

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRESSA GATTINELLA, and
KRISTIN LENGYEL each individually and on behalf
of all others similarly situated,

No. 14 Civ. 5731 (WHP)

Plaintiffs,

-against-

MICHAEL KORS (USA), INC.; MICHAEL KORS,
L.L.C.; MICHAEL KORS RETAIL, INC.; and
MICHAEL KORS STORES, L.L.C.,

Defendants.

-----X

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	3
A. Factual Background	3
1. Procedural History	4
2. Class Counsel’s Investigation	6
B. Summary of the Settlement Terms	6
1. The Settlement Class.....	6
2. Relief for the Benefit of the Settlement Class	7
3. The Notice Program.....	7
a. The Published Notice Program	8
b. Long-Form Notice	9
c. The Settlement Website and Toll-Free Hotline	9
4. Settlement and Notice Administration.....	10
5. Claims Process	11
6. Allocation of Net Settlement Fund	12
7. Disposition of Residual Funds afer Distribution	14
8. Class Release	14
9. Settlement Termination.....	15
10. Class Representatives’ Service Awards.....	15
11. Attorneys’ Fees and Costs	15
III. ARGUMENT.....	16
A. The Legal Standard for Preliminary Approval	16
B. This Settlement Satisfies the Criteria for Preliminary Approval	18
1. This Settlement is the product of Good Faith, Informed and Arm’s Length Negotiations.....	18
2. The Facts Support a Preliminary Determination that the Settlement is Fair, Adequate, and Reasonable.....	19
a. Complexity, Expense, and Likely Duration of the Litigation.....	20
b. The Reaction of the Class to the Settlement	21
c. The Stage of the Proceedings and Amount of Discovery	21
d. The Risks of Establishing Liability and Damages.....	22

e.	The Risks of Maintaining the Class Action through Trial	24
f.	The Ability of Defendant to Withstand a Greater Judgment	25
g.	The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risk of Litigation	25
C.	Certification of the Settlement Class is Appropriate	26
1.	Numerosity.....	27
2.	Commonality.....	28
3.	Typicality	29
4.	Adequacy	30
5.	Predominance.....	30
6.	Superiority.....	31
D.	Appointment of Class Counsel	32
E.	Adequacy of the Proposed Notice.....	33
F.	The Plan of Allocation	34
G.	The Court Should Schedule a Final Approval Hearing	35
IV.	CONCLUSION	36

INDEX OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Air Line Pilots Assoc. v. American Nat’l Bank and Trust Co. of Chicago</i> , 156 B.R. 414 (S.D.N.Y. 1993).....	25
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	31, 32
<i>Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.</i> , 222 F.3d 52 (2d Cir. 2000).....	30
<i>Ballinger v. Advance Magazine Publr., Inc.</i> , No. 13 Civ. 4036 (HBP), 2014 U.S. Dist. LEXIS 179538 (S.D.N.Y. Dec. 29, 2014)	22, 25
<i>Behrens v. Wometco Enterprises, Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988).....	21
<i>Bolanos v. Norweigen Cruise Lines Ltd.</i> , 212 F.R.D. 144 (S.D.N.Y. 2002)	29
<i>Brown v. Kelly</i> , 609 F.3d 467 (2d Cir. 1010).....	31
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	16
<i>Clark v. Ecolab, Inc.</i> , Nos. 07 Civ. 8623 (PAC) <i>et al.</i> , 2009 U.S. Dist., LEXIS 108736 (S.D.N.Y. Nov. 27, 2009)	17
<i>Consol. Rail Corp. v. Town of Hyde Park</i> , 47 F.3d 473 (2d Cir. 2005).....	27
<i>Damassia v. Duane Reade, Inc.</i> , 250 F.R.D. 152 (S.D.N.Y. 2008)	30
<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78 (2d Cir. 2001).....	25
<i>Denney v. Deutsche Bank AG</i> , 443 F.3d 253 (2d Cir. 2006).....	26
<i>Ebin v. Kangadis Food, Inc.</i> , 297 F.R.D. 561 (S.D.N.Y. Feb 24, 2014)	24
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174 (W.D.N.Y. 2005).....	25, 28
<i>Hernandez v. Merrill Lynch & Co, Inc.</i> , No. 11 Civ. 8472 (KBF)(DCF), 2012 U.S. Dist. LEXIS 165771 (S.D.N.Y. Nov. 15, 2012)	17

<i>Inglesias-Mendoza v. La Belle Farm, Inc.</i> , 239 F.R.D. 363 (S.D.N.Y. 2007)	31
<i>In re Austrian & German Bank Holocaust Litig.</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	<i>passim</i>
<i>In re Currency Conversion Fee Antitrust Litig.</i> , MDL No. 1409, M 21-95, 2006 U.S. Dist. LEXIS 81440 (S.D.N.Y. Nov. 8, 2006)	19, 20
<i>In re Gache</i> , 164 F.3d 617 (2d Cir. 1988).....	25
<i>In re Initial Pub. Offering Sec. Litig.</i> , 226 F.D.R. 186 (S.D.N.Y. 2005)	18
<i>In re Med. X-Ray</i> , No. 93 Civ. 5904, 1998 U.S. Dist. LEXIS 14888 (E.D.N.Y. Aug. 7, 1998).....	26
<i>In re Michael Milken Sec. Lit.</i> , 150 F.R.D. 57 (S.D.N.Y. 1993)	25
<i>In re Nasdaq Market-Makers Antitrust Litig.</i> , 169 F.R.D. 493 (S.D.N.Y.)	27
<i>In re Nasdaq Market-Makers Antitrust Litig.</i> , 176 F.R.D. 99 (S.D.N.Y. 1997)	19
<i>In re Platinum & Palladium Commodities Litig.</i> , No. 10cv3617, 2014 U.S. Dist. LEXIS 96457 (S.D.N.Y. July 15, 2014)	<i>passim</i>
<i>In re Prudential Secs. Inc. Ltd. P'ships Litig.</i> , 164 F.R.D. 362 (S.D.N.Y. 1996)	33, 34
<i>In re Scotts EZ Seed Litig.</i> , 304 F.R.D. 397 (S.D.N.Y. 2015)	24
<i>In re Traffic Executive Ass'n</i> , 627 F.2d 631 (2d Cir. 1980).....	17
<i>In re Warfarin Sodium Antitrust Litig.</i> , 391 F.3d 516 (3d Cir. 2004).....	24
<i>In re Warner Chilcott Ltd. Secs. Litig.</i> , No. 06 Civ. 11515 (WHP), 2008 U.S. Dist. LEXIS 99840 (S.D.N.Y. Nov. 20, 2008).....	<i>passim</i>
<i>In re Warner Chilcott Ltd. Secs. Litig.</i> , No. 06 Civ. 11515 (WHP), 2009 U.S. Dist. LEXIS 58843, (S.D.N.Y. July 10, 2009)	34
<i>Joel A. v. Giuliani</i> , 218 F.3d 132 (2d Cir. 2000).....	16

<i>Klein v. PDG Remediation, Inc.</i> , No. 95 Civ. 4954, 1999 U.S. Dist. LEXIS 650 (S.D.N.Y. Jan. 28, 1999).....	21
<i>Korn v. Franchard Corp.</i> , 456 F.2d 1206 (2d Cir. 1972).....	27
<i>Levitt v. J.P. Morgan Sec., Inc.</i> , 710 F.3d 454 (2d Cir. 2013).....	27
<i>Lizondro-Garcia v. Kefi LLC</i> , 300 F.R.D. 169, 178 (S.D.N.Y. 2014)	<i>passim</i>
<i>Maley v. Del Global Techs. Corp.</i> , 186 F. Supp. 2d 358 (S.D.N.Y. 2002).....	34
<i>Marisol A. v. Giuliani</i> , 126 F.3d 372 (2d Cir. 1997).....	27, 29
<i>Martens v. Smith Barney, Inc.</i> , 81 F.R.D. 243 (S.D.N.Y. 1998)	22
<i>McBean v. City of N.Y.</i> , 228 F.R.D. 487 (S.D.N.Y. 2005)	31
<i>McReynolds v. Richards-Cantave</i> , 588 F.3d 790 (2d Cir. 2009).....	16, 17
<i>Moore v. PaineWebber, Inc.</i> , 306 F.3d 1247 (2d Cir. 2002).....	31
<i>Park v. Thomson Corp.</i> , No. 05 Civ. 2931 (WHP), 2008 U.S. Dist. LEXIS 84551 (S.D.N.Y. Oct. 22, 2008)	18, 19, 23, 24
<i>Plummer v. Chemical Bank</i> , 668 F.2d 654 (2d Cir. 1982).....	21
<i>Robidoux v. Celani</i> , 987 F.2d 931 (2d Cir. 1993).....	29
<i>Spagnola v. Chubb Corp.</i> , 264 F.R.D. 76 (S.D.N.Y. 2010)	27
<i>Trief v. Dun & Bradstreet Corp.</i> , 144 F.R.D. 193 (S.D.N.Y. 1992)	28
<i>United States v. Glens Falls Newspapers, Inc.</i> , 160 F.3d 853 (2d Cir. 1998).....	20
<i>Wal-Mart Stores Inc. v. Dukes</i> , __ U.S. __, 131 S. Ct. 2541 (2011)	28
<i>Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.</i> , 396 F.3d 96 (2d Cir. 2005).....	16

Court Rules

Fed. R. Civ. P. Rule 23(a).....	26
Fed. R. Civ. P. Rule 23(a)(1)	27
Fed. R. Civ. P. Rule 23(a)(2)	28
Fed. R. Civ. P. Rule 23(b).....	26
Fed. R. Civ. P. Rule 23(b)(3)	6, 27, 30, 31, 32, 36
Fed. R. Civ. P. Rule 23(c)(1)(B)	32
Fed. R. Civ. P. Rule 23(c)(2)(B)	34
Fed. R. Civ. P. Rule 23(c)(3)	34
Fed. R. Civ. P. Rule 23(e)	35
Fed. R. Civ. P. Rule 23(e)(1)(B)	33
Fed. R. Civ. P. Rule 23(g).....	32
Fed. R. Civ. P. Rule 23(g)(1)(A)	33

Other Authorities

1 <i>Newberg on Class Actions</i> 3.05, at 3-25 (3d ed. 1992).....	28
4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> § 11:25, at 87 (4th ed. 2002)	16

I. INTRODUCTION

Plaintiffs, Tressa Gattinella and Kristin Lengyel (collectively “Plaintiffs”), on behalf of themselves and the Settlement Class, respectfully move for Preliminary Approval of the Settlement Agreement and Release (“Settlement” or “Agreement”), attached as *Exhibit A*, which will resolve all claims against Michael Kors (USA), Inc., Michael Kors, L.L.C., Michael Kors Retail, Inc., and Michael Kors Stores, L.L.C. (“collectively “Michael Kors”) in the above-captioned action (“Action”).¹ The Court should grant Preliminary Approval because the Settlement provides substantial relief for the Settlement Class, and the terms of the Settlement are well within the range of reasonableness and consistent with applicable case law. Indeed, given the significant risks inherent in this Action, the Settlement – which provides for Michael Kors’ agreement to pay \$4,875,000.00 and significant practices changes – is a significant result.

Plaintiffs sued on behalf of themselves and all others similarly situated seeking monetary damages, restitution and declaratory relief based on Michael Kors alleged deceptive and misleading labeling and marketing of merchandise sold at its company-owned Michael Kors outlet stores. Specifically, the manner in which Michael Kors labels its price tags deceives customers into believing they are purchasing products that were formerly sold or offered at a higher price at main line retail stores and are now significantly cheaper at the outlet stores.

The Settlement satisfies all Second Circuit criteria for settlement approval. One of the keystones of this Settlement is that Michael Kors has agreed for all of its United States outlet stores to cease the very practice at the heart of Plaintiffs’ Complaint and to modify its price tags, as well as provide in-store displays with explanations of pricing terms, making it easier for customers to understand the value of what they are purchasing. A second hallmark is that the

¹ All capitalized terms used throughout this memorandum have the same meanings as those found in Section II of the Settlement Agreement and Release.

process to claim a cash benefit is streamlined as compared to most claims procedures and the threshold for eligibility is reasonably low, thereby making it easy for Settlement Class Members throughout the United States to participate in the Settlement and receive a portion of the Net Settlement Fund. To participate, claimants need only submit online or by mail a Claim Verification Form verifying that they purchased Michael Kors Outlet Products during the Class Period. Claimants need not submit proof of purchase to receive a share of the Net Settlement Fund. However, those claimants that do have receipts may be entitled to receive a higher distribution depending upon the amount of their purchases. Upon confirmation by the Notice and Settlement Administrator that Claim Verification Forms are complete, checks will automatically be sent to each Settlement Class Member. The claims process and plan of allocation is extremely fair and adequate.

Another testament to the reasonableness and fairness of the Settlement is the amount of the Settlement Fund. Class Counsel negotiated a \$4.875 million cash payment for the benefit of the Settlement Class. The recovery falls well within the range of reasonableness given the significant risks inherent with litigating false advertising outlet store cases. In other similar cases, courts have granted motions to dismiss and have otherwise refused to enter restitutionary damages awards. Cases against outlet stores alleging false product pricing are a relatively new phenomenon, meaning there is no extensive body of case law governing applicable damages models. In the face of these risks and others discussed below, this Settlement is eminently fair and reasonable and merits Preliminary Approval.

Therefore, as detailed below, Plaintiffs respectfully request that the Court take the following initial steps in the Settlement approval process: (1) grant Preliminary Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule

23 of the Federal Rules of Civil Procedure; (3) appoint Tressa Gattinella and Kristin Lengyel as class representatives; (4) approve the Notice Program set forth in the Agreement and approve the form and content of the Notices attached to the Agreement as *Exhibits 1* and 2; (5) approve the claims procedure and the Claim Verification Form attached to the Agreement as *Exhibit 3*; (6) approve and order the opt-out and objection procedures set forth in the Agreement; (7) stay the Action against Michael Kors pending Final Approval of the Settlement; (8) appoint as Class Counsel the law firms listed in paragraph 7 of the Agreement; and (9) schedule a Final Approval Hearing to occur no sooner than the week of November 2, 2015 (if convenient for the Court).

II. STATEMENT OF FACTS

A. Factual Background.

This case alleges Michael Kors falsely and deceptively labels and markets merchandise it sells at its company-owned Michael Kors outlet stores (“Kors Outlet”). Plaintiffs are California consumers, who, in reliance on Michael Kors’ misrepresentations regarding the existence, nature and amount of price discounts on products manufactured exclusively for Kors Outlet (“Kors Outlet Products”), purchased Kors Outlet Products. Plaintiffs allege that Michael Kors represented—on the price tags of its Kors Outlet Products—Manufacturer’s Suggested Retail Prices (“MSRPs”) that were artificial, arbitrary and did not represent a bona fide price at which Michael Kors formerly sold the Michael Kors Outlet Products. Having touted a false MSRP, Michael Kors then offered, on the same sales labels, to sell Kors Outlet Products for a price termed “OUR PRICE,” which supposedly represented a deep discount off of the false MSRP. However, because the Michael Kors Outlet Products were manufactured exclusively for sale at Kors Outlets, those products were never sold—or even intended to be sold—at the “MSRP” price listed on their labels. Thus, the “OUR PRICE” represented on Kors Outlet Products’ price

tags was nothing more than a false, misleading and deceptive illusion of a discount. Plaintiffs allege that Michael Kors' practices violate California's False Advertising Law, Unfair Competition Law, and Consumers Legal Remedies Act.

There have been a number of similar cases filed in New York and California against prominent retailers on behalf of California consumers alleging deceptive marketing practices at retail outlets and factory stores. As Plaintiffs do here, the plaintiffs in those cases allege claims for false advertising, unfair competition and violation of California's Consumers Legal Remedies Act based on the assertion that they were led to believe that the products they purchased at outlet stores were steeply discounted from their "suggested" retail prices or "compared to" prices when, in reality, those products were never intended to be sold at the traditional retail stores, were created exclusively for the outlet stores, and were of inferior quality. Several of those putative class actions have been dismissed, and the remaining pending actions are still at their infancy. This case is believed to be the only outlet class action that has been settled to date. Class Counsel are counsel of record for plaintiffs in many of those similar actions.

1. Procedural History.

On July 25, 2014, Plaintiff Gattinella filed a Class Action Complaint in this Court seeking monetary damages, restitution and declaratory relief from Michael Kors. DE # 1. Thereafter, on September 2, 2014, Plaintiff Gattinella filed her First Amended Complaint. DE # 10. On September 25, 2014, Michael Kors filed its Answer. DE # 25. Michael Kors defended its conduct by, *inter alia*, arguing that the "suggested" retail price on Kors Outlet Products did not constitute a representation as to whether those Products were, in fact, offered for sale at those "suggested" prices, and that it complied with applicable federal and state laws, regulations and rules. Joint Declaration of Jeffrey M. Ostrow and Hassan A. Zavareei ("Joint Decl.") ¶ 6,

attached hereto as *Exhibit B*. Furthermore, Michael Kors advanced a medley of other defenses. *See generally* Answer. DE # 25. On October 31, 2014, the Parties' counsel appeared before the Court for a Pretrial Conference, after which a Scheduling Order was entered. DE # 30. On December 24, 2014, Plaintiff Gattinella filed a Second Amended Complaint adding Plaintiff Lengyel. DE # 33. Thereafter, the Parties engaged in formal written discovery, including document requests, interrogatories and requests for admission. Joint Decl. ¶ 7.

Beginning in early 2015, the Parties engaged in preliminary settlement discussions, which involved Michael Kors producing informal damage related data and information. Joint Decl. ¶ 8. On February 11, 2015, the Parties conducted an informal settlement conference in New York. *Id.* On April 2, 2015, the Parties participated in a formal mediation session with Professor Eric Green in New York City. *Id.* In advance of the mediation, and aside from responding to Plaintiffs' formal written discovery, Michael Kors produced specific additional data and class related information. This data and class related information included nationwide sales numbers for Kors Outlet Products, internal procedures related to setting prices for Kors Outlet Products and a description of customer databases maintained by Michael Kors. *Id.*

After the mediation, the Parties reached an agreement in principle and signed a term sheet, which memorialized, subject to negotiation and execution of the Agreement and subject to Preliminary Approval and Final Approval, the Parties' good faith intention to fully, finally and forever resolve, discharge and release all rights and claims of Plaintiffs and the Settlement Class Members in exchange for Michael Kors' Agreement to; (a) pay the sum of Four Million Eight Hundred Seventy-Five Thousand Dollars (\$4,875,000.00) to create a common fund for the benefit of the Settlement Class; and (b) modify its sales practices to change the manner and method in which it markets and labels various price tags for items in its outlet stores. Joint Decl. ¶ 9.

On April 8, 2015, the Parties filed a Notice of Settlement with the Court DE # 37, and on June 12, 2015, the Parties fully executed the Agreement. Joint Decl. ¶ 10.

2. Class Counsel's Investigation.

Class Counsel spent many hours investigating the claims of several potential plaintiffs against Michael Kors. Joint Decl. ¶ 11. Prior to filing suit, Class Counsel visited outlet stores, spoke to Michael Kors employees, and interviewed a number of customers and potential plaintiffs to gather information about Michael Kors' conduct and its impact upon consumers. *Id.* This information was essential to Class Counsel's ability to understand the nature of the conduct, the language on the price tags at issue, and potential relief and remedies. *Id.*

Class Counsel expended significant resources researching and developing the legal claims at issue. Joint Decl. ¶ 12. After filing suit, Class Counsel also crafted and served document requests, interrogatories and requests for admission with an eye toward class certification, summary judgment and trial. *Id.* Additionally, Class Counsel spent an enormous amount of time researching, reviewing and analyzing Michael Kors' outlet revenue and industry trends relating to pricing. *Id.* Prior to Settlement, Class Counsel and Plaintiffs' expert analyzed the discovery and other data provided by Michael Kors, and researched case law, to create damage models and to formulate a range of alleged damages in this case. *Id.*

B. Summary of the Settlement Terms.

The Settlement's terms are detailed in the Agreement. The following is a summary of the material terms of the Settlement.

1. The Settlement Class.

The Settlement Class is an opt-out class under Rule 23(b)(3) of the Federal Rule of Civil Procedure. The Settlement Class is defined as:

All consumers who purchased Michael Kors Outlet Products from a Michael Kors Outlet Store during the Class Period.

Agreement ¶ 28. Class Period means the period from July 25, 2010, through, and including, July 25, 2014. *Id.* ¶ 8.

2. Relief for the Benefit of the Settlement Class.

The Settlement consists of a \$4,875,000 million cash Settlement Fund to be distributed to Settlement Class Members. Agreement ¶ 33. The Settlement requires Michael Kors to deposit into an Escrow Account the full amount of the Settlement within 5 days of Preliminary Approval. *Id.* The Settlement Fund will be used to pay the costs of class Notice and Settlement Administration, attorneys' fees, costs and expenses, the class representatives' Service Awards sought in this case, and, most importantly, the distributions to Settlement Class Members. Agreement ¶ 36.

Additionally, within 6 months of Final Approval, unless Michael Kors elects to do it sooner, Michael Kors agrees to modify its sales practices to change the manner and method of how it presents pricing on price tags of Michael Kors Outlet Products. Specifically, Michael Kors shall: (a) cease the use of the acronym "MSRP" (Manufacturer Suggested Retail Prices) and will replace it with the word "Value" on price tags of items sold at Michael Kors Outlet Stores; and (b) display signage in the Michael Kors Outlet Stores that explains the meaning of "Value" to customers. Agreement ¶¶ 37-38.

3. The Notice Program.

The Notice Program in this Settlement is designed to provide the best notice practicable. Joint Decl. ¶ 15. The Notice Program is reasonably calculated under the circumstances to apprise members of the Settlement Class, among other information: a description of the material terms of the Settlement, the date by which persons in the Settlement Class may exclude

themselves from or “opt-out” of the Settlement Class, the date by which persons in the Settlement Class may object to the Settlement, the date upon which the Final Approval Hearing will occur, and the address of the Settlement Website at which persons in the Settlement Class may access the Agreement and other related documents and information. Agreement ¶ 45-52 and Exs. 1-2 thereto. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. Joint Decl. ¶ 15. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process. *Id.*

The Notice Program is comprised of two parts: (1) publication notice (“Published Notice”); and (2) written long-form notice containing more detail than the Published Notice (“Long Form Notice”) that will be available on the Settlement website (www.KorsOutletSettlement.com) and via U.S. mail upon request. Agreement ¶¶ 49-52. In addition, Notice will be provided through targeted Internet banner advertising. Joint Decl. ¶ 16.

a. The Published Notice Program.

The Settlement and Notice Administrator shall administer the Published Notice, which shall be comprised of a one-time appropriate sized newspaper advertisements covering the areas in which Michael Kors had Michael Kors Outlet Stores during the Class Period and targeted Internet advertising. Agreement ¶ 51; Joint Decl. ¶ 16. The Published Notice shall be completed no later than 90 days before the Final Approval Hearing. Agreement ¶ 51.

Within 7 days after the date the Settlement and Notice Administrator completes the Published Notice, the Settlement and Notice Administrator shall provide Class Counsel and Michael Kors’ Counsel with an affidavit that confirms that the Published Notice was given in accordance with the Preliminary Approval Order. Agreement ¶ 52. Class Counsel shall file the

affidavit with the Court in conjunction with Plaintiffs' motion for final approval of the Settlement. *Id.*

b. Long-Form Notice

In addition to the information described above, the Long Form notice will also describe the procedure that members of the Settlement Class must follow to opt-out of the Settlement or to object to the Settlement, and/or to Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards to Plaintiffs. Agreement ¶¶ 46-47 and Ex. 2 thereto. All opt-outs must be postmarked during the Opt-Out Period, and any objections must be postmarked no later than the last day of the Opt-Out Period (no later than 45 days prior to the Final Approval Hearing). Agreement ¶ 20. For an objection to be valid, it must include: the name of the Action; the objector's name, address, and telephone number; an explanation of how the objector is a member of the Settlement Class; the basis for the objection; a description of the number of times the objector or the objector's counsel has objected to a class settlement in the last five years, the names of any such cases, and any relevant orders issued in response to such past objections; a statement confirming whether the objector will appear at the Final Approval Hearing and a description of counsel or witnesses who will appear on behalf of the objector at the Final Approval Hearing; and the objector's signature. *Id.* ¶ 47.

c. The Settlement Website and Toll-Free Hotline.

The Settlement Administrator will establish a Settlement Website, www.KorsOutletSettlement.com, as a means for members of the Settlement Class to obtain notice of, and information about, the Settlement. Agreement ¶ 32. The Settlement Website will be established as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program. *Id.* The Settlement Website will include hyperlinks to

the Settlement, the Long Form Notice, the order preliminarily approving this Settlement and such other documents as Class Counsel and Michael Kors' Counsel agree to post or that the Court orders posted on the Settlement Website. *Id.* These documents will remain on the Settlement Website at least until Final Approval. *Id.*

The Settlement Administrator will also establish and maintain an automated toll-free telephone line for members of the Settlement Class to call with Settlement-related inquiries, and answer the questions of members of the Settlement who call with or otherwise communicate such inquiries. Agreement ¶ 44(d).

4. Settlement and Notice Administration.

The Settlement and Notice Administrator is Epiq Systems, Inc. ("Epiq"), one of the leading class action settlement administrators in the United States. Epiq's responsibilities include the following:

- a. Obtain from Michael Kors and Class Counsel a complete and accurate list of all Michael Kors Outlet Stores locations that were in operation during the Class Period;
- b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and answer the questions of persons who call with or otherwise communicate such inquiries (except that the Settlement and Notice Administrator shall not give, and shall not be expected to give, legal advice);
- e. Receive and review for completeness the Claim Verification Forms submitted by claimants seeking to be part of the Settlement Class;

- f. Respond to any mailed inquiries from persons in the Settlement Class;
- g. Process all requests for exclusion from persons in the Settlement Class;
- h. Provide weekly reports and a final report to Class Counsel and Michael Kors' Counsel that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date and other pertinent information;
- i. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each person in the Settlement Class who timely and properly requested exclusion from the Settlement Class;
- j. Process and transmit payments to Class Members from the Net Settlement Fund;
- k. Perform all tax-related services for the Escrow Account as provided in this Agreement;
- l. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Class Counsel and Michael Kors' Counsel; and
- m. Pay invoices, expenses and costs upon approval by Class Counsel and Michael Kors' Counsel, as provided in this Agreement. Agreement ¶ 44.

5. Claims Process.

To be eligible to participate in the Settlement as a Settlement Class Member, claimants must submit a Claim Verification Form online or by mail to the Settlement and Notice Administrator. Agreement ¶ 55. A copy of the Claim Verification Form is attached as Exhibit 3 to the Agreement. The Notice Program will direct claimants to the Settlement Website to provide instructions on how to complete and submit the Claim Verification Form. *Id.* At the request of a Settlement Class Member, the Settlement and Notice Administrator will send a hard

copy of the form to the claimant's address. *Id.* at ¶ 56. The Settlement Class Member shall return the Claim Verification Form to the mailing address identified on the Claim Verification Form, and shall be responsible for the cost of postage to deliver the Claim Verification Form to the Settlement and Notice Administrator. *Id.*

Once the forms are submitted online or by mail, the Settlement and Notice Administrator will be responsible for reviewing the forms for completeness. Agreement ¶ 57. Should a Claim Verification Form be valid and complete, the claimant will be added to the Settlement Class Member list. *Id.* If a Claim Verification Form is invalid or incomplete, the Settlement and Notice Administrator will send written verification to the claimant that the form is rejected. *Id.* The claimant will have one more opportunity to submit a corrected completed form. *Id.*

All Claim Verification Forms, whether the initial or second submission, must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order ("Claim Verification Form Deadline"). Agreement ¶ 58.

6. Allocation of Net Settlement Fund.

All Settlement Class Members who submit a valid Claim Verification Form ("Valid Class Members") will receive a percentage of the Net Settlement Fund. Agreement ¶ 59. The percentage each Valid Class Member receives will be dependent upon the total number of Valid Class Members, and whether such Valid Class Member is entitled to one, two, three, four or five points, as follows: (a) each Valid Class Member who submits a Claim Verification Form but does not submit a valid receipt evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period shall receive one point; (b) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total less than \$200 will receive two points; (c) each Valid Class Member who submits one

or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$200 to \$499 will receive three points; (d) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$500 to \$999 will receive four points; and (e) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$1,000 or more will receive five points. *Id.*

Thereafter, each Valid Class Member's percentage will be determined by dividing the number of points he or she receives by the number of total points of all Valid Class Members in order to determine his or her percentage of the Net Settlement Fund. Agreement ¶ 59. By way of example, if there are 2000 total Valid Class Members, 400 of whom receive one point, 400 of whom receive two points, 400 of whom receive three points, 400 of whom receive four points, and 400 of whom receive five points, the number of total points would be 6,000, and a Valid Class Member who received five points would receive .00083% (or $5/6000$) of the Net Settlement Fund; a Valid Class Member who received four points would receive .00067% (or $4/6000$) of the Net Settlement Fund; a Valid Class Member who received three points would receive .00050% (or $3/6000$) of the Net Settlement Fund; a Valid Class Member who received two points would receive .00033% (or $2/6000$) of the Net Settlement Fund; and a Valid Class Member who received one point would receive .00017% (or $1/6000$) of the Net Settlement Fund. *Id.*

Payments will be made by check and distributed by the Settlement and Notice Administrator 30 days after the later of the Claim Verification Form Deadline or the Effective Date. Agreement ¶ 60. Checks shall contain an appropriate legend, in a form approved by Class Counsel and Michael Kors' Counsel, to indicate that it is from the Settlement. *Id.* at ¶ 61.

Checks will be cut and mailed by the Notice and Settlement Administrator, and will be sent to the addresses that the Settlement Class Members provide on the Claim Verification Forms. *Id.* Checks shall be valid for 180 days. *Id.*

The amount of the Net Settlement Fund attributable to uncashed checks and checks returned to the Settlement and Notice Administrator shall remain in the Settlement Fund for 1 year from the date that the first distribution check is mailed by the Settlement and Notice Administrator, during which time the Settlement and Notice Administrator shall make a reasonable effort to locate Settlement Class Members whose checks were returned to effectuate delivery of such checks to the Settlement Class Members entitled to them. Agreement ¶ 62. The Settlement and Notice Administrator shall make only one attempt to re-mail or re-issue a distribution check. *Id.*

All costs associated with the process of printing and mailing the checks and any accompanying communication to Settlement Class Members shall be paid out of the Settlement Fund. Agreement ¶ 63.

7. Disposition of Residual Funds after Distribution.

Within 1 year plus 30 days after the date the Settlement and Notice Administrator mails the first Settlement Class Member payment, if any funds remain in the Settlement Fund, the Parties shall meet and confer regarding the distribution of any remaining funds to (i) an appropriate charitable organization approved by the Court (as a *cy pres* award); (ii) Valid Class Members (as a supplemental distribution); or (iii) a combination thereof. Agreement ¶ 64.

8. Class Release.

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released Michael Kors from claims relating to the subject matter of the Action. The detailed release language can be found in Section XIII of the Agreement.

9. Settlement Termination.

Either Party may terminate the Settlement if the Settlement is rejected or materially modified by the Court or an appellate court. Agreement ¶ 75. Michael Kors also has the right to terminate the Settlement if the number of members of the Settlement Class who timely request exclusion from the Settlement Class equals or exceeds an amount agreed upon by the Parties in a separate agreement. *Id.* at ¶ 76.

10. Class Representatives' Service Awards.

Class Counsel will seek Service Awards of \$5,000 for each of the named Plaintiffs. Agreement ¶ 72. If the Court approves them, the total Service Awards of \$10,000, will be approximately 0.2% of the Settlement Fund. Joint Decl. ¶ 23. The Service Awards will be paid from the Settlement Fund, and will be in addition to the distributions the Plaintiffs will be entitled to under the terms of the Settlement. *Id.* These awards will compensate the representatives for their time and effort in the Action and for the risks they assumed in prosecuting the Action against Michael Kors. *Id.* Specifically, Plaintiffs provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding relevant responsive documents and information; and (3) participating in conferences with Class Counsel. *Id.* In so doing, the Plaintiffs were integral to the case. *Id.* Michael Kors does not object to Class Counsel's request for Service Awards for the Class Representatives.

11. Attorneys' Fees and Costs.

Michael Kors will not oppose Class Counsel will request attorneys' fees of up to thirty percent (30%) of the Settlement Fund, as well as reimbursement of costs and expenses incurred in connection with the Action. Agreement ¶ 68; Joint Decl. ¶ 24. The Parties negotiated and

reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement. Agreement ¶ 69; Joint Decl. ¶ 24.

III. ARGUMENT

A. The Legal Standard for Preliminary Approval.

"The settlement of complex class action litigation is favored by the Courts." *In re Warner Chilcott Ltd. Secs. Litig.*, No. 06 Civ. 11515 (WHP), 2008 U.S. Dist. LEXIS 99840, *2-3 (S.D.N.Y. Nov. 20, 2008) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)) (noting the "strong judicial policy in favor of settlements, particularly in the class action context") (internal citation omitted). *See also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:25, at 87 (4th ed. 2002) ("*Newberg*") ("The compromise of complex litigation is encouraged by the courts and favored by public policy."). "Although there is a general policy favoring settlement, the court may approve a class action settlement only if it is 'fair, adequate, and reasonable, and not a product of collusion.'" *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 178 (S.D.N.Y. 2014) (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000)). "A court determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to the settlement." *Lizondro-Garcia*, 300 F.R.D. at 178 (quoting *Wal-Mart Stores, Inc.*, 396 F.3d at 116).

"In assessing procedural fairness, there is a 'presumption of fairness, reasonableness, and adequacy as to the settlement where a class settlement [is] reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Lizondro-Garcia*, 300 F.R.D. at 178 (quoting *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (internal citation omitted)). "In assessing whether a settlement is substantively fair, reasonable, and adequate, courts in this Circuit use the nine-factor test set forth in *City of Detroit v. Grinnell*

Corp., 495 F.2d 448, 463 (2d Cir. 1974).” *Lizondro-Garcia*, 300 F.R.D. at 178 (citing *McReynolds*, 588 F.3d at 804). These factors include:

(1) The complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in the light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Lizondro-Garcia, 300 F.R.D. at 178 (citing *McReynolds*, 588 F.3d at 804).

As this Court previously held in *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 179 (S.D.N.Y. 2014):

Preliminary approval is the first step in the settlement of a class action whereby the court “must preliminarily determine whether notice of the proposed settlement . . . should be given to class members in such a manner as the court directs, and an evidentiary hearing scheduled to determine the fairness and adequacy of settlement.” Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 11.25 (4th ed. 2002) (internal quotation omitted). . . .

Preliminary approval of a settlement requires only an “initial evaluation” of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties. *Clark v. Ecolab, Inc.*, Nos. 07 Civ. 8623 (PAC) *et al.*, 2009 U.S. Dist. LEXIS 108736, at *3 (S.D.N.Y. Nov. 27, 2009)) (citing Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 11.25 (4th ed. 2002)). Nevertheless, courts often grant preliminary settlement approval without requiring a hearing or a court appearance. *Hernandez v. Merrill Lynch & Co, Inc.*, No. 11 Civ. 8472 (KBF)(DCF), 2012 U.S. Dist. LEXIS 165771, at *1 (S.D.N.Y. Nov. 15, 2012) (granting preliminary approval based on plaintiffs’ memorandum of law, attorney declaration, and exhibits)). To grant preliminary approval, the court need only find that there is “‘probable cause’ to submit the [settlement] to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Executive Ass’n*, 627 F.2d 631, 634 (2d Cir. 1980); *see Newberg* § 11.25 (“If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible approval,” the court should permit notice of the settlement to be sent to class members)). . . .

B. This Settlement Satisfies the Criteria for Preliminary Approval.

Each of the relevant factors weighs in favor of Preliminary Approval of this Settlement. First, the Settlement was reached in the absence of collusion, and is the product of good-faith, informed and arm's length negotiations by competent counsel, in conjunction with an experienced mediator. Furthermore, a preliminary review of the factors related to the fairness, adequacy and reasonableness of the Settlement demonstrates that the Settlement fits well within the range of reasonableness, such that Preliminary Approval is warranted.

Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiffs believe that the claims asserted are meritorious and that they would prevail if this matter proceeded to trial. Michael Kors argues that Plaintiffs' claims are unfounded, denies any potential liability, and up to the point of settlement has indicated a willingness to litigate those claims vigorously.

The Parties concluded that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review, completing merits discovery, pretrial motion practice, trial, final appellate review. Joint Decl. ¶ 25.

1. This Settlement is the Product of Good Faith, Informed and Arm's Length Negotiations.

"Where a settlement is the 'product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation,' the negotiation enjoys a 'presumption of fairness.'" *Park v. Thomson Corp.*, No. 05 Civ. 2931 (WHP), 2008 U.S. Dist. LEXIS 84551, at *5-6 (S.D.N.Y. Oct. 22, 2008) (quoting *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000)); *In re Initial Pub. Offering Sec.*

Litig., 226 F.D.R. 186, 194 (S.D.N.Y. 2005); *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action. Joint Decl. ¶ 26. Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases. *Id.* As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in both informal and formal discovery with Michael Kors. *Id.* at ¶ 27. Class Counsel's review of the discovery enabled it counsel to gain an understanding of the evidence related to central questions in the case, and prepared it for well-informed settlement negotiations. *Id.* Accordingly, Class Counsel was well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, and the appropriate basis upon which to settle them. *Id.*

Furthermore, the Parties engaged in a full day formal mediation before an experienced and respected mediator, Professor Eric Green. Joint Decl. ¶ 28; *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409, M 21-95, 2006 U.S. Dist. LEXIS 81440, *14-15 (S.D.N.Y. Nov. 8, 2006) (holding that mediator's "participation in the negotiations substantiates the parties' claim that the negotiations took place at arm's length"); *Park*, 2008 U.S. Dist. LEXIS 84551 at *6 (granting preliminary approval in part because settlement negotiations were facilitated by former judge).

2. The Facts Support a Preliminary Determination that the Settlement is Fair, Adequate, and Reasonable.

Application of facts to the *Grinnell* factors supports a preliminary determination that the Settlement falls within the "range of reason" such that notice to the Settlement Class and a final hearing as to the fairness, adequacy, and reasonableness of the Settlement are warranted.

a. Complexity, Expense, and Likely Duration of the Litigation.

As an initial matter, it is common knowledge that “[m]ost class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 174. This case is no exception, with tens of thousands of members of the Settlement Class. By reaching a favorable settlement prior to dispositive motions or trial, the Parties seek to avoid significant expense and delay, and instead ensure recovery for the Settlement Class. Joint Decl. ¶ 29.

The traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and given the relatively small value of the claims of the individual members of the Settlement Class, individual cases would be impracticable. Joint Decl. ¶ 30. Although the Parties have already undertaken considerable time and expense litigating this matter, further litigation without settlement would necessarily result in additional expense and delay. *Id.* There is no doubt that continued litigation here would be difficult, expensive, and time consuming. *Id.* Recovery by any means other than settlement would require additional years of litigation in this Court and the Second Circuit Court of appeals. *Id.* See also *In re Currency Conversion Fee Antitrust Litig.*, 2006 U.S. Dist. LEXIS 81440 at *15 (noting that “[t]he expense and delay of continued litigation could be substantial”); *United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856 (2d Cir. 1998) (noting that “a principal function of a trial judge is to foster an atmosphere of open discussion among the parties’ attorneys and representatives to that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial”).

One of the most expensive aspects of ongoing litigation in this case involves the retention of experts to perform data analyses and to present those analyses in expert reports, at depositions,

and at trial. Joint Decl. ¶ 31. Experts in the fields of retail and marketing may also be necessary. *Id.* This consideration militates heavily in favor of the Settlement. *See In re Warner Chilcott Ltd. Secs. Litig.*, 2008 U.S. Dist. LEXIS 99840 at *4 (noting that a “high likelihood of significant expenditure on experts . . . weigh in favor of preliminary approval”); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) (noting likely “battle of experts” at trial regarding damages, which would pose “great difficulty” for plaintiffs).

The Settlement provides immediate and substantial relief to tens of thousands of Michael Kors customers. Joint Decl. ¶ 32. The proposed Settlement is the best vehicle for the Settlement Class to receive the relief to which they are entitled in a prompt and efficient manner. *Id.*

b. The Reaction of the Class to the Settlement.

Since no notice has been sent, consideration of this factor is premature. *See In re Warner Chilcott Ltd. Secs. Litig.*, 2008 U.S. Dist. LEXIS 99840 at *5.

c. The Stage of the Proceedings and Amount of Discovery.

“To approve a proposed settlement, the Court need not find that the parties have engaged in extensive discovery.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 176 (citing *Plummer v. Chemical Bank*, 668 F.2d 654, 660 (2d Cir. 1982). “Instead, it is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to ‘intelligently make . . . an appraisal’ of the Settlement.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 176 (quoting *Plummer*, 668 F.2d at 660). *See also Klein v. PDG Remediation, Inc.*, No. 95 Civ. 4954, 1999 U.S. Dist. LEXIS 650, at * 7 (S.D.N.Y. Jan. 28, 1999). Additionally, “the pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [, but] an aggressive effort to ferret out facts

helpful to the prosecution of the suit.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 176 (quoting *Martens v. Smith Barney, Inc.*, 181 F.R.D. 243, 263 (S.D.N.Y. 1998)).

Here, Class Counsel conducted in-depth interviews with Plaintiffs prior to filing the instant action, and also spoke to employees about the pricing. Joint Decl. ¶ 34. In addition, Class Counsel propounded and received responses to formal written discovery, including Interrogatories, Requests for Production and Requests for Admissions. Further, Class Counsel conducted informal discovery, and obtained and reviewed with its experts damage data produced by Michael Kors. *Id.* at ¶ 35. The damage data included the evaluation of sales data and pricing formulas for the Class Period as it relates to the products in questions. *Id.* From those figures, the Parties were able to determine the range of damages under the applicable damage models. *See Ballinger v. Advance Magazine Publs., Inc.*, No. 13 Civ. 4036 (HBP), 2014 U.S. Dist. LEXIS 179538, *4-5 (S.D.N.Y. Dec. 29, 2014) (noting that although settling before depositions were taken, “[b]oth sides were sufficiently familiar with the facts to make an intelligent decision concerning the merits of the settlement). Accordingly, the record provides sufficient information for this Court to determine that “the parties had adequate information about their claims.” *In re Warner Chilcott Ltd. Secs. Litig.*, 2008 U.S. Dist. LEXIS 99840 at *5.

d. The Risks of Establishing Liability and Damages.

“In assessing the risk of establishing liability, the Court must balance the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation.” *In re Warner Chilcott Ltd. Secs. Litig.*, 2008 U.S. Dist. LEXIS 99840 at *5 (citing *Grinnell*, 495 F.2d at 463). While Plaintiffs believe that they could ultimately establish Michael Kors’ liability, to do so would require significant factual development. Joint Decl. ¶ 36. For example, in similar outlet litigation, the defendants have

argued that the comparative discount pricing language contained on the price tags at issue would not lead a reasonable consumer to believe that the product in question was previously sold at a higher price. *Id.* As such, there could be no violations under California law for making an unlawful price comparison. *Id.* Although the price tags at issue in this case contained representations regarding purported discounts from the products' MSRP's, and not comparative discounts, the threshold issue of whether consumers would be deceived by such language remained a significant obstacle Plaintiffs would have to overcome in order to move forward with the prosecution of their case. *Id.* Class Counsel are experienced and realistic, and understand that the resolution of liability issues, the outcome of the trial, and the inevitable appeals process are inherently uncertain in terms of outcome and duration. *Id.* at ¶ 37. As this Court has previously recognized, "[l]iability is never automatic," and a settlement of \$4,875.00 in cash and the practice changes described above represents a significant recovery. *Park*, 2008 U.S. Dist. LEXIS 84551 at *9.

In addition, "[p]roving damages in this action would have been extremely complicated and would almost certainly require significant expert testimony and analysis." *Park*, 2008 U.S. Dist. LEXIS 84551 at *9. Indeed, Plaintiffs retained two experts – an economics professor and marketing expert – to establish the price premium members of the Settlement Class paid as a result of Michael Kors' MSRP misrepresentation. Joint Decl. ¶ 38. Although Plaintiffs are confident that the calculation of this price premium and other alternative methods would provide evidence sufficient to establish the amount of damages sustained by members of the Settlement Class, Plaintiffs are mindful of the fact that courts in arguably similar cases have overturned damage awards based on the insufficiency of such evidence. *Id.* Thus, Plaintiffs faced the risk

of a non-monetary recovery for members of the Settlement Class, despite this Court's finding of Michael Kors' liability. *Id.*

e. The Risks of Maintaining the Class Action through Trial.

The risks of maintaining this action as a class action through trial provides additional support to Plaintiffs' position that the Settlement should be approved. Michael Kors would undoubtedly have argued that individual issues predominate over common issues. Joint Decl. ¶ 39. In addition, like defendants have argued in other consumer class actions, Michael Kors would have raised issues pertaining to the ascertainability of the Settlement Class in light of the fact that many consumers do not retain receipts for the products they have purchased. *Id.* at ¶ 40. While Plaintiffs acknowledge that there are some burdens to easily identifying all members of the Settlement Class, they maintain that consistent with prior rulings from this Court, the retention of receipts is not an essential elements for the management of this class action, or for establishing proof of injury or damages. *Id.* See, e.g., *Ebin v. Kangadis Food, Inc.*, 297 F.R.D. 561, 566-67 (S.D.N.Y. 2014); *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397, 407-08 (S.D.N.Y. 2015). Here, the proposed Settlement Class consisting of United States consumers who purchased products from Michael Kors outlet stores containing the MSRP claim is sufficiently specific to satisfy the implied ascertainability requirement of Rule 23. *Id.* at 407; Joint Decl. ¶ 40. Notwithstanding, even assuming that Plaintiffs were successful in certifying a class, there is a risk that Michael Kors would ask the Court to reconsider or amend the certification decision. *Park*, 2008 U.S. Dist. LEXIS 84551 at *9; *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) ("A district court retains the authority to decertify or modify a class at any time during the litigation if it proves to be unmanageable.").

f. The Ability of Defendant to Withstand a Greater Judgment.

While neither Plaintiffs nor their counsel have knowledge as to this factor, conceivably, Michael Kors could withstand a greater judgment for an amount significantly greater than the Settlement. “Nonetheless, the Second Circuit has held that this factor is not dispositive and need not affect the conclusion that the settlement is within the range of reasonableness.” *In re Warner Chilcott Ltd.*, 2008 U.S. Dist. LEXIS 99840 at *7 (citing *D’Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001)); *In re Austrian & German Holocaust Litig.*, 80 F. Supp. 2d at 179 n.9 (“[D]efendants’ ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.”); accord *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005).

g. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation.

With regard to these factors, the Court must “see whether the settlement ‘falls below the lowest point in the range of reasonableness.’” *Ballinger*, 2014 U.S. Dist. LEXIS 179538 at *7 (quoting *In re Gache*, 164 F.3d 617 (2d Cir. 1988)). “Determining whether a settlement is reasonable ‘is not susceptible of a mathematical equation yielding a particular sum.’” *In re Austrian & German Holocaust Litig.*, 80 F. Supp. 2d at 178 (quoting *In re Michael Milken Sec. Lit.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)). “The weighing of a claim against compensation cannot be . . . exact. Nor should it be, since an exact judicial determination of the values in issue would defeat the purpose of compromising the claim” *In re Austrian & German Holocaust Litig.*, 80 F. Supp. 2d at 178 (quoting *Air Line Pilots Assoc. v. American Nat’l Bank and Trust Co. of Chicago*, 156 B.R. 414 (S.D.N.Y. 1993)). “The adequacy of the amount offered should be judged ‘in light of the strengths and weaknesses of the plaintiff[s]’ case.” *In re Austrian &*

German Holocaust Litig., 80 F. Supp. 2d at 178 (quoting *In re Med. X-Ray*, No. 93 Civ. 5904, 1998 U.S. Dist. LEXIS 14888, *15 (E.D.N.Y. Aug. 7, 1998)).

There has been resistance from other courts to allowing cases such as this one to withstand a motion to dismiss under the applicable California laws, suggesting that liability in this case is not certain. Joint Decl. ¶ 43. Also given the difficulties in establishing damages, Plaintiffs are unable to estimate with any certainty the best possible recovery for members of the Settlement Class at this stage of the litigation. *Id.* However, as demonstrated above, establishing damages would be a difficult and expensive task. *Id.* at ¶ 44. The law establishing a proper damages model to apply to outlet store false pricing litigation is still evolving. In addition, “litigation through trial and appeal of this case would be lengthy and expensive, and would subject Plaintiffs’ claims to a number of risks pertaining to liability. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 178. On the other hand, if approved, Plaintiffs and members of the Settlement Class are assured recovery of \$4.875 million in cash, in addition to the benefit of significant practice changes, which will prevent future damages based on the practices at issue in this lawsuit. Joint Decl. ¶ 45. “Given these facts, the Court [should find] that the Settlement falls within the range of reasonableness.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. at 178.

C. Certification of the Settlement Class is Appropriate.

For settlement purposes, Plaintiffs respectfully request that the Court certify the Settlement Class defined above, and in paragraph 29 of the Agreement. However, “[b]efore certification is proper for any purpose – settlement, litigation, or otherwise – a court must ensure that the requirements of Rule 23(a) and (b) have been met.” *Lizondro-Garcia*, 300 F.R.D. at 174 (quoting *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006)). Rule 23(a) requires

that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires the Court to find that: questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

“The Second Circuit has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation.” *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 504 (S.D.N.Y.) (citing *Korn v. Franchard Corp.*, 456 F.2d 1206, 1208-09 (2d Cir. 1972)). *See also Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997). Notwithstanding, “class certification should not be granted unless, after a ‘rigorous analysis,’ the court is satisfied that Rule 23’s requirements have been met.” *Lizondro-Garcia*, 300 F.R.D. at 174 (citing *Spagnola v. Chubb Corp.*, 264 F.R.D. 76, 92 (S.D.N.Y. 2010)). “Doubts concerning the propriety of class certification should be resolved in favor of class certification.” *Lizondro-Garcia*, 300 F.R.D. at 174 (citing *Levitt v. J.P. Morgan Sec., Inc.*, 710 F.3d 454, 464 (2d Cir. 2013)).

1. Numerosity.

Numerosity is satisfied when the class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Rule 23(a)(1)’s numerosity requirement is presumed satisfied if there are 40 class members.” *In re Platinum & Palladium Commodities Litig.*, No. 10cv3617, 2014 U.S. Dist. LEXIS 96457, *28 (S.D.N.Y. July 15, 2014) (citing *Consol. Rail*

Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 2005)). *See also* 1 Newberg on Class Actions 3.05, at 3-25 (3d ed. 1992) (suggesting that any class consisting of more than forty members “should raise a presumption that joinder is impracticable”). Plaintiffs easily satisfy the numerosity requirement as there are tens of thousands of members of the Settlement Class. Joint Decl. ¶ 47.

2. Commonality.

“A party seeking certification must show ‘there are questions of law or fact common to the class.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist LEXIS 96457 at *28 (quoting Fed. R. Civ. P. 23(a)(2)). “Class claims ‘must depend upon a common contention . . . capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *29 (quoting *Wal-Mart Stores Inc. v. Dukes*, __ U.S. __, 131 S. Ct. 2541, 2551 (2011)). Accordingly, the Court must assess whether the common questions are capable of “generate[ing] common answers apt to drive the resolution of the litigation.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *29 (quoting *Wal-Mart Stores*, 131 S. Ct. at 2551). “Courts have generally construed the commonality requirement liberally and require that only one issue be common to all class members.” *Frank*, 228 F.R.D. at 181 (citing *Trief v. Dun & Bradstreet Corp.*, 144 F.R.D. 193, 198-99 (S.D.N.Y. 1992)).

Here, the commonality requirement is readily satisfied. Plaintiffs and members of the Settlement Class all bring identical claims arising from Michael Kors’ labeling and marketing of merchandise that it sells at its company-owned outlet stores. Joint Decl. ¶ 48. Specifically, Plaintiffs and members of the Settlement Class claim that the manner in which Michael Kors

labels its price tags deceived them into believing they were purchasing products at a discounted price. *Id.* Accordingly, the overarching questions are whether Michael Kors used false price representations and falsely advertised price discounts on its merchandise sold at Kors Outlet, and whether such representations constitute a violation of California law. These questions “will be determined on a classwide basis without regard for evidence pertaining to individual class members.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *29.

3. Typicality.

“Typicality ‘requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal argument to prove the defendant’s liability.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *30 (quoting *Marisol*, 126 F.3d at 376) (citation omitted). “The commonality and typicality requirements tend to merge into one another.” *Id.* Thus, “[s]ince the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.” *Id.* (quoting *Bolanos v. Norweigen Cruise Lines Ltd.*, 212 F.R.D. 144, 155 (S.D.N.Y. 2002)). Accordingly, “[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.” *Id.* (quoting *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993)).

Plaintiffs’ claims are typical of the members of the Settlement Class’ claims because they were subjected to the same Michael Kors advertising and marketing practices and claim to have suffered from the same injuries, and because they will benefit equally from the relief provided by

the Settlement. Joint Decl. ¶ 49. *See In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *30 (holding typicality requirement met where the claims of the named plaintiffs and class members “ar[ose] out of the same course of events” and were similarly affected by “[t]he same unlawful conduct”).

4. Adequacy.

“Adequacy requires determining whether ‘1) plaintiff’s interests are antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experience and able to conduct the litigation.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *31 (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). “‘The fact that plaintiffs’ claims are typical of the class is strong evidence that their interests are not antagonistic to those of the class.’” *Id.* (quoting *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 158 (S.D.N.Y. 2008)).

As set forth above, Plaintiffs’ interests are coextensive with, not antagonistic to, the interests of members of the Settlement Class, because Plaintiffs and members of the Settlement Class have the same interest in the relief afforded by the Settlement, and there is no evidence that Plaintiffs and members of the Settlement Class have divergent interests. Joint Decl. ¶ 50. Further, Plaintiffs are represented by qualified and competent counsel who have extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. *Id.* Class Counsel have devoted substantial time and resources to this Action and will vigorously protect the interests of the Settlement Class. *Id.*

5. Predominance.

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3).

This inquiry examines “whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “‘Class-wide issues predominate of resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *32 (quoting *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002)). Where plaintiffs are “unified by a common legal theory” and by common facts, the predominance requirement is satisfied. *McBean v. City of N.Y.*, 228 F.R.D. 487, 502 (S.D.N.Y. 2005).

Plaintiffs readily satisfy the Rule 23(b)(3) predominance requirement because liability questions common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class. Joint Decl. ¶ 51. As stated above, the central issue in this litigation is whether Michael Kors engaged in a policy and practice of misrepresenting the existence, nature and amount of price discounts on products manufactured exclusively for its outlet stores. Because Michael Kors’ policies and practices applied to all members of the Settlement Class, questions regarding the legality of those policies “are about the most perfect questions for class treatment.” *Inglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.N.Y. 2007). *See also Brown v. Kelly*, 609 F.3d 467, 484 (2d Cir. 1010) (“[W]here plaintiffs were allegedly aggrieved by a single policy of the defendants, and there is a strong commonality of the violation and the harm, this is precisely the type of situation for which the class action device is suited.”) (internal citation omitted).

6. Superiority.

“In determining whether ‘a class action is superior to other available methods for fairly

and efficiently adjudicating the controversy,’ a court must consider

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.”

In re Platinum & Palladium Commodities Litig., 2014 U.S. Dist. LEXIS 96457 at *32 (quoting Fed. R. Civ. P. 23(b)(3)).

Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually. Joint Decl. ¶ 52. *See In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *32. In addition, whether the case would be manageable as a class action at trial is “irrelevant in the context of a settlement class.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *32 (quoting *Amchem*, 521 U.S. at 620) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems... for the proposal is that there be no trial.”) (internal citation omitted). Further, “there are no likely difficulties in managing the Settlement.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *32. Accordingly, this Settlement is “a superior method for disposing of this controversy.” *Id.*

D. Appointment of Class Counsel.

Rule 23(c)(1)(B) provides that “[a]n order that certifies a class action must . . . appoint class counsel under Rule 23(g).” Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, the Court must consider the following factors:

(i) the work counsel has done in identifying or investigating potential claims in this action; (ii) counsel’s experience in handling class actions, other complex

litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

In re Platinum & Palladium Commodities Litig., 2014 U.S. Dist. LEXIS 96457 at *34 (quoting Fed. R. Civ. P. 23(g)(1)(A)).

As set forth above, Class Counsel has significant experience handling class actions, and in particular, the claims asserted in this action as a result of its prosecution of similar actions throughout the country. This experience, along with the thorough investigation and analysis of Plaintiffs' claims that was conducted both prior to and after the filing of this action, has enabled Class Counsel to obtain a strong knowledge of the law applicable to the claims asserted herein. Since the inception of this case, Class Counsel has demonstrated its commitment and financial ability to represent Plaintiffs and members of the Settlement Class. Accordingly, Class Counsel should be appointed as class counsel. *See In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *35; *Lizondro-Garcia*, 300 F.R.D. at 178.

E. Adequacy of the Proposed Notice.

"Fed. R. Civ. P. 23(e)(1)(B) provides that, in the event of a settlement of a class action, '[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement.'" *In re Warner Chilcott Ltd.*, 2008 U.S. Dist. 99840 at *7. "To satisfy due process, the notice must be 'reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* at *7 (quoting *In re Prudential Secs. Inc. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996)). "It is widely recognized that for the due process standard to be met it is not necessary that every class member receive actual notice, so long as Co-Lead Counsel acted reasonably in selecting means likely to inform persons affected." *In re Warner Chilcott*

Ltd., 2008 U.S. Dist. 99840 at *7 (quoting *In re Prudential*, 164 F.R.D. at 368). To satisfy the standards of Rule 23 and due process, the notice must describe:

(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

The proposed Notice Program satisfies all of these criteria. As recited in the Settlement, the Notice will properly inform members of the Settlement Class of the substantive terms of the Settlement. It will advise members of the Settlement Class of their options for opting-out of or objecting to the Settlement, and how to obtain additional information about the Settlement. The Notice Program is designed to reach a high percentage of the Settlement Class and exceeds the requirements of constitutional due process. Joint Decl. ¶ 18. Therefore, the Court should approve the Notice Program and the form and content of the Notices and Claim Verification Form attached to the Agreement as Exhibits 1-3.

F. The Plan of Allocation.

“To warrant approval, the plan of allocation must meet the standards by which the . . . settlement was scrutinized -- namely, it must be fair and adequate.” *In re Warner Chilcott Ltd. Secs. Litig.*, No. 06 Civ. 11515 (WHP), 2009 U.S. Dist. LEXIS 58843, *7 (S.D.N.Y. July 10, 2009) (quoting *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002)). Accordingly, “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *In re Warner Chilcott*, 2009 U.S. Dist. LEXIS 58843 at *7 (quoting *Maley*, 186 F. Supp. 2d at 367).

The proposed plan of allocation provides for a *pro rata* distribution of the Net Settlement Fund, based on a tiered recovery system, to members of the Settlement Class who submit a valid Claim Verification Form (“Valid Class Members”), a copy of which is attached to the Agreement as Exhibit 3. Joint Decl. ¶ 22. The tiered recovery system is based on the amount of qualifying products purchased by Valid Class Members who can provide proof of their purchase, and thus, allocates a recovery that more closely represents such Valid Class Members’ individual damages. *Id.* The plan also takes into account the fact that many Valid Class Members will have not retained proof of their purchase, and allows such Settlement Class Members to nonetheless share in the recovery. *Id.* No portion of the Net Settlement Fund will revert back to Michael Kors. *Id.*

G. The Court Should Schedule a Final Approval Hearing.

The last step in the Settlement approval process is a Final Approval Hearing, at which the Court will hear all evidence and argument necessary to make its final evaluation of the Settlement. Proponents of the Settlement may explain the terms and conditions of the Settlement, and offer argument in support of Final Approval. The Court will determine at or after the Final Approval Hearing whether the Settlement should be approved; whether to enter a Final Approval Order and Final Judgment under Rule 23(e); whether to approve Class Counsel’s application for attorneys’ fees and reimbursement of costs and expenses; and whether to approve the request for Service Awards to the Plaintiffs. Plaintiffs request that the Court schedule the Final Approval hearing no sooner than the week of November 1, 2015 (if convenient for the Court). Plaintiffs and Class Counsel will file their motion for Final Approval, Fee Application and request for Service Awards for Plaintiffs no later than sixty (60) days prior to the Final Approval Hearing.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court: (1) grant Preliminary Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure and appoint Tress Gattinella and Kristina Lengyel as class representatives; (4) approve the Notice Program set forth in the Agreement and approve the form and content of the Notices, attached to the Agreement as Exhibits 1 and 2; (5) approve the claims procedure and the Claim Verification Form attached to the Agreement as Exhibit 3; (6) approve and order the opt-out and objection procedures set forth in the Agreement; (7) stay the Action against Michael Kors pending Final Approval of the Settlement; (8) appoint as Class Counsel the law firms listed in paragraph 7 of the Agreement; and (9) schedule a Final Approval Hearing no sooner than the week of November 1, 2015.

For the Court's convenience, Plaintiffs attach as *Exhibit C* a Proposed Order Preliminarily Approving Class Settlement and Certifying Settlement Class.

Dated: June 12, 2015.

Respectfully submitted,

KOPELOWITZ OSTROW P.A.

By: /s/ Jason H. Alperstein
Jeffrey M. Ostrow, Esq. (*Pro Hac Vice*)
ostrow@kolawyers.com
Jason Alperstein, Esq.
SDNY Bar No.: JA1209
alperstein@kolawyers.com
Scott A. Adelsberg (*Pro Hac Vice*)
edelsberg@kolawyers.com
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Facsimile: (954) 525-4300

Wayne S. Kreger, Esq.
SDNY Bar No.: WK2868
wayne@kregerlaw.com
LAW OFFICES OF WAYNE KREGER
303 Fifth Avenue, Suite 1201
New York, New York 10016
Telephone: (212) 956-2136
Facsimile: (212) 956-2137

Hassan A. Zavareei, Esq. (*Pro Hac Vice*)
hzavareei@tzlegal.com
Jeffrey D. Kaliei (*Pro Hac Vice*)
jkaliel@tzlegal.com
TYCKO & ZAVAREEI LLP
2000 L Street, NW
Suite 808
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950

CERTIFICATE OF SERVICE

I certify that on this 12th day of June, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of the filing to the attorneys on that system.

/s/ Jason H. Alperstein
Jason H. Alperstein
SDNY Bar No.: JA1209

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**TRESSA GATTINELLA, individually and on behalf
of all others similarly situated,**

No. 14 Civ. 5731 (WHP)

Plaintiff,

-against-

**MICHAEL KORS (USA), INC.; MICHAEL KORS,
L.L.C.; MICHAEL KORS RETAIL, INC.; and
MICHAEL KORS STORES, L.L.C.,**

Defendants.
-----X

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement”) is made by and among: (1) Plaintiffs, Tressa Gattinella and Kristina Lengyel (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class (as defined below); and (2) Michael Kors (USA), Inc., Michael Kors, L.L.C., Michael Kors Retail, Inc., and Michael Kors Stores, L.L.C. (collectively, “Michael Kors”). Class Counsel (as defined below) and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court (as defined below) of a Final Approval Order (as defined below), all claims of Plaintiffs and the Settlement Class Members (as defined below) against Michael Kors in this case shall be settled, compromised, and released upon the terms and conditions contained herein.

I. Background of Litigation

1. On July 25, 2014, Plaintiff Gattinella filed a Class Action Complaint in the United States District Court for the Southern District of New York seeking monetary damages, restitution and declaratory relief from Michael Kors based on its alleged deceptive and misleading labeling and marketing of merchandise that it sells at its Michael Kors Outlet Stores (as defined below), including its allegedly misleading price tags on its Michael Kors Outlet

Products (as defined below). Thereafter, on August 28, 2014, Plaintiff Gattinella filed her First Amended Complaint. On September 24, 2015, Michael Kors filed its Answer. On December 24, 2014, Plaintiff Gattinella filed a Second Amended Complaint adding Plaintiff Lengyel. Thereafter the parties engaged in discovery.

2. Class Counsel conducted a thorough investigation into the facts surrounding the alleged deceptive and misleading labeling and marketing. This investigation included, but was not limited to, factual research, legal research, and collecting and reviewing documents and data through discovery and otherwise.

3. Beginning in early 2015, the Parties (as defined below) engaged in preliminary settlement discussions. On February 11, 2015, the Parties had an informal settlement conference in New York. On April 2, 2015, the Parties participated in a formal mediation session with Professor Eric Green in New York, at which time the Parties reached an agreement in principle and signed a term sheet, which memorialized, subject to negotiation and execution of this Agreement and subject to Preliminary Approval and Final Approval (as defined below), the Parties' good faith intention to fully, finally and forever resolve, discharge and release all rights and claims of Plaintiffs and the Settlement Class Members in exchange for Michael Kors' Agreement to: (a) pay the sum of Four Million Eight Hundred Seventy-Five Thousand Dollars (\$4,875,000.00) to create a common fund for the benefit of the Settlement Class, which includes the costs of notice and settlement administration; and (b) modify the price tags on its Michael Kors Outlet Products (as defined below).

4. On April 8, 2014, the Parties filed a Notice of Settlement with the Court.

5. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims (as defined below) by the Settlement Class Members. The Parties intend this Agreement to bind Plaintiffs, Michael Kors and Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, Plaintiffs and Michael Kors agree to the Settlement, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

6. “Claim Verification Form” means the claim document, attached hereto as Exhibit 3, prepared and approved by Class Counsel, Michael Kors’ Counsel and the Settlement and Notice Administrator, that will be submitted by claimants seeking to join the Settlement Class.

7. “Class Counsel” means Kopelowitz Ostrow PA., Tycko & Zavareei LLP and the Law Offices of Wayne Kreger.

8. “Class Period” means the period from July 25, 2010 through, and including, July 25, 2014.

9. “Court” means the United States District Court for the Southern District of New York.

10. “Effective Date” means the fifth business day after which all of the following events have occurred:

a. All Parties, Michael Kors’ Counsel and Class Counsel have executed this Agreement;

b. The Court has entered, without material change, the Final Approval Order; and

c. The time for appeal or petition has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal or certiorari could be taken has finally expired and relief from a failure to file same is not available.

11. “Escrow Account” means the account to be established consistent with the terms and conditions described in Section III below. The Escrow Account shall be held at an FDIC insured bank selected by Class Counsel.

12. “Escrow Agent” means Epiq Systems Inc. The Escrow Agent shall administer the Escrow Account.

13. “Final Approval” means the date that the Court enters the Final Approval Order granting Final Approval to the Settlement and determines the amount of fees, costs and expenses awarded to Class Counsel and the amount of the Service Awards (defined below) to Plaintiffs. The proposed Final Approval Order that will be attached to the motion for final approval of the Settlement shall be in a form agreed to by Class Counsel and Michael Kors’ Counsel.

14. “Final Approval Order” means the order and judgment that the Court enters upon finally approving the Settlement.

15. “Michael Kors’ Counsel” means Paul, Weiss, Rifkind, Wharton & Garrison LLP.

16. “Michael Kors Outlet Store” means all Michael Kors branded outlet stores in the United States that existed at any time during the Class Period that sold Michael Kors Outlet Products.

17. “Michael Kors Outlet Products” means any product sold at a Michael Kors Outlet Store that was made specifically for Michael Kors outlet stores, and that was sold with tags showing both an “MSRP” (Manufacturer’s Suggested Retail Price) and an “Our Price.” Michael Kors Outlet Products do not include watches, jewelry, fragrances, eyewear or any other product that did not have a price tag that showed both an “MSRP” and an “Our Price.”

18. “Net Settlement Fund” means the Settlement Fund, plus any interest earned, minus Court-approved attorneys’ fees, costs and expenses, notice and administration expenses, Court-approved Service Awards to Plaintiffs and any costs associated with taxes and investments as to the Settlement Fund.

19. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the

Settlement. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Published Notice and Long-form Notice substantially in the forms attached hereto as Exhibits 1 and 2, respectively. A complete description of the contemplated Notice Program is provided in Section IX, below.

20. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 45 days prior to the Final Approval Hearing. The Opt-Out deadline will be specified in the Notice.

21. “Parties” means Plaintiffs and Michael Kors.

22. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed to by the Parties.

23. “Released Claims” means all claims to be released as specified in Section XIV of this Agreement. The “Releases” means all of the releases contained in Section XIV of this Agreement.

24. “Released Parties” means those persons and entities released by paragraph 66.

25. “Releasing Parties” means all Plaintiffs and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

26. “Service Award” means any Court-ordered payment to Plaintiffs (in addition to any payment due Plaintiffs as Settlement Class Members).

27. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and the attached exhibits.

28. “Settlement and Notice Administrator” means Epiq Systems Inc.

29. “Settlement Class” means all consumers who purchased Michael Kors Outlet Products from a Michael Kors Outlet Store during the Class Period. Excluded from the Settlement Class are directors, officers and employees of Michael Kors, its parents and subsidiaries, and any entity in which Michael Kors has a controlling interest.

30. “Settlement Class Member” means any person in the Settlement Class who does not opt-out of the Settlement.

31. “Settlement Fund” means the fund established under Section III of this Agreement.

32. “Settlement Website” means the website that the Settlement and Notice Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for persons in the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, Claim Verification Form, the order preliminarily approving this Settlement and such other documents as Settlement Class Counsel and Michael Kors’ Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.korsoutletsettlement.com or such other URL as Class Counsel and Michael Kors’ Counsel may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Michael Kors logo or trademarks. Ownership of the Settlement Website URL shall be transferred to Michael Kors within 10 days after the Effective Date.

III. Establishing and Maintaining the Settlement Fund; Costs of Notice and Settlement Administration

33. Within 5 days of Preliminary Approval, Michael Kors shall deposit the sum of Four Million Eight Hundred Seventy-Five Thousand Dollars (\$4,875,000.00) into the Escrow Account to create the Settlement Fund.

34. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be obligated to, cause the Settlement Fund in the Escrow Account to be invested in interest-bearing short-term instruments – to be agreed upon by Class Counsel and Michael Kors’ Counsel – that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). The Escrow

Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with Settlement Class Counsel and Michael Kors' Counsel on at least a monthly basis to discuss potential cash needs from the Settlement Fund for the following month. All costs incurred in connection with investing in the Instruments shall be paid from the Settlement Fund.

35. The Settlement Fund at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed on Michael Kors, Michael Kors' Counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively, "Taxes"), shall be paid out of the Settlement Fund. Michael Kors, Michael Kors' Counsel, Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Michael Kors, Michael Kors' Counsel, Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

36. The Settlement Fund shall be used to pay all distributions to Settlement Class Members as follows: (a) any attorneys' fees, costs and expenses awarded to Class Counsel; (b) any Service Awards awarded to Plaintiffs; (c) costs and fees for settlement and notice administration; and (d) distribution of payments to Settlement Class Members.

IV. Additional Relief as to Pricing Model

37. Currently, Michael Kors' utilizes an "MSRP" and an "Our Price" price comparison on the price tags of Michael Kors Outlet Products.

38. Within six months of Final Approval, unless Michael Kors elects to do it sooner, Michael Kors agrees either to: (a) replace "MSRP" with "Value" on price tags of Michael Kors Outlet Products, and display signage in Michael Kors Outlet Stores that explains the meaning of "Value" (as that term is used on price tags of Michael Kors Outlet Products) to customers; or (b) not use a reference price (i.e., a price at which the product was not previously offered for sale at a Michael Kors retail store or a Michael Kors Outlet Store) on the price tags of products made exclusively for sale in Michael Kors Outlet Stores.

V. Conditional Certification of the Settlement Class

39. The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only.

40. If the Settlement is not finally approved by the Court, disapproved by any court, not consummated for any reason, or is terminated, the certification of the Settlement Class will be null and void, and the Action shall proceed as though the Settlement Class had never been certified, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement. No doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. If the Settlement is not finally approved, is disapproved by any court, is not consummated for any reason, or is terminated, Michael Kors shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. Neither this Settlement, any agreements made by or entered into by Michael Kors in connection with the Settlement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement, shall be admissible or used for any purpose in this Action or any other action. This includes, but is not limited to, any use by Plaintiffs, any person in the Settlement Class or any other person to establish any of the elements

of class certification in any litigated certification proceedings, whether in the Action or any other action.

VI. Preliminary Approval

41. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Michael Kors’ Counsel. The motion for preliminary approval shall request that the Court: (i) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (ii) provisionally certify the Settlement Class pursuant to the Federal Rules of Civil Procedure and Rule 23(e) for settlement purposes only; (iii) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement, substantially in the forms attached to this Agreement as Exhibits 1 and 2; (iv) approve the procedures set forth in this Agreement for persons in the Settlement Class to exclude themselves from the Settlement or to object to the Settlement; (v) approve the procedures set forth in this Agreement for persons in the Settlement Class to submit their Claim Verification Forms; (vi) stay the Action pending Final Approval of the Settlement; and (vii) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and Michael Kors’ Counsel, at which the Court will conduct an inquiry into the fairness, reasonableness and adequacy of the Settlement, and determine whether to approve the Settlement and Class Counsel’s application for attorneys’ fees, costs and expenses and for Service Awards to Plaintiffs (“Final Approval Hearing”).

42. The Parties, through the Settlement and Notice Administrator, shall serve or cause to be served a notice of the proposed Settlement, in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

VII. Settlement and Notice Administrator

43. The Parties have agreed to retain Epiq Systems Inc. to serve as the Settlement and Notice Administrator. The Settlement and Notice Administrator’s fees and expenses will be paid

out of the Settlement Fund. The Settlement and Notice Administrator shall administer various aspects of the Settlement as described in this Agreement, including, but not limited to, effectuating the Notice Program pursuant to Section IX below; distributing the Settlement Fund as provided herein; and, in the event of a termination of the Settlement pursuant to Section XVI below, returning the Settlement Fund, along with any accrued interest or earnings, less any amounts already committed to pay for expenses and costs associated with investments and/or taxes with respect to the Settlement Fund, to Michael Kors. Class Counsel and Michael Kors' Counsel will oversee the Settlement and Notice Administrator.

44. The duties of the Settlement and Notice Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Obtain from Michael Kors and Class Counsel a complete and accurate list of all Michael Kors Outlet Store locations that were in operation during the Class Period;
- b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and answer the questions of persons who call with or otherwise communicate such inquiries (except that the Settlement and Notice Administrator shall not give, and shall not be expected to give, legal advice);
- e. Receive and review for completeness the Claim Verification Forms submitted by claimants seeking to be part of the Settlement Class;
- f. Respond to any mailed inquiries from persons in the Settlement Class;
- g. Process all requests for exclusion from persons in the Settlement Class;
- h. Provide weekly reports and a final report to Class Counsel and Michael Kors' Counsel that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date and other pertinent information;

- i. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each person in the Settlement Class who timely and properly requested exclusion from the Settlement Class;
- j. Process and transmit payments to Class Members from the Net Settlement Fund;
- k. Perform all tax-related services for the Escrow Account as provided in this Agreement;
- l. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Class Counsel and Michael Kors' Counsel; and
- m. Pay invoices, expenses and costs upon approval by Settlement Class Counsel and Michael Kors' Counsel, as provided in this Agreement

VIII. Providing Notice to the Settlement Class

45. Upon Preliminary Approval of the Settlement, the Settlement and Notice Administrator shall implement the Notice Program outlined herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which persons in the Settlement Class may exclude themselves from or "opt-out" of the Settlement Class; a date by which persons in the Settlement Class may object to the Settlement; the date by which persons in the Settlement Class must submit their Claim Verification Form; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which persons in the Settlement Class may access this Agreement and other related documents and information. Class Counsel and Michael Kors' Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the Michael Kors logo or

trademarks, the return address of Michael Kors, or otherwise be styled so as to appear to originate from Michael Kors.

46. The Notice also shall include a procedure for persons in the Settlement Class to opt-out at any time during the Opt-Out Period. A person in the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

47. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or for Service Awards to Plaintiffs. Objections to the Settlement or to the application for attorneys' fees, costs, expenses and Service Awards must be mailed to the Clerk of the Court, Class Counsel and Michael Kors' Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the last day of the Opt-Out Period, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the case;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection and a copy of any orders or opinions related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

g. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;

h. any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector's counsel and any other person or entity;

i. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;

j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

l. the objector's signature (an attorney's signature is not sufficient).

48. The Notice also shall include a procedure for persons in the Settlement Class to file a Claim Verification Form. Any member of the Settlement Class who opts-out at any time during the Opt-Out Period shall be ineligible to submit a Claim Verification Form, and the Settlement Administrator shall reject any such Claim Verification Forms.

49. Notice shall be provided to the Settlement Class in two different ways: Published Notice and Long-form Notice on the Settlement Website.

50. The Published Notice shall be substantially in the form attached hereto as Exhibit 1 and the Long-form Notice shall be substantially in the form attached hereto as Exhibit 2.

51. The Settlement and Notice Administrator shall administer the Published Notice, which shall be comprised of: a) a one-time appropriate sized print advertisement covering the areas in which Michael Kors had Michael Kors Outlet Stores during the Class Period; and b)

targeted internet advertising. The Published Notice shall be completed no later than 90 days before the Final Approval Hearing.

52. Within 7 days after the date the Settlement and Notice Administrator completes the Published Notice, the Settlement and Notice Administrator shall provide Settlement Class Counsel and Michael Kors' Counsel with an affidavit that confirms that the Published Notice was given in accordance with the Preliminary Approval Order. Class Counsel shall file the affidavit with the Court in conjunction with Plaintiffs' motion for final approval of the Settlement.

IX. Final Approval Order and Judgment

53. Plaintiffs' motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their motion for Final Approval of the Settlement and their application for attorneys' fees, costs and expenses and for Service Awards for Plaintiffs no later than 60 days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards for Plaintiffs. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who timely object to the Settlement or to the fee, cost, expense or Service Award application, provided that said objections meet all of the requirements listed in this Agreement.

54. The Court at the Final Approval Hearing will determine whether to enter the Final Approval Order granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Awards. The proposed Final Approval Order that will be attached to the motion shall be in a form agreed upon by Settlement Class Counsel and Michael Kors' Counsel. Such Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, reasonable and adequate;

- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiffs and all Settlement Class Members from asserting any of the Released Claims, as set forth below, including during any appeal from the Final Approval Order;
- f. Release Michael Kors and the Released Parties from the Released Claims, as set forth below; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, Michael Kors and all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

X. Claim Verification Forms Submission and Review Procedures

55. To be eligible to participate in the Settlement as a Settlement Class Member, claimants must submit the Claim Verification Form online or by mail to the Settlement and Notice Administrator. The Notice Program will direct claimants to the Settlement Website to provide instructions on how to complete and submit the Claim Verification Form.

56. At the request of a Settlement Class Member, the Settlement and Notice Administrator will send a hard copy of the form to the claimant's address. The Settlement Class Member shall return the Claim Verification Form to the mailing address identified on the Claim Verification Form, and shall be responsible for the cost of postage to deliver the Claim Verification Form to the Settlement and Notice Administrator.

57. Once the forms are submitted online or by mail, the Settlement and Notice Administrator will be responsible for reviewing the forms for completeness. Should a Claim Verification Form be complete, the claimant will be added to the Settlement Class Member list. If a Claim Verification Form is incomplete, the Settlement and Notice Administrator will send written verification to the claimant that the form is rejected. The claimant will have one more opportunity to submit a corrected completed form.

58. All Claim Verification Forms, whether the initial or second submission, must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order (“Claim Verification Form Deadline”).

XI. Allocation & Distribution of Settlement Fund Among Settlement Class Members

59. All Settlement Class Members who submit a valid Claim Verification Form (“Valid Class Members”) will receive a percentage of the Net Settlement Fund. The percentage each Valid Class Member receives will be dependent upon the total number of Valid Class Members, and whether such Valid Class Member is entitled to one, two, three, four or five points, as follows: (a) each Valid Class Member who submits a Claim Verification Form but does not submit a valid receipt evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period shall receive one point; (b) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total less than \$200 will receive two points; (c) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$200 to \$499 will receive three points; (d) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$500 to \$999 will receive four points; and (e) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$1,000 or more will receive five points. Thereafter, each Valid Class Member’s percentage will be determined by dividing the number of points he or she receives by the number of total points of all Valid Class Members in order to determine his or her percentage of the Net Settlement Fund. By way of example, if there are 2000 total Valid Class Members, 400 of whom receive one point, 400 of whom receive two points, 400 of whom receive three points, 400 of whom receive four points, and 400 of whom receive five points, the number of total points would be 6,000, and a Valid Class Member who received five points would receive .00083% (or 5/6000) of the Net Settlement Fund, a Valid Class Member who received four points would receive .00067% (or 4/6000) of the Net Settlement Fund, a Valid

Class Member who received three points would receive .00050% (or 3/6000) of the Net Settlement Fund, a Valid Class Member who received two points would receive .00033% (or 2/6000) of the Net Settlement Fund, and a Valid Class Member who received one point would receive .00017% (or 1/6000) of the Net Settlement Fund.

60. The actual amount recovered by each Valid Class Member will not be determined until after the Claim Verification Form deadline has passed and all such claim forms have been received and processed by the Settlement and Notice Administrator. Payments will be made by check and distributed by the Settlement and Notice Administrator 30 days after the later of the Claim Verification Form Deadline or the Effective Date.

61. Checks shall contain an appropriate legend, in a form approved by Class Counsel and Michael Kors' Counsel, to indicate that it is from the Settlement. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Class Members provide on the Claim Verification Forms. Checks shall be valid for 180 days.

62. The amount of the Net Settlement Fund attributable to uncashed checks and checks returned to the Settlement and Notice Administrator shall remain in the Settlement Fund for 1 year from the date that the first distribution check is mailed by the Settlement and Notice Administrator, during which time the Settlement and Notice Administrator shall make a reasonable effort to locate Settlement Class Members whose checks were returned to effectuate delivery of such checks to the Settlement Class Members entitled to them. The Settlement and Notice Administrator shall make only one attempt to re-mail or re-issue a distribution check.

63. All costs associated with the process of printing and mailing the checks and any accompanying communication to Settlement Class Members shall be paid out of the Settlement Fund.

XII. Disposition of Residual Funds After Distribution to Settlement Class Members

64. Within 1 year plus 30 days after the date the Settlement and Notice Administrator mails the first Settlement Class Member payment, if any funds remain in the Settlement Fund, the Parties shall meet and confer regarding the distribution of any remaining funds to (i) an

appropriate charitable organization approved by the Court (as a *cy pres* award); (ii) Valid Class Members (as a supplemental distribution); or (iii) a combination thereof.

65. All costs associated with the disposition of residual funds – whether through additional distributions to Valid Class Members or through an alternative plan approved by the Court – shall be borne solely by the Settlement Fund. Under no circumstances shall Michael Kors have responsibility for any costs associated with the disposition of residual funds whether through additional distributions to Valid Class Members and/or through an alternative plan approved by the Court.

XIII. Releases

66. As of the Effective Date, and for good and valuable consideration set forth herein, Plaintiffs and each Settlement Class Member, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and successors, shall automatically be deemed to have fully and irrevocably released, acquitted, and forever discharged Michael Kors and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them, of and from any and all liabilities, rights, claims, actions, causes of action, obligations, demands, damages, penalties, debts, accounts, duties, liens, charges, complaints, costs and expenses, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were, or could have been, alleged in the instant lawsuit, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions,

circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Action.

67. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 66, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by paragraph 66. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in paragraph 66, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement or never receives a distribution of funds from the Settlement. Plaintiffs and any Settlement Class Member further waive any and all rights or benefits that they as individuals or the class may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Action under the terms of Section 1542(a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

XIV. Payment of Attorneys' Fees, Costs and Incentive Awards

A. Class Counsel Fees and Costs

68. Michael Kors agrees not to oppose Class Counsel's request for attorneys' fees of up to thirty percent (30%) of the amount of the Settlement Fund, as well as reimbursement of costs and expenses incurred in connection with the Action. Any award of attorneys' fees, costs and expenses to Class Counsel shall be payable solely out of the Settlement Fund, and is subject to Court approval. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any award of attorneys' fees, costs and expenses to Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs and expenses to Class Counsel in the amounts sought by Class Counsel, or at all, the remaining provisions of this Agreement shall remain in full force and effect.

69. The Parties negotiated and reached this Agreement regarding the terms of paragraph 68 only after reaching agreement on all other material terms of this Settlement.

B. Payment of Attorneys' Fees and Costs

70. Within 5 days of the date of Final Approval, the Escrow Agent shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees, costs and expenses of Class Counsel, including interest accrued thereon. Class Counsel shall furnish to the Escrow Agent any required tax information or forms before the payment is made. The Parties negotiated and reached this agreement regarding any Service Awards only after reaching agreement on all other material terms of this Settlement.

71. The payment of attorneys' fees, costs and expenses of Class Counsel pursuant to paragraph 70 shall be made through a deposit by the Escrow Agent into Class Counsel's selected trust account.

C. Class Representative Service Awards

72. Michael Kors agrees not to oppose Class Counsel's request that the Court approve Service Awards of \$5,000.00 per Plaintiff. Any Service Awards are to be paid from the

Settlement Fund. Any Service Awards shall be paid to Plaintiffs in addition to Plaintiffs' Settlement Class Member payments. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, the Service Awards sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, any Service Awards in the amounts set forth above, or at all, the remaining provisions of this Agreement shall remain in full force and effect.

73. Upon the Effective Date, the payment of Service Awards pursuant to paragraph 72 shall be made through a deposit by the Escrow Agent into Class Counsel's selected trust account.

74. The Parties negotiated and reached this agreement regarding any Service Awards only after reaching agreement on all other material terms of this Settlement.

XV. Termination of Settlement and Effect of Termination

75. This Settlement may be terminated by either Michael Kors or Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 10 days after any of the following occurrences:

- a. Any court rejects or denies approval of the Settlement;
- b. any court materially modifies, or materially amends or changes, any term or condition of this Settlement, other than terms pertaining to Attorneys' Fees and Expenses and/or Service Awards;
- c. the Effective Date does not occur; or
- d. any other ground for termination provided for elsewhere in this Agreement.

76. Michael Kors also shall have the right, but not the obligation, to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 10 days of its receipt from the Settlement and Notice Administrator of the total number of people in the Settlement Class who opted out during the Opt-Out Period pursuant to paragraph 46, if the number of persons in the Settlement Class who timely request exclusion from the Settlement

Class equals or exceeds the number or percentage specified in the separate letter agreement executed concurrently with this Settlement by Michael Kors' Counsel and Class Counsel. The number or percentage shall be confidential except to the Court, who shall upon request be provided with a copy of the letter agreement for *in camera* review.

77. In the event the Settlement is terminated or fails to become effective for any reason, the amounts paid into the Settlement Fund by Michael Kors, together with any interest earned thereon, less any Taxes due with respect to such income, and less costs from the Settlement Administrator for administration and notice actually incurred and paid or payable, shall be refunded and remitted to Michael Kors.

78. In the event of a termination of the Settlement pursuant to this Section, the parties shall be deemed to have reverted to their respective status in the Action as of the date of this Settlement, and the parties shall retain all of their pre-Settlement litigation rights and defenses, including Plaintiffs' right to seek class certification and Michael Kors' right to oppose class certification.

79. This Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions herein.

80. In the event the Settlement is terminated in accordance with the provisions herein, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiffs' right to seek discovery and class certification, and Michael Kors' right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XVI. Parties' Positions on the Action and Settlement; No Admission

81. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. This Agreement and any Court order related hereto, and any action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement, is not a concession or admission,

and shall not be used against Michael Kors, or any of its respective partners, officers, directors, agents, employees or business partners as an admission or indication with respect to any claim of any fault, liability or wrongdoing by any of them of any kind.

82. Class Counsel and Plaintiffs believe that the claims asserted in the action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive formal and informal discovery, and have conducted independent investigation of the challenged practices. Class Counsel and Plaintiffs have concluded that the proposed Settlement set forth in this Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class.

83. Michael Kors disputes the claims alleged in the action and does not by this Agreement or otherwise admit any liability, culpability or wrongdoing of any kind. Michael Kors expressly denies liability for the claims asserted. Nor shall this agreement constitute an admission by Michael Kors as to any interpretation of laws or as to merits, validity, or accuracy of any claims made against it in the Litigation. Each of the parties has entered into this Agreement to avoid further disputes and litigation with the attendant inconveniences and expenses.

84. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

85. In addition to any other defenses Michael Kors may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

XVII. Miscellaneous Provisions

86. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

87. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

88. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

89. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

90. Integration. This Agreement (along with the letter agreement referenced in paragraph 76 herein) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

91. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

92. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the

same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

93. Jurisdiction and Governing Law. The Court shall retain jurisdiction over the implementation, enforcement and performance of this Agreement which, except as otherwise provided herein, shall be construed in accordance with, and be governed by, the laws of the State of New York, without regard of law to the principles thereof regarding choices of law, except to the extent federal law controls the issue in dispute. The Court shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program and the Settlement Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement and Notice Administrator shall consent to the jurisdiction of the Court for this purpose.

94. Notices. All notices to counsel provided for herein shall be sent by email and facsimile with a hard copy sent by overnight mail to:

As to Plaintiffs and the Settlement Class:

Jeffrey M. Ostrow (pro hac vice)
KOPELOWITZ OSTROW P.A.
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Facsimile: (954) 525-4300
ostrow@kolawyers.com

Hassan A. Zavareei (pro hac vice)
TYCKO & ZAVAREEI LLP
2000 L Street, NW, Suite 808
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com

Wayne S. Kreger, Esq.
LAW OFFICES OF WAYNE KREGER
SDNY Bar No.: WK2868
303 Fifth Avenue, Suite 1201
New York, New York 10016
Telephone: (212) 956-2136
Facsimile: (212) 956-2137
E-Mail: wayne@kregerlaw.com

As to Michael Kors:

Leslie Gordon Fagen
Darren W. Johnson
Danielle B. Polebaum
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3710
Facsimile: (212) 492-0710
lfagen@paulweiss.com
djohnson@paulweiss.com
dpolebaum@paulweiss.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

95. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties and their respective counsel and approved by the Court.

96. No Waiver. The waiver by any party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

97. Authority. Plaintiffs represent and warrant that they have full power and authority to execute this Agreement. Michael Kors represents and warrants that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definition of Michael Kors to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

98. Agreement Mutually Prepared. Neither Michael Kors nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

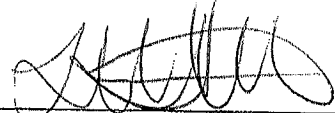
99. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with the action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

100. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained the

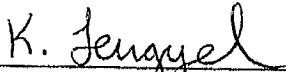
Agreement, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Signatures on following page

PLAINTIFFS



TRESSA GATTINELLA



KRISTINA LENGYEL

MICHAEL KORS

By: _____

Its: _____

CLASS COUNSEL

JEFFREY M. OSTROW

HASSAN ZAVAREEI

WAYNE KREGER

MICHAEL KORS' COUNSEL

LESLIE GORDON FAGEN

PLAINTIFFS

TRESSA GATTINELLA

KRISTINA YENGEL

**MICHAEL KORS (USA), INC.,
MICHAEL KORS, L.L.C.,
MICHAEL KORS RETAIL, INC.,
AND MICHAEL KORS STORES,
L.L.C.**

By: _____

their *Its:* SVP, General Counsel

CLASS COUNSEL

JEFFREY M. OSTROW

HASSAN ZAVAREEI

WAYNE KREGER

MICHAEL KORS' COUNSEL

LESLIE GORDON FAGEN

PLAINTIFFS

TRESSA GATTINELLA

KRISTINA LENGYEL

MICHAEL KORS

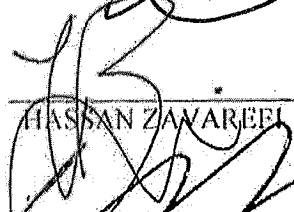
By: _____

Its: _____

CLASS COUNSEL



JEFFREY M. OSTROW



HASSAN ZAVAREEI



WAYNE KREGER

MICHAEL KORS' COUNSEL

LESLIE GORDON FAGEN

EXHIBIT 1

PUBLICATION NOTICE

If You Bought Products at a Michael Kors Outlet Store You May Be Eligible for a Payment from a Class Action Settlement

A Settlement has been reached in a class action lawsuit concerning the labeling and marketing of merchandise sold in Michael Kors Outlet Stores during the period July 25, 2010 through July 25, 2014.

What's this Settlement about?

The lawsuit alleges that Michael Kors deceptively and misleadingly labeled and marketed merchandise that it sells at its Michael Kors Outlet Stores, including by using allegedly misleading price tags on its Michael Kors Outlet Products, which Plaintiffs claim resulted in damages to Plaintiffs and the Settlement Class. Michael Kors maintains that its marketing and labeling is not deceptive or misleading, and is entirely proper and permitted by law.

Who's included?

You are included in the Settlement Class if between July 25, 2010, and July 25, 2014 you purchased at least one item at a Michael Kors Outlet Store that was sold with a price tag showing both an "MSRP" (Manufacturer's Suggested Retail Price) and an "Our Price." These items do not include watches, jewelry, fragrances, eyewear or any other product that did not have a price tag that showed both an "MSRP" and an "Our Price." The Settlement Class does not include directors, officers or employees of Michael Kors, its parents and subsidiaries, or any entity in which Michael Kors has a controlling interest.

What are the Settlement terms?

Michael Kors has agreed to establish a Settlement Fund of \$4,875,000 from which Settlement Class Members will receive payments. The amount of such individual payments cannot be determined at this time. The amount will be based on a number of factors, including the number of Settlement Class Members who submit a valid Claim Verification Form and the amount of the Settlement Fund available for distribution. Michael Kors has also agreed to change the labeling of its price tags of certain items in its outlet stores.

How to get a payment.

If you purchased a Michael Kors Outlet Product between July 25, 2010, and July 25, 2014, to be eligible to receive a payment as a Settlement Class Member, you must submit a Claim Verification Form online at www.KorsOutletSettlement.com or by mail. If you would like to submit the form by mail, you may request that the form be mailed to You by calling 1-800- [REDACTED]. All Claim Verification Forms must be fully completed and submitted online or postmarked if by mail no later than 30 days after the Court grants Final Approval. If you are included in the Settlement Class and entitled to a payment, once the Court approves the Settlement and it becomes final and effective, you will receive a check in the mail for your share of the Settlement.

Your rights may be affected.

If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class. Your request to exclude must be postmarked no later than [REDACTED], 2015. If you do not exclude yourself, you will release your Michael Kors Outlet Store pricing claims and will not be able to sue Michael Kors for any claim relating to the lawsuit. If you stay in the Settlement Class, you may object to it by [REDACTED], 2015. For further information on how to opt-out or object to the Settlement, please visit the website, or call the phone number, listed below.

The Court will hold a hearing on [REDACTED], 2015, to consider whether to approve the Settlement and a request for Service Awards of \$5,000 each for the Plaintiffs and attorneys' fees of up to 30% of the Settlement Fund, along with the reimbursement of expenses. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information: www.KorsOutletSettlement.com or 1-800-*-*****

Do not contact Michael Kors or the Court for information.

All capitalized terms herein have the same meanings as those in the Settlement Agreement.

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

**IF YOU PURCHASED PRODUCTS AT A
MICHAEL KORS OUTLET STORE YOU MAY
BE ELIGIBLE FOR A PAYMENT FROM A
CLASS ACTION SETTLEMENT.¹**

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit concerning the labeling and marketing of merchandise sold in Michael Kors Outlet Stores during the period July 25, 2010 through July 25, 2014.
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Receive A Payment	If you are a member of the Settlement Class, you must submit a completed Claim Verification Form to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check.
Exclude Yourself From The Settlement	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against Michael Kors about the claims in this case.
Object	Write to the Court if you do not like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	You will not receive a payment if you fail to timely submit a completed Claim Verification Form, and you will give up your right to bring your own lawsuit against Michael Kors about the claims in this case.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

¹ All capitalized terms in this notice are defined in the Settlement Agreement, which may be found online at the website below.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATIONPAGE 3

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

WHO IS IN THE SETTLEMENTPAGE 4

5. Who is included in the Settlement?

THE SETTLEMENT'S BENEFITS PAGE 4-5

6. What does the Settlement provide?
7. How do I receive a payment?
8. What am I giving up to stay in the Settlement Class?

EXCLUDING YOURSELF FROM THE SETTLEMENTPAGE 5

9. How do I get out of the Settlement?
10. If I don't exclude myself, can I sue Michael Kors for the same thing later?
11. If I exclude myself from the Settlement, can I still receive a payment?

THE LAWYERS REPRESENTING YOU..... PAGE 5-6

12. Do I have a lawyer in this case?
13. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT PAGE 6-7

14. How do I tell the Court that I don't like the Settlement?
15. What's the difference between objecting and excluding?

THE COURT'S FINAL APPROVAL HEARING.....PAGE 8

16. When and where will the Court decide whether to approve the Settlement?
17. Do I have to come to the hearing?
18. May I speak at the hearing?

IF YOU DO NOTHINGPAGE 9

19. What happens if I do nothing at all?

GETTING MORE INFORMATIONPAGE 9

20. How do I get more information?

BASIC INFORMATION

1. Why is there a Notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement and your legal rights.

Judge William H. Pauley, III of the U.S. District Court for the Southern District of New York is presiding over this case. The case is known as *Gattinella v. Michael Kors (USA), Inc., et al.*, Case No. 14-civ-5731 (WHP). Tressa Gattinella and Kristen Lengyel, the people who sued, are called the “Plaintiffs.” The “Defendants” are Michael Kors (USA), Inc., Michael Kors, L.L.C., Michael Kors Retail, Inc., and Michael Kors Stores, L.L.C. Throughout this notice, the Defendants are collectively called “Michael Kors.”

2. What is this lawsuit about?

The lawsuit alleges that Michael Kors deceptively and misleadingly labeled and marketed merchandise that it sells at its Michael Kors Outlet Stores, including by using allegedly misleading price tags on its Michael Kors Outlet Products, which Plaintiffs claim resulted in damages to Plaintiffs and the Settlement Class. Michael Kors maintains that its marketing and labeling is not deceptive or misleading, and is entirely proper and permitted by law.

3. Why is this a class action?

In a class action, one or more people, called class representatives (in this case, two Michael Kors’ customers who purchased products from Michael Kors Outlet Stores), sue on behalf of people who have similar claims.

All of the people who have claims similar to the class representatives are members of the Settlement Class, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Court has not decided in favor of either Plaintiffs or Michael Kors. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The class representatives and their attorneys think the Settlement is best for everyone who is affected.

WHO IS IN THE SETTLEMENT?

5. Who is included in the Settlement?

You are included in the Settlement Class if between July 25, 2010, and July 25, 2014 you purchased at least one item at a Michael Kors Outlet Store that was sold with a price tag showing both an “MSRP” (Manufacturer’s Suggested Retail Price) and an “Our Price.” These items do not include watches, jewelry, fragrances, eyewear or any other product that did not have a price tag that showed both an “MSRP” and an “Our Price.”

If this did not happen to you, then you are not a member of the Settlement Class. Further, you are not eligible for a payment under the Settlement if you do not fully complete and timely submit a Claim Verification Form to the Settlement and Notice Administrator. Also excluded from the Settlement Class are directors, officers and employees of Michael Kors, its parents and subsidiaries, or any entity in which Michael Kors has a controlling interest. You may contact the Settlement and Notice Administrator if you have any questions as to whether you are in the Settlement Class.

THE SETTLEMENT’S BENEFITS

6. What does the Settlement provide?

Michael Kors has agreed to establish a Settlement Fund of \$4,875,000 from which Settlement Class Members will receive payments. All Settlement Class Members who submit a valid Claim Verification Form (“Valid Class Members”) will receive a percentage of the net Settlement Fund (after the payment of other fees and expenses from the Settlement Fund). The percentage each Valid Class Member receives will be dependent upon the total number of Valid Class Members, and whether such Valid Class Member is entitled to one, two, three, four or five points, as follows: (a) each Valid Class Member who submits a Claim Verification Form but does not submit a valid receipt evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period shall receive one point; (b) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total less than \$200 will receive two points; (c) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$200 to \$499 will receive three points; (d) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$500 to \$999 will receive four points; and (e) each Valid Class Member who submits one or more valid receipts evidencing the purchase of Michael Kors Outlet Product(s) during the Class Period that total \$1,000 or more will receive five points. Thereafter, each Valid Class Member’s percentage will be determined by dividing the number of points he or she receives by the number of total points of all Valid Class Members in order to determine his or her percentage of the Net Settlement Fund.

Michael Kors has also agreed to change the labeling of its price tags of certain items in its outlet stores. In particular, Michael Kors will either (a) replace “MSRP” with “Value” on price tags of Michael Kors Outlet Products, and display signage in Michael Kors Outlet Stores that explains the meaning of “Value” (as that term is used on price tags of Michael Kors Outlet Products) to

customers; or (b) not use a reference price (i.e., a price at which the product was not previously offered for sale at a Michael Kors retail store or a Michael Kors Outlet Store) on the price tags of products made exclusively for sale in Michael Kors Outlet Stores.

7. How do I receive a payment?

If you are in the Settlement Class and entitled to receive a cash benefit, you must fully complete and timely submit a Claim Verification Form. A copy of the form is attached hereto as **Exhibit 1**. You may obtain the Claim Verification Form either online at www.KorsOutletSettlement.com or by contacting the Settlement and Notice Administrator at **1-8XX-XXX-XXXX** and requesting a form. All forms must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order. If the Court approves the Settlement, you will automatically receive a check in the mail for your share of the Settlement.

8. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you cannot sue, continue to sue or be part of any other lawsuit against Michael Kors about the legal issues in this case. It also means that all of the decisions by the Court will bind you. The “Release of Claims” included in the Settlement Agreement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at www.KorsOutletSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Michael Kors on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting-out” of the Settlement Class.

9. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- Your name, address and telephone number;
- A statement that you want to be excluded from the Michael Kors Settlement in *Gattinella v. Michael Kors (USA), Inc., et al.*, Case No. 14-civ-5731 (WHP); and
- Your signature.

You must mail your exclusion request, postmarked no later than , 2015, to:

Michael Kors Outlet Settlement
P.O. Box
[City, State, Zip]

10. If I do not exclude myself, can I sue Michael Kors for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Michael Kors for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

11. If I exclude myself from the Settlement, can I still receive a payment?

No. You will not receive a payment if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court has appointed lawyers to represent you and others in the Settlement Class as “Class Counsel,” including:

Jeffrey M. Ostrow

Kopelowitz Ostrow P.A.
200 SW 1st Avenue, Ste. 1200
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100

Hassan Zavareei

Tycko & Zavareei LLP
2000 L Street, N.W., Suite 8008
Washington D.C. 20036
Telephone: (202) 973-0900

Wayne S. Kreger, Esq.

Law Offices of Wayne Kreger
303 Fifth Avenue, Suite 1201
New York, New York 10016
Telephone: (212) 956-2136

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel intends to request up to thirty percent (30%) of the money in the Settlement Fund for attorneys’ fees, plus reimbursement of their expenses incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also

12613-002/00612597_1 **Questions? Call 1-8XX-XXX-XXXX or visit www.KorsOutletSettlement.com**

request that up to \$5,000.00 per Plaintiff be paid from the Settlement Fund to the two class representatives for their service to the entire Settlement Class.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

14. How do I tell the Court that I don't like the Settlement?

If you are a Settlement Class Member, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or Class Counsel's request for Service Awards for Plaintiffs. To object, you must submit a letter that includes the following:

- The name of this case, which is *Gattinella v. Michael Kors (USA), Inc., et al.*, Case No. 14-civ-5731 (WHP);
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a Settlement Class Member;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you or your counsel and any other person or entity;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant final approval to the Settlement and Class Counsel's request for attorneys' fees and service awards to Plaintiffs (the "Final Approval Hearing");
- The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your objection to the following addresses, so that it is received by all the people listed below no later than **June 15, 2015**:

Clerk of the Court United States District Court for Southern District of New York Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007	Michael Kors Outlet Litigation P.O. Box _____ [City, State, Zip]	Jeffrey M. Ostrow Kopelowitz Ostrow P.A. 200 SW 1 st Ave., Ste. 1200 Fort Lauderdale, FL 33301 Hassan Zavareei Tycko & Zavareei LLP 2000 L St., N.W., Ste. 8008 Washington D.C. 20036 Wayne S. Kreger, Esq. 303 Fifth Ave., Ste. 1201 New York, NY 10016	Darren W. Johnson □ Paul Weiss, Rifkind, Wharton & Garrison, LLP 285 Ave. of the Americas New York, NY 10019
--	---	---	--

15. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees and expenses and Service Awards for Plaintiffs. You may attend and you may ask to speak, but you don't have to do so.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at _____ on _____, 2015, at the United States District Court for Southern District of New York, located at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.KorsOutletSettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for service awards for Plaintiffs. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As

long as you submitted your written objection on time to the proper address, and as long as it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for the Michael Kors Outlet Settlement in *Gattinella v. Michael Kors (USA), Inc., et al.*, Case No. 14-civ-5731 (WHP);
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear, so that it is received no later than _____, 2015, to all of the addresses listed in Question 14 above.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will not receive a payment, and you will give up your right to bring your own lawsuit against Michael Kors about the claims in this case. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against Michael Kors relating to the issues in this case.

GETTING MORE INFORMATION

20. How do I get more information?

This Detailed Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.KorsOutletSettlement.com. You may also write with questions to Michael Kors Outlet Litigation, P.O. Box _____, [City, State, Zip], or call the toll-free number, 1-8XX-_____. Do not contact Michael Kors or the Court for information.

EXHIBIT 3

MICHAEL KORS SETTLEMENT
Settlement Administrator
PO Box #####
Portland, OR 97208-####

<<MAIL ID>>

<<NAME 1>>

<<NAME 2>>

<<ADDRESS 1>>

<<ADDRESS 2>>

<<DATE>>

<<CITY>>, <<STATE>> <<ZIP CODE>>

CLAIM VERIFICATION FORM INSTRUCTIONS

If you shopped at a Michael Kors Outlet Store (a list identifying the Michael Kors Outlet locations is enclosed) between June 25, 2010, and June 25, 2014, and purchased one or more products with a price tag that contained both a Manufacturer's Suggested Retail Price ("MSRP") and an "Our Price," and you wish to make a claim in this class action, please complete this claim form.

The Claim Verification Form must be completed truthfully. The address you fill in on the form must be the address at which you intend to receive your payment, in the event you are eligible to receive payment as a Settlement Class Member, and should be an address that you will continue to receive mail through the date the Court orders payments to be distributed to Settlement Class Members. All forms must be submitted either online, or postmarked if sent by mail, no later than 30 days after the Court's entry of a Final Approval Order. Please contact the Administrator or visit www.WebsiteURL.com for the deadline date. Should you have any questions regarding the completion of the form, please contact the Administrator at www.WebsiteURL.com.

SECTION 1 – PERSONAL INFORMATION

First	Middle	Last
-------	--------	------

Street Number & Name	City	State	Zip Code
----------------------	------	-------	----------

(____) _____
Daytime Phone

Email

SECTION 2 – PURCHASING HISTORY

Have you purchased a Michael Kors Outlet Product at one or more Michael Kors Outlet Stores between July 25, 2010, and July 25, 2014? Yes ____ No ____

At which Michael Kors Outlet Store(s) did you purchase the Michael Kors Outlet Product(s)?

How many total Michael Kors Outlet Products did you purchase between July 25, 2010, and July 25, 2014?

What Michael Kors Outlet Product(s) did you Purchase?

Did you pay with cash, debit card, check or credit card? _____

Do you still have the receipt(s) for your purchase(s)? Yes ____ No ____

If you paid with a credit or debit card, do you still have the credit card or debit card statement(s) reflecting your purchase(s)? Yes ____ No ____

SECTION 3 – SETTLEMENT CLASS MEMBERS WITH RECEIPTS

If you have the receipt(s) for your Michael Kors Outlet Product purchase(s), and/or the credit card or debit card statement(s) reflecting your Michael Kors Outlet Product purchase(s), please complete Section 3; otherwise, continue to Section 4.

Please upload if online, or attach if sent by mail, copies of the receipt(s) for your Michael Kors Outlet Product purchase(s), and/or the credit card or debit card statement(s) reflecting your Michael Kors Outlet Product purchase(s), and provide the following information:

What is the total amount you paid for Michael Kors Outlet Products between July 25, 2010, and July 25, 2014 for which you are submitting receipt(s) and/or the credit card or debit card statement(s) to support your claim? \$_____

SECTION 4 – VERIFICATION

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

Signature: _____

Name (please print): _____

Executed on (date): ____ - ____ - 2015

All Claim Verification Forms will be subject to review for completeness by the Settlement Administrator.

MICHAEL KORS SETTLEMENT
Settlement Administrator
PO Box #####
Portland, OR 97208-####

<<INSERT LIST OF MICHAEL KORS OUTLETS STORES AND/OR
PRODUCTS>>

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**TRESSA GATTINELLA, and
KRISTIN LENGYEL each individually and on behalf
of all others similarly situated,**

No. 14 Civ. 5731 (WHP)

Plaintiffs,

-against-

**MICHAEL KORS (USA), INC.; MICHAEL KORS,
L.L.C.; MICHAEL KORS RETAIL, INC.; and
MICHAEL KORS STORES, L.L.C.,**

Defendants.
-----X

**JOINT DECLARATION OF JEFFREY M. OSTROW,
WAYNE S. KREGER, AND HASSAN A. ZAVAREEI IN SUPPORT
OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Jeffrey M. Ostrow, Wayne S. Kreger and Hassan A. Zavareei declare as follows:

1. We are Class Counsel for Plaintiffs and the proposed Settlement Class in the action (“Action”) against Michael Kors (USA), Inc., Michael Kors, L.L.C., Michael Kors Retail, Inc., and Michael Kors Stores, L.L.C. (collectively “Michael Kors”).¹ We submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. After litigation and settlement negotiations, Plaintiffs, Class Counsel and Michael Kors entered into a Settlement Agreement and Release (“Settlement” or “Agreement”) under

¹ All capitalized defined terms have the same meaning as defined in the Settlement Agreement and Release attached to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class.

which Michael Kors has agreed to: (i) pay \$4,875,000.00 in cash to create a common fund for the benefit of the Settlement Class; and (ii) implement significant practice changes, including ceasing the very practice at the heart of this Action. Under the Settlement, members of the Settlement Class need only submit online or by mail a Claim Verification Form verifying that they purchased Michael Kors Outlet Products during the Class Period in order to receive a distribution from the Net Settlement Fund.

3. The Action involved sharply opposed positions on several fundamental legal and factual issues. Plaintiffs maintain that the claims asserted in the Action are meritorious; that they would establish liability and recover substantial damages if the Action proceeded to trial; and that the final judgment recovered in favor of Plaintiffs and the Settlement Class Members would be affirmed on an appeal. Plaintiffs' ultimate success in the litigation required them to prevail, in whole or in part, at *all* of these junctures. Conversely, Michael Kors' success at any one of these junctures could or would have spelled defeat for Plaintiffs and the Settlement Class. Thus, continued litigation posed significant risks and countless uncertainties, as well as the time, expense and delays associated with trial and appellate proceedings.

4. In light of the risks, uncertainties and delays associated with continued litigation, the Settlement represents a significant achievement by providing guaranteed benefits to the Settlement Class in the form of direct cash compensation and other valuable relief.

A. Background of the Litigation and Procedural History.

5. On July 25, 2014, Plaintiff Gattinella filed a Class Action Complaint in this Court seeking monetary damages, restitution and declaratory relief from Michael Kors for its false deceptive labeling and marketing of the merchandise it sells at Kors Outlet. Plaintiffs allege that in reliance on Michael Kors' misrepresentations regarding the existence, nature and amount of

price discounts on Kors Outlet Products, they purchased Kors Outlet Products, and as a result therefore damaged.

6. On September 25, 2014, Michael Kors filed its Answer, denying liability for Plaintiffs' claims. Michael Kors defended its conduct by, *inter alia*, arguing that the "suggested" retail price on Kors Outlet Products did not constitute a representation as to whether those Products were, in fact, offered for sale at those "suggested" prices, and that it complied with applicable federal and state laws, regulations and rules. Furthermore, Michael Kors advanced a medley of other defenses.

7. On December 24, 2014, Plaintiff Gattinella filed a Second Amended Complaint adding Plaintiff Lengyel. Thereafter, the Parties engaged in formal written discovery, including document requests, interrogatories and requests for admission.

8. Beginning in early 2015, the Parties engaged in preliminary settlement discussions, which involved Michael Kors producing informal damage related data and information. On February 11, 2015, the Parties conducted an informal settlement conference in New York. On April 2, 2015, the Parties participated in a formal mediation session with Professor Eric Green in New York City. In advance of the mediation, and aside from responding to Plaintiffs' formal written discovery, Michael Kors produced specific additional data and class related information. This data and class related information included nationwide sales numbers for Kors Outlet Products, internal procedures related to setting prices for Kors Outlet Products and a description of customer databases maintained by Michael Kors.

9. After the mediation, the Parties reached an agreement in principle and signed a term sheet, which memorialized, subject to negotiation and execution of the Agreement and subject to Preliminary Approval and Final Approval, the Parties' good faith intention to fully,

finally and forever resolve, discharge and release all rights and claims of Plaintiffs and the Settlement Class Members in exchange for Michael Kors' Agreement to; (a) pay the sum of Four Million Eight Hundred Seventy-Five Thousand Dollars (\$4,875,000.00) to create a common fund for the benefit of the Settlement Class; and (b) modify its sales practices to change the manner and method in which it markets and labels its price tags for items in its outlet stores.

10. On April 8, 2015, the Parties filed a Notice of Settlement with the Court, and on June 12, 2015, the Parties fully executed the Agreement.

B. Class Counsel's Investigation.

11. Class Counsel spent many hours investigating the claims of several potential plaintiffs against Michael Kors. Prior to filing suit, Class Counsel visited outlet stores, spoke to Michael Kors employees, and interviewed a number of customers and potential plaintiffs to gather information about Michael Kors' conduct and its impact upon consumers. This information was essential to Class Counsel's ability to understand the nature of the conduct, the language on the price tags at issue, and potential relief and remedies.

12. Class Counsel expended significant resources researching and developing the legal claims at issue. After filing suit, Class Counsel also crafted and served document requests, interrogatories and requests for admission with an eye toward class certification, summary judgment and trial. Additionally, Class Counsel spent an enormous amount of time researching, reviewing and analyzing Michael Kors' outlet revenue and industry trends relating to pricing. Prior to Settlement, Class Counsel and Plaintiffs' expert analyzed the discovery and other data provided by Michael Kors, and researched case law, to create damage models and to formulate a range of alleged damages in this case.

C. The Relief for the Benefit of the Settlement Class.

13. The Settlement consists of a \$4.875 million cash Settlement Fund to be distributed to Settlement Class Members. The Settlement requires Michael Kors to deposit into an Escrow Account the full amount of the Settlement following Preliminary Approval. The Settlement Fund will be used to pay the costs of class Notice and Settlement Administration, attorneys' fees, costs and expenses, the class representatives' Service Awards sought in this case, and, most importantly, the distributions to Settlement Class Members.

14. Additionally, upon Final Approval, unless Michael Kors elects to do it sooner, Michael Kors agrees to modify its sales practices to change the manner and method of how it presents pricing on price tags of Michael Kors Outlet Products. Specifically, Michael Kors shall: (a) cease the use of the acronym "MSRP" (Manufacturer Suggested Retail Prices) and will replace it with the word "Value" on price tags of items sold at Michael Kors Outlet Stores; and (b) display signage in the Michael Kors Outlet Stores that explains the meaning of "Value" to customers.

D. Class Notice.

15. The Notice Program in this Settlement is designed to provide the best notice practicable. The Notice Program is reasonably calculated under the circumstances to apprise members of the Settlement Class, among other information: a description of the material terms of the Settlement, the date by which persons in the Settlement Class may exclude themselves from or "opt-out" of the Settlement Class, the date by which persons in the Settlement Class may object to the Settlement, the date upon which the Final Approval Hearing will occur, and the address of the Settlement Website at which persons in the Settlement Class may access the Agreement and other related documents and information. The Notice and Notice Program

constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

16. The Notice Program is comprised of two parts: (1) publication notice (“Published Notice”); and (2) written long-form notice containing more detail than the Published Notice (“Long Form Notice”) that will be available on the Settlement website (www.KorsOutletSettlement.com) and via U.S. mail upon request. In addition, Notice will be provided through targeted Internet banner advertising.

17. Notice to the Settlement Class will include, among other information: a description of the material terms of the Settlement; a date by which members of the Settlement may exclude themselves from or opt-out of the Settlement Class; a date by which members of the Settlement Class may object to the Settlement; the date of the Final Approval Hearing; and the address of the Settlement Website at which members of the Settlement Class may access the Agreement and other related documents and information.

18. The Notice Program is designed to reach a high percentage of the Settlement Class and exceeds the requirements of constitutional due process.

E. Claims Process.

19. To be eligible to participant in the Settlement as a Settlement Class Member, claimants must submit a Claim Verification Form online or by mail to the Settlement and Notice Administrator. A copy of the Claim Verification Form is attached as Exhibit 3 to the Agreement. The Notice Program will direct claimants to the Settlement Website to provide instructions on how to complete and submit the Claim Verification Form. At the request of a Settlement Class Member, the Settlement and Notice Administrator will send a hard copy of the form to the

claimant's address. The Settlement Class Member shall return the Claim Verification Form to the mailing address identified on the Claim Verification Form, and shall be responsible for the cost of postage to deliver the Claim Verification Form to the Settlement and Notice Administrator.

20. Once the forms are submitted online or by mail, the Settlement and Notice Administrator will be responsible for reviewing the forms for completeness. Should a Claim Verification Form be valid and complete, the claimant will be added to the Settlement Class Member list. If a Claim Verification Form is invalid or incomplete, the Settlement and Notice Administrator will send written verification to the claimant that the form is rejected. The claimant will have one more opportunity to submit a corrected completed form.

21. All Claim Verification Forms, whether the initial or second submission, must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order.

F. The Plan of Allocation.

22. The proposed plan of allocation provides for a *pro rata* distribution of the Net Settlement Fund, based on a tiered recovery system, to Valid Class Members" a copy of which is attached to the Agreement as Exhibit 3. The tiered recovery system is based on the amount of qualifying products purchased by Valid Class Members who can provide proof of their purchase, and thus, allocates a recovery that more closely represents such Valid Class Members' individual damages. The plan also takes into account the fact that many Valid Class Members will have not retained proof of their purchase, and allows such Settlement Class Members to nonetheless share in the recovery. No portion of the Net Settlement Fund will revert back to Michael Kors.

G. Service Awards, Attorneys' Fees and Costs.

23. Class Counsel will seek Service Awards of \$5,000 for each of the named Plaintiffs. If the Court approves them, the total Service Awards of \$10,000, will be approximately 0.2% of the Settlement Fund. The Service Awards will be paid from the Settlement Fund, and will be in addition to the distributions the Plaintiffs will be entitled to under the terms of the Settlement. *Id.* These awards will compensate the representatives for their time and effort in the Action and for the risks they assumed in prosecuting the Action against Michael Kors. Specifically, Plaintiffs provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding relevant responsive documents and information; and (3) participating in conferences with Class Counsel. In so doing, the Plaintiffs were integral to the case. Michael Kors does not object to Class Counsel's request for Service Awards for the Class Representatives.

24. Michael Kors will not oppose Class Counsel will request attorneys' fees of up to thirty percent (30%) of the Settlement Fund, as well as reimbursement of costs and expenses incurred in connection with the Action. The Parties negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement.

H. Considerations Supporting Settlement.

1. This Settlement is the Product of Good Faith, Informed and Arm's Length Negotiations.

25. The Parties concluded that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with the motions to dismiss, contested class certification proceedings and possible

interlocutory appellate review, completing merits discovery, pretrial motion practice, trial, and final appellate review.

26. The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action. Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases.

27. As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in both informal and formal discovery with Michael Kors. Class Counsel's review of the discovery enabled it counsel to gain an understanding of the evidence related to central questions in the case, and prepared it for well-informed settlement negotiations. Accordingly, Class Counsel was well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, and the appropriate basis upon which to settle them.

28. Furthermore, the Parties engaged in a full day formal mediation before an experienced and respected mediator, Professor Eric Green.

2. Complexity, Expense, and Likely Duration of the Litigation.

29. By reaching a favorable settlement prior to dispositive motions or trial, the Parties seek to avoid significant expense and delay, and instead ensure recovery for the Settlement Class.

30. The traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and given the relatively small value of the claims of the individual members of the Settlement Class, individual cases would be impracticable. Although the Parties have already undertaken considerable time and expense litigating this matter, further litigation without settlement would necessarily result in

additional expense and delay. There is no doubt that continued litigation here would be difficult, expensive, and time consuming. Recovery by any means other than settlement would require additional years of litigation in this Court and the Second Circuit Court of appeals.

31. One of the most expensive aspects of ongoing litigation in this case involves the retention of experts to perform data analyses and to present those analyses in expert reports, at depositions, and at trial. Experts in the fields of retail and marketing may also be necessary. This consideration militates heavily in favor of the Settlement.

32. The Settlement provides immediate and substantial relief to tens of thousands of Michael Kors customers. The proposed Settlement is the best vehicle for the Settlement Class to receive the relief to which they are entitled in a prompt and efficient manner.

3. The Reaction of the Class to the Settlement.

33. Since no notice has been sent, consideration of this factor is premature.

4. The Stage of the Proceedings and Amount of Discovery.

34. Class Counsel conducted in-depth interviews with Plaintiffs prior to filing the instant action, and also spoke to employees about the pricing. In addition, Class Counsel propounded and received responses to formal written discovery, including Interrogatories, Requests for Production and Requests for Admissions.

35. Further, Class Counsel conducted informal discovery, and obtained and reviewed with its experts damage data produced by Michael Kors. The damage data included the evaluation of sales data and pricing formulas for the Class Period as it relates to the products in questions. From those figures, the Parties were able to determine the range of damages under the applicable damage models.

5. The Risks of Establishing Liability and Damages.

36. While Plaintiffs believe that they could ultimately establish Michael Kors' liability, to do so would require significant factual development. For example, in similar outlet litigation, the defendants have argued that the comparative discount pricing language contained on the price tags at issue would not lead a reasonable consumer to believe that the product in question was previously sold at a higher price. As such, there could be no violations under California law for making an unlawful price comparison. Although the price tags at issue in this case contained representations regarding purported discounts from the products' MSRP's, and not comparative discounts, the threshold issue of whether consumers would be deceived by such language remained a significant obstacle Plaintiffs would have to overcome in order to move forward with the prosecution of their case.

37. Class Counsel are experienced and realistic, and understand that the resolution of liability issues, the outcome of the trial, and the inevitable appeals process are inherently uncertain in terms of outcome and duration. A settlement of \$4,875.00 in cash and the practice changes described above represents a significant recovery.

38. In addition, proving damages in this action would have been extremely complicated and would almost certainly require significant expert testimony and analysis. Indeed, Plaintiffs retained two experts – an economics professor and marketing expert – to establish the price premium members of the Settlement Class paid as a result of Michael Kors' MSRP misrepresentation. Although Plaintiffs are confident that the calculation of this price premium and other alternative methods would provide evidence sufficient to establish the amount of damages sustained by members of the Settlement Class, Plaintiffs are mindful of the fact that courts in arguably similar cases have overturned damage awards based on the

insufficiency of such evidence. Thus, Plaintiffs faced the risk of a non-monetary recovery for members of the Settlement Class, despite this Court's finding of Michael Kors' liability.

6. The Risks of Maintaining the Class Action through Trial.

39. The risks of maintaining this action as a class action through trial provides additional support to Plaintiffs' position that the Settlement should be approved. Michael Kors would undoubtedly have argued that individual issues predominate over common issues.

40. In addition, like defendants have argued in other consumer class actions, Michael Kors would have raised issues pertaining to the ascertainability of the Settlement Class in light of the fact that many consumers do not retain receipts for the products they have purchased. While Plaintiffs acknowledge that there are some burdens to easily identifying all members of the Settlement Class, they maintain that consistent with prior rulings from this Court, the retention of receipts is not an essential elements for the management of this class action, or for establishing proof of injury or damages. Here, the proposed Settlement Class consisting of United States consumers who purchased products from Michael Kors outlet stores containing the MSRP claim is sufficiently specific to satisfy the implied ascertainability requirement of Rule 23.

41. Notwithstanding, even assuming that Plaintiffs were successful in certifying a class, there is a risk that Michael Kors would ask the Court to reconsider or amend the certification decision.

7. The Ability of Defendants to Withstand a Great Judgment.

42. While neither Plaintiffs nor their counsel have knowledge as to this factor, conceivably, Michael Kors could withstand a greater judgment for an amount significantly greater than the Settlement.

8. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation.

43. There has been resistance from other courts to allowing cases such as this one to withstand a motion to dismiss under the applicable California laws, suggesting that liability in this case is not certain. Also given the difficulties in establishing damages, Plaintiffs are unable to estimate with any certainty the best possible recovery for members of the Settlement Class at this stage of the litigation.

44. However, as demonstrated above, establishing damages would be a difficult and expensive task. The law establishing a proper damages model to apply to outlet store false pricing litigation is still evolving. In addition, litigation through trial and appeal of this case would be lengthy and expensive, and would subject Plaintiffs' claims to a number of risks pertaining to liability.

45. On the other hand, if approved, Plaintiffs and members of the Settlement Class are assured recovery of \$4.875 million in cash, in addition to the benefit of significant practice changes, which will prevent future damages based on the practices at issue in this lawsuit.

I. Class Certification for Settlement Purposes.

46. Certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Under Rule 23(b)(3), certification is appropriate if the questions of law or fact common to the members of the class predominate over individual issues of law or fact and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

47. The numerosity requirement of Rule 23(a) is satisfied because there are tens of thousands of members of the Settlement Class, and joinder of all such persons is impracticable.

48. The commonality requirement is satisfied because Plaintiffs and members of the Settlement Class all bring identical claims arising from Michael Kors' labeling and marketing of merchandise that it sells at its company-owned outlet stores. Specifically, Plaintiffs and members of the Settlement Class claim that the manner in which Michael Kors' labels its price tags deceived them into believing they were purchasing products at a discounted price. Accordingly, the overarching questions are whether Michael Kors used false price representations and falsely advertised price discounts on its merchandise sold at Kors Outlet, and whether such representations constitute a violation of California law.

49. Plaintiffs' claims are typical of the members of the Settlement Class' claims because they were subjected to the same Michael Kors advertising and marketing practices and claim to have suffered from the same injuries, and because they will benefit equally from the relief provided by the Settlement.

50. Adequacy is established because Plaintiffs' interests are coextensive with, not antagonistic to, the interests of members of the Settlement Class, because Plaintiffs and members of the Settlement Class have the same interest in the relief afforded by the Settlement, and there is no evidence that Plaintiffs and members of the Settlement Class have divergent interests. Further, Plaintiffs are represented by qualified and competent counsel who have extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. Class Counsel have devoted substantial time and resources to this Action and will vigorously protect the interests of the Settlement Class.

51. Plaintiffs satisfy the predominance requirement because liability questions common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class. As stated above, the central issue in this litigation is whether Michael Kors engaged in a policy and practice of misrepresenting the existence, nature and amount of price discounts on products manufactured exclusively for its outlet stores. Because Michael Kors' policies and practices applied to all members of the Settlement Class, questions regarding the legality of those policies are well-suited for class treatment.

52. Moreover, class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually.

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Fort Lauderdale, Florida, on June 12, 2015.

/s/ Jeffrey M. Ostrow
Jeffrey M. Ostrow

I declare under penalty of perjury of the laws of the New York and the United States that the foregoing is true and correct, and that this declaration was executed in New York, New York, on June 12, 2015.

/s/ Wayne S. Kreger
Wayne S. Kreger

I declare under penalty of perjury of the laws Washington, D.C. and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C., on June 12, 2015.

/s/ Hassan A. Zavareei
Hassan A. Zavareei

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRESSA GATTINELLA, and
KRISTIN LENGYEL each individually and on behalf
of all others similarly situated,

No. 14 Civ. 5731 (WHP)

Plaintiffs,

-against-

MICHAEL KORS (USA), INC.; MICHAEL KORS,
L.L.C.; MICHAEL KORS RETAIL, INC.; and
MICHAEL KORS STORES, L.L.C.,

Defendants.
-----X

[PROPOSED] PRELIMINARY APPROVAL ORDER

The Parties to the above-captioned action currently pending against Michael Kors have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release.¹ The Parties reached the Agreement through arm's-length negotiations, including a private mediation session conducted by Professor Eric Green. Under the Agreement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their claims in exchange for Michael Kors' total payment of Four Million Eight Hundred Seventy-Five Thousand Dollars and 00/100 Dollars (\$4,875,000.00), inclusive of all attorneys'

¹ All capitalized defined terms used herein have the same meanings ascribed in the Settlement Agreement attached as *Exhibit A* to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class.

fees and costs, Notice and Administration costs, and Service Awards to Plaintiffs, along with significant changes in the manner it displays its price tags.

The Agreement has been filed with the Court, and Plaintiffs have filed an Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class (“Motion”). Upon considering the Motion and exhibits thereto, the Agreement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the proposed Agreement and Settlement Class meet the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed class representatives and Class Counsel; (4) the Agreement is the result of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (5) the Agreement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Agreement, Class Counsel’s application for an award of attorneys’ fees and expenses and request for Service Awards for Plaintiffs, their rights to opt-out of the Agreement or object to the Agreement, and Class Counsel’s fee application, and/or the request for Service Awards for Plaintiffs; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval of the Agreement and enter the Final

Approval Order; and (8) the other related matters pertinent to the Preliminary Approval of the Agreement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The terms of the Agreement are hereby incorporated by reference in this Order as if fully set forth herein. First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. § 1332.

3. Venue is proper in this District.

Provisional Class Certification and Appointment of Class Representatives and Class Counsel

4. “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—i.e., all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.* at 620.

5. The Court finds, for settlement purposes, that Federal Rule of Civil Procedure 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court therefore provisionally certifies the following Settlement Class.

All consumers who purchased Michael Kors Outlet Products from a Michael Kors Outlet Store during the Class Period.

6. Excluded from the Settlement Class are directors, officers and employees of Michael Kors, its parents and subsidiaries, and any entity in which Michael Kors has a controlling interest.

7. Specifically, the Court finds, for settlement purposes, that the Settlement Class satisfies the following factors of Federal Rule of Civil Procedure 23:

- i. Numerosity: In the Action, thousands of individuals are members of the proposed Settlement Class. Their joinder is impracticable. *In re Platinum & Palladium Commodities Litig.*, No. 10cv3617, 2014 U.S. Dist. LEXIS 96457, *28 (S.D.N.Y. July 15, 2014) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 2005)). *See also* 1 Newberg on Class Actions 3.05, at 3-25 (3d ed. 1992) (suggesting that any class consisting of more than forty members “should raise a presumption that joinder is impracticable”). Thus, the Rule 23(a)(1) numerosity requirement is met.
- ii. Commonality: “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, ___ U.S. ___, 131 S. Ct. 2541, 2551 (2011). Here, the commonality requirement is satisfied because there are multiple questions of law and fact that center on Michael Kors’ class-wide policies and practices that are common to the Settlement Class.

- iii. Typicality: “Typicality ‘requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal argument to prove the defendant’s liability.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *30 (quoting *Marisol*, 126 F.3d at 376) (citation omitted). Thus, “[s]ince the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *30 (quoting *Bolanos v. Norweigen Cruise Lines Ltd.*, 212 F.R.D. 144, 155 (S.D.N.Y. 2002)). Accordingly, “[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *30 (quoting *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993)). Here, the typicality requirement is met.
- iv. Adequacy: “Adequacy requires determining whether ‘1) plaintiff’s interests are antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experience and able to conduct the litigation.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at *31 (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). Rule 23(a)(4) is satisfied here because there are no

conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have retained competent counsel to represent them and the Settlement Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Action, and have dedicated substantial resources to the prosecution of the Action. Moreover, the Plaintiffs and Class Counsel have vigorously and competently represented the interests of the Settlement Class in the Action.

- v. Predominance and Superiority: Fed. R. Civ. P. 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” Rule 23(b)(3) is satisfied for settlement purposes because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for thousands of members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. Based on the record currently before the Court, the predominance requirement is satisfied here for settlement purposes because common questions present a significant aspect of the case and can be resolved for all Settlement Class Members in a single common judgment.

8. The named Plaintiffs, Tressa Gattinella and Kristin Lengyel, are designated as class representatives of the Settlement Class.

9. The following firms are appointed as Class Counsel:

KOPELOWITZ OSTROW P.A.
Jeffrey M. Ostrow, Esq.
Jason H. Alperstein, Esq.
Scott Edelsberg, Esq.
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: 954-525-4100

TYCKO & ZAVAREEI, LLP
Hassan A. Zavareei, Esq.
Jeffrey D. Kaliel, Esq.
2000 L Street, N.W., Suite 808
Washington, D.C. 20036
Telephone: (202) 973-0900

LAW OFFICES OF WAYNE KREGER
Wayne S. Kreger, Esq.
303 Fifth Avenue, Suite 1201
New York, NY 10016
Telephone: (212) 956-2136

Preliminary Approval of the Settlement

10. As this Court previously held in *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 179 (S.D.N.Y. 2014):

Preliminary approval is the first step in the settlement of a class action whereby the court “must preliminarily determine whether notice of the proposed settlement . . . should be given to class members in such a manner as the court directs, and an evidentiary hearing scheduled to determine the fairness and adequacy of settlement.” Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 11.25 (4th ed. 2002) (internal quotation omitted). . . .

Preliminary approval of a settlement requires only an “initial evaluation” of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties. *Clark v. Ecolab, Inc.*, Nos. 07 Civ. 8623 (PAC) *et al.*, 2009 U.S. Dist. LEXIS 108736, at *3 (S.D.N.Y. Nov. 27, 2009)) (citing Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) § 11.25 (4th ed. 2002)). Nevertheless, courts often grant preliminary settlement approval without requiring a hearing or a court appearance. *Hernandez v. Merrill Lynch & Co, Inc.*, No. 11 Civ. 8472 (KBF)(DCF), 2012 U.S. Dist. LEXIS 165771, at *1 (S.D.N.Y. Nov. 15, 2012) (granting preliminary approval based on

plaintiffs' memorandum of law, attorney declaration, and exhibits)). To grant preliminary approval, the court need only find that there is "'probable cause' to submit the [settlement] to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Ass'n*, 627 F.2d 631, 634 (2d Cir. 1980); *see Newberg* § 11.25 ("If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible approval," the court should permit notice of the settlement to be sent to class members)). . . .

11. The Court preliminarily approves the Agreement, and the exhibits attached to the Motion, as fair, reasonable and adequate. The Court finds that the Agreement was reached in the absence of collusion, and is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Agreement, including the exhibits appended to the Motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter Final Approval Order.

12. Subject to Final Approval of the proposed settlement and Agreement, and subject to the provision of the Settlement Notices required by this Order, the Court approves the provisions of the Settlement Agreement making the Settlement and its release of claims binding on all Settlement Class Members, whether or not they actually receive notice of the Action or the Settlement.

Approval of Claim Process, Notices and Direction to Effectuate Notice Program

13. The Court approves the form and content of the Claim Verification Form appended to the Agreement, as well as the Claim Verification Form process outlined therein.

14. The Court approves the form and content of the Notice to be provided to the Settlement Class, substantially in the forms appended to the Agreement. The Court further finds that the Notice Program of the Settlement Agreement is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Agreement, and their rights to opt-out of the Settlement or object to the Settlement, Class Counsel's fee application, and the request for Service Awards for Plaintiffs. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

15. The Court directs that Epiq Systems act as the Settlement and Notice Administrator.

16. The Settlement and Notice Administrator shall implement the Notice Program, as set forth below and in the Agreement, using substantially the forms of Notice attached to the Agreement and approved by this Order. Notice shall be provided to the members of the Settlement Class pursuant to the Notice Program, as specified in the Agreement and approved by this Order. The Notice Program shall include Published Notice, Internet Notice, and Long-Form Notice on the Settlement Website, as set forth in the Agreement, the exhibits appended thereto, and below.

Published Notice Program

15. The Settlement and Notice Administrator shall administer the Published Notice program, which shall be comprised exclusively of one time print advertising in national publications and Internet advertising targeted toward the Settlement Class and covering the areas

in which Michael Kors had Michael Kors Outlet Stores during the Class Period. The Published Notice program shall commence as soon as practicable following the Court's entry of the Preliminary Approval Order.

Settlement Website

16. As soon as practicable following Preliminary Approval, the Settlement and Notice Administrator shall establish a Settlement Website as a means for members of the Settlement Class to obtain notice of and information about the Agreement, through and including hyperlinked access to the Agreement, the Long-Form Notice, this Preliminary Approval Order, and such other documents as Class Counsel and Michael Kors' Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.korsoutletsettlement.com or such other URL as Class Counsel and Michael Kors' Counsel may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Michael Kors logo or Michael Kors trademarks. Ownership of the Settlement Website URL shall be transferred to Michael Kors within ten (10) days of the date on which operation of the Settlement Website ceases.

17. Epiq Systems is directed to perform all other responsibilities under the Notice Program assigned to the Settlement and Notice Administrator.

Final Approval Hearing, Opt-Outs, and Objections

18. A Final Approval Hearing shall be held before the undersigned on **November 2, 2015** at _____ in Courtroom 20B of the United States District Court for the Southern District of New York, located at 500 Pearl Street, Room 1920, New York, NY 10007, to determine, among other things: (a) whether the Agreement should be finally approved as fair,

reasonable, and adequate; (b) whether the Action should be dismissed with prejudice as to the Plaintiffs and all Settlement Class Members, pursuant to the terms of the Agreement; (c) whether Settlement Class Members should be bound by the Release set forth in the Agreement; (d) whether Settlement Class Members should be subject to a permanent injunction that bars them from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit, claim, demand or proceeding in any jurisdiction that is based on or related to, directly or indirectly, matters within the scope of the Released Claims; (e) whether the Settlement Class should be finally certified; (f) the amount of Service Awards for Plaintiffs; and (g) the amount of attorneys' fees and costs to be awarded to Class Counsel. The Final Approval Hearing may be adjourned or continued by the Court without further notice to the members of the Settlement Class.

19. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by completing and mailing a request for exclusion ("Opt-Out") to the address set forth in the Notices. Such request for exclusion must be postmarked no later than the last day of the Opt-Out Period, as specified in the Notices. For a Class Member's Opt-Out to be valid, it must:

- (i) be signed by all holders of the applicable Account;
- (ii) include the full name, address, and Account number(s) of the person(s) requesting exclusion;
- (iii) be timely postmarked and mailed to the address designated in the Class Notice; and

(iv) include the following statement “I/we request to be excluded from the proposed class settlement in *Gattinella v. Michael Kors (USA)*, S.D.N.Y., Case No. 1:14-cv-05731-WHP.”

A request for exclusion that does not comply with all the foregoing requirements, that is sent to an address other than the one designated in the Notice Program, or that is not sent within the time specified, shall be invalid, and the person(s) serving such a request shall be bound as a Settlement Class Member and by the Agreement, if the Agreement is finally approved. No member of the Settlement Class may purport to exercise any exclusion rights of any other person, or purport to exclude other members of the Settlement Class as a group, aggregate, or class involving more than one person, or as an agent or representative. Any such purported exclusion shall be invalid and the member(s) of the Settlement Class that is or are the subject of the purported Opt-Out shall be a member or members of the Settlement Class and treated and be bound by the Agreement and as a Settlement Class Member for all purposes. Any member of the Settlement Class who successfully Opts-out of the Agreement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

20. The Court further directs that any Settlement Class Member who wishes to object to the Agreement must file a written objection (“Objection”) with the Court, and mail and serve it upon Class Counsel and Michael Kors’ Counsel as specified in the Notice. For an Objection to be considered by the Court, the Objection must be postmarked no later than the last day of the Opt-Out Period as specified in the Notice. To be considered valid, each Objection must be timely served and filed (as judged by the filing deadline and postmark date and time set forth), and must set forth:

(i) the name of the Action;

- (ii) the objector's full name, current address, and telephone number;
- (iii) an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- (iv) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- (v) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- (vi) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Agreement or fee application;
- (vii) the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- (viii) any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector's counsel and any other person or entity;

- (ix) the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- (x) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- (xi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (xii) the objector's signature (an attorney's signature is not sufficient).

21. Any Settlement Class Member who wishes to object and appear at the Final Approval Hearing in person instead of submitting only written Objections must, along with the required written Objection and by the same due date, also file a written notice of intention to appear at the Final Approval Hearing with the Clerk of the Court, and mail and serve the notice on Class Counsel and Michael Kors' Counsel, by the date specified herein. Any Settlement Class Member who does not submit a timely written Objection in complete accordance with this Order shall not be treated as having filed a valid Objection to the Agreement, shall be deemed as having waived his or her objections in this Action, and shall forever be barred from making any such objections in this Action.

Further Papers In Support of Settlement and Fee Application

22. Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their fee application and request for Service Awards for Plaintiffs, no later than **September 1, 2015** [60 days prior to the Final Approval Hearing].

23. Plaintiffs and Class Counsel shall file their responses to timely filed Objections to the Motion for Final Approval of the Settlement, the Fee Application and request for Service Awards for Plaintiffs no later than **October 15, 2015** [15 days prior to the Final Approval

Hearing]. If Michael Kors chooses to file a response to timely filed Objections to the Motion for Final Approval of the Settlement, it also must do so no later than **October 15, 2015** [15 days prior to the Final Approval Hearing].

Effect of Failure to Approve Settlement or Termination

24. In the event of a termination as provided in the Settlement Agreement, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiffs' right to seek class certification and Michael Kors' right to oppose class certification. Any discussions, offers, or negotiations associated with the Agreement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiffs' right to seek class certification, and Michael Kors' right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if the Agreement had not been negotiated, made or filed with the Court, and as if this order had not been entered.

Stay/Bar of Other Proceedings

25. All proceedings in the Action are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Agreement. Pending final determination of whether the Agreement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

29. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must precede it:

- (i) The Settlement and Notice Administrator shall establish the Settlement Website as soon as practicable following Preliminary Approval, but no later than the date of the Notice Program;
- (ii) The Settlement and Notice Administrator shall complete the Published Notice Program by **August 1, 2015**.
- (iii) Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and Request for Service Awards for Plaintiffs, no later than **September 1, 2015** [60 days before the Final Approval Hearing];
- (vi) Settlement Class Members must file any Objections to the Agreement, the Motion for Final Approval of the Settlement, Class Counsel's fee application and/or the Request for Service Awards no later than **October 1, 2015** [30 days before the Final Approval Hearing];
- (vii) Members of the Settlement Class must file requests for exclusion from the Agreement by no later than **October 1, 2015** [30 days before the Final Approval Hearing];
- (viii) Plaintiffs and Class Counsel shall file their responses to timely filed Objections to the Motion for Final Approval of the Settlement and Fee Application no later than **October 15, 2015** [15 days before the Final Approval Hearing];
- (ix) If Michael Kors chooses to file a response to timely filed objections to the Motion for Final Approval of the Settlement, it shall do so no later than **October 15, 2015** [15 days before the Final Approval Hearing];

- (x) All Claim Verification Forms, whether the initial or second submission, must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order.
- (xi) The **Final Approval Hearing** will be held on **November 2, 2015 at** **a.m/p.m.** before the undersigned Judge in Courtroom 20B of the United States District Court for the Southern District of New York, located at 500 Pearl Street, Room 1920, New York, NY 10007.

IT IS SO ORDERED.

DATED: _____

The Honorable William H. Pauley III
UNITED STATES DISTRICT JUDGE