

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CHRISTOPHER META,)	
)	CASE NO. 4:14-CV-0832
Plaintiff,)	
)	JUDGE DONALD C. NUGENT
v.)	
)	
TARGET CORP., et al.)	
)	
Defendants.)	
)	
)	
)	
)	

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Agreement”) is made and entered into by and between Christopher Meta, individually and on behalf of the Settlement Class he represents (“Plaintiff”), and Target Corporation (“Target”) and Nice-Pak Products, Inc. (“Nice-Pak”) (collectively, “Defendants”). Plaintiff and Defendants are referred to herein as the “Parties.” This settlement is intended to fully, finally, and forever resolve, discharge, release, and settle the Released Claims (as defined below) upon and subject to the terms and conditions herein (the “Settlement”).

RECITALS

This Agreement is entered into based on the following:

1. On April 18, 2014, Plaintiff filed a Class Action Complaint against Defendants in the United States District Court for the Northern District of Ohio, captioned *Christopher Meta v. Target Corporation, et al.*, Case No. 4:14-CV-0832 (the “Action”).
2. On July 3, 2014, Plaintiff filed an Amended Class Action Complaint against Defendants, alleging that Up & Up flushable wipes are not “flushable” and seeking monetary

damages and injunctive relief for the following claims: (1) tortious breach of warranty; (2) negligent design; (3) negligent failure to warn; (4) negligent misrepresentation; (5) fraud; (6) defective design/formulation (R.C. 2307.75); (7) product defect due to inadequate warning or instruction (R.C. 2307.76); (8) product defect due to nonconformance with representations (R.C. 2307.77); (9) breach of implied warranty of merchantability (R.C. 1302.27); (10) violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301) as to Target; and (11) unjust enrichment as to Target.

3. After dispositive briefing, the following claims survived: (5) fraud (against Nice-Pak); (9) breach of implied warranty of merchantability (R.C. 1302.27) (against Target); and (10) violation of the Magnuson-Moss Warranty Act (15. U.S.C. § 2301) (against Target).

4. The Court certified a class under Fed. R. Civ. P. 23(b)(3) with respect to Plaintiff's implied warranty of merchantability and Magnuson-Moss Warranty Act claims against Target and determined Mr. Meta was an adequate class representative for those claims. The Court, however, limited the class to Ohio "purchasers of the Nice-Pak 'Buckeye' formulation of Up & Up wipes from April 18, 2010 through the discontinuation of that product formulation in 2014" (the "Class"). In doing so, the Court specifically excluded from the class purchasers of Nice-Pak's subsequent "Sigma" formulation of Up & Up flushable toddler wipes, which Target began distributing in 2014, as Plaintiff presented no evidence that he was injured by the "Sigma" product formulation.

5. The Court appointed Spangenberg Shibley & Liber LLP and Tycko & Zavareei LLP as class counsel for the certified class.

6. Plaintiff's fraud claim against Nice-Pak survived only as to Mr. Meta's individual claim.

7. The Court ruled that the Class can recover only a reimbursement of the price

premium allegedly charged for the “flushable” component of the Nice-Pak Up & Up flushable toddler wipes through the discontinuation of the “Buckeye” product formulation and cannot recover alleged damages relating to harm made to individual plumbing and/or septic systems.

8. The Court ruled that the Class cannot obtain injunctive relief or recover alleged damages relating to any alleged harm resulting from the use of Nice-Pak’s subsequent “Sigma” formulation of Up & Up flushable toddler wipes.

9. The Parties and their counsel have extensively investigated the facts and issues raised in the Action, and have sufficient information to evaluate settlement and this Agreement.

10. Over the course of the Action, Defendant produced to Class Counsel over 200,000 pages of documents. Class Counsel also took five depositions of Defendants’ employees, requested and received written discovery responses from Defendant and several third parties, and conducted expert discovery, during which eight depositions occurred.

11. Defendants deny the validity of any allegations made in the Action or any liability with respect thereto, and specifically deny that any applicable rule, statute, regulation, or law requires any supplemental disclosure or any other settlement consideration, but have agreed to the Settlement set forth herein to avoid further delay and the substantial burden, expense, risk, inconvenience, and distraction of continued litigation, and to fully and finally resolve the Action and any claims that could have been made in the Action.

12. The Action was a motivating factor for Nice-Pak to increase its involvement in consumer education initiatives regarding what products should and should not be flushed.

13. Counsel for Plaintiff and counsel for Defendants have engaged in arm’s length negotiations concerning settlement of the Action. After extensive confidential settlement negotiations, including those taking place during formal mediation proceedings, the parties have reached an agreement providing for the settlement of the Action on the terms and subject to the

conditions set forth below. The Parties did not discuss Attorneys' Fees and Costs or any potential Incentive Award until they first agreed on the substantive terms of this settlement.

14. The Parties hereby agree that for settlement purposes only, the Settlement Class shall be defined as all persons residing in the United States who purchased Up & Up flushable toddler wipes from April 18, 2010 through the discontinuation of the "Buckeye" product formulation on October 31, 2014 (the "Settlement Class" or "Class Members"). The Settlement Class specifically excludes purchasers of Nice-Pak's "Sigma" formulation and subsequent product formulations of Up & Up flushable toddler wipes. Nice-Pak submitted its testing methodology and results relating to its "Sigma" technology flushable wipes to the Federal Trade Commission ("FTC") to substantiate its flushability claims for that product formulation. The FTC analyzed the composition, performance, labeling, and testing of the "Sigma" product formulation and has not sought any revisions to Nice-Pak labeling relating to its flushability claims for the "Sigma" technology flushable wipes nor any subsequent product formulation.

15. Class Counsel has analyzed and evaluated the merits of all Parties' contentions and this settlement as it affects all Parties and the Class Members. Among the risks of continued litigation are the possibility that Plaintiff will be unable to prove liability, damages or entitlement to injunctive relief at trial on a classwide or individual basis.

16. Plaintiff's counsel and Defendants' counsel, in light of their knowledge of this Action and their experience, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interest of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned Parties, that the Action shall be settled, subject to the approval of the Court pursuant to Rules 23 and 41 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

DEFINITIONS

1. “Action” means *Christopher Meta v. Target Corporation, et al.*, Case No. 4:14-CV-0832, commenced by Plaintiff against Defendants on April 18, 2014, in the United States District Court for the Northern District of Ohio.
2. “Agreement” or “Settlement” means this Stipulation and Agreement of Settlement, including all exhibits hereto.
3. “Claims Deadline” means thirty (30) days after the Final Settlement Hearing held by the Court to consider final approval of the Settlement.
4. “Claim Form” or “Claim Forms” means online and paper forms in substantially the same form as Exhibits A1-A2 hereto.
5. “Class Counsel” means Spangenberg Shibley & Liber LLP and Tycko & Zavareei LLP.
6. “Class Period” means April 18, 2010 through the discontinuation of the “Buckeye” product formulation on October 31, 2014.
7. “Effective Date” means the date on which the judgment entered pursuant to the Final Judgment shall be deemed “Final”, the Settlement contemplated by this Agreement shall be deemed effective, and the Parties and Class Members shall be definitively bound thereto. The Judgement shall be deemed “Final” on the date upon which the judgment is no longer subject to any further appeal or judicial reconsideration or review, whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time, or otherwise. Thus, “Final” means, without limitation, the date of expiration of time for the filing or noticing of any appeal from, or other request for judicial review or reconsideration of, the Final Judgment, without any appeal or other request for reconsideration or review having been filed or noticed; or, if an appeal or other request for further judicial review of the Final Judgment is timely filed or

noticed, the date on which all appellate and/or other judicial proceedings resulting from such filing(s) or notice(s) have been finally terminated, and the Judgement substantially in the form in as that attached hereto as Exhibit D has become effective without the possibility of further review by any court; provided however, and notwithstanding any provision to the contrary in this Agreement, the pendency of any appeal or judicial reconsideration or review relating to the approval of the Fee and Expense Amount, as addressed in Paragraph 11, shall not be considered in determining the Effective Date.

8. “E-Mail Summary Notice” means the Notice of Class Action and Hearing thereon, attached hereto as Exhibit B1, which will be e-mailed customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014 for whom e-mail addresses are available;

9. “Excluded Persons” means Defendants, their affiliates, the Court, the mediator, government entities, and those who opt out of the class.

10. “Fee and Expense Amount” means an award of attorneys’ fees and reimbursement of expenses and costs in connection with the representation of the Settlement Class in this Action in an amount not to exceed One Million Six Hundred Fifteen Thousand Dollars (\$1,615,000.00).

11. “Final Approval” means the issuance of an order, substantially in the form of the Final Judgment attached hereto as Exhibit D, granting final approval of this Agreement as binding upon the Parties; holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below; ordering that the settlement relief be provided as set forth in this Agreement; ordering the releases as set forth in Section 13, of this Agreement; entering judgment in this case; and

retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the settlement.

12. “Final Judgment” means a Final Order and Judgment substantially in the form attached hereto as Exhibit D.

13. “Final Settlement Hearing” means a hearing to be held before the Court in order to determine (1) whether the Settlement set forth in this Agreement should be approved as fair, reasonable, and adequate; (2) whether the class notice and notice methodology constituted due, adequate, and sufficient notice to all persons entitled to notice, and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), the rules of this Court, and any other applicable law, and constituted the notice as directed by the Court in the Preliminary Approval Order, to apprise Class Members of (a) the pendency of this Action; (b) the nature and terms of the Settlement; (c) the Class Members’ right to object to the Settlement; and (d) the Class Members’ right to appear at the Final Settlement Hearing; (3) whether a final judgment should be entered dismissing the claims of the Plaintiff and all other Class Members with prejudice, as contemplated by this Agreement; (4) whether the Court should enter a complete bar order, as set forth in the proposed Final Order and Judgment; (5) whether the Court should permanently bar and enjoin (a) all Class Members from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complain in intervention in this Action if the person or entity filing such motion or complain in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim (as herein defined) as to any Released Party (as

herein defined), and (b) all persons and entities from filing, commencing, or prosecuting any other lawsuit as a class action (including seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action) or other proceeding on behalf of any Class Member as to the Released Parties, if such other lawsuit is based upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises out of, or relates to the Action or the transactions or occurrences referred to in the Amended Complaint; (6) whether the Court should approve the Fee and Expense Amount (as defined herein) to Plaintiff's Counsel; and (7) any other matter that the Court may deem appropriate. The Parties anticipate that the Final Settlement Hearing will be scheduled approximately one hundred and twenty (120) days after the Court enters the Preliminary Approval Order.

14. "Heffler" means Heffler Claims Group.

15. "Incentive Award" means an award to the Plaintiff in the amount of Ten Thousand Dollars (\$10,000.00).

16. "Long Form Notice" means the Court-approved form of notice to Settlement Class Members in substantially the same form as Exhibit B2.

17. "Memorandum of Understanding" means the Memorandum of Understanding entered into between the Parties on December 20, 2017.

18. "Nice-Pak" means Nice-Pak Products, Inc.

19. "Notice" or "Notices" means the notices to be sent via e-mail or postcard and/or made available online, including but not limited to the Long Form Notice, E-Mail Summary Notice, Postcard Summary Notice, and online advertising.

20. "Party" or "Parties" means Plaintiff and Defendants.

21. "Plaintiff" means Christopher Meta.

22. “Postcard Summary Notice” means the Notice of Class Action and Hearing thereon, attached hereto as Exhibit B3, which will be mailed to Target customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014 for whom only physical addresses are available.

23. “Preliminary Approval Order” means an order substantially in the form as the proposed Order Preliminarily Approving Class Settlement attached hereto as Exhibit C.

24. “Proof of Purchase” means an itemized retail sales receipt showing, at a minimum, the purchase of Up & Up flushable toddler wipes, the purchase price, and the date and place of the purchase.

25. “Released Claims” means the claims released as set forth in Section 13 of this Agreement.

26. “Released Party” or “Released Parties” means (i) Target Corporation; (ii) Nice-Pak Products, Inc.; and (iii) Target and Nice-Pak’s past, present, and future consultants, contractors, officers, directors, employees, executors, heirs, indemnitors, representatives, attorneys, affiliates, insurers, subsidiaries, divisions, parents, predecessors, successors, agents (whether by estoppel or otherwise), and assigns.

27. “Settlement Class” or “Class Members” means all persons residing in the United States who purchased Up & Up flushable toddler wipes from April 18, 2010 through the discontinuation of the “Buckeye” product formulation on October 31, 2014, specifically excluding Excluded Persons and purchasers of Nice-Pak’s “Sigma” formulation and subsequent product formulations of Up & Up flushable toddler wipes.

28. “Settlement Website” means an internet website created and maintained by the Tilghman & Co., P.C. The URL of the Settlement Website shall be provided in the Notices.

29. “Target” means Target Corporation.

30. "Tilghman" means Tilghman & Co., P.C.

AGREEMENT

1. Stipulation to Class Certification.

a. The Parties hereby stipulate for the purposes of Settlement only that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes. The Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the Settlement not receive Final Approval, the parties' stipulation to class certification as part of the Settlement shall become null and void.

b. Neither this Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement, should be intended to be, construed as, or deemed to be evidence of an admission or concession by Target and Nice-Pak that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

2. Preliminary Approval.

a. On or before March 30, 2018, Plaintiff shall apply to the Court for immediate entry of an order substantially in the same form as the Preliminary Approval Order attached hereto as Exhibit C. The Preliminary Approval Order shall specifically include provisions that:

i. For the purposes of Settlement only, the Court shall find and determine that the Settlement Class shall be defined as all persons residing in the United States who purchased Up & Up flushable toddler wipes from April 18,

2010 through the discontinuation of the “Buckeye” product formulation on October 31, 2014 (“Class Period”);

ii. Preliminarily approve the Settlement as set forth in this Agreement;

iii. Direct that notice be given to the Settlement Class in the manner specified in Paragraph 7, below;

iv. Schedule a Final Settlement Hearing;

v. Approve the form of the E-Mail Summary Notice attached hereto as Exhibit B1 and the Postcard Summary Notice attached hereto as Exhibit B3, direct that Tilghman send the E-Mail Summary Notice and Postcard Notice as described in Paragraphs 7d-7f below, and direct that Heffler implement the media program as described in Paragraph 7b below within thirty days (30) calendar days of entry of the Preliminary Approval Order;

vi. Find that Notice pursuant to Paragraph 7 below constitutes notice as ordered by the Court in the Preliminary Approval Order, constitutes due and sufficient notice of the Settlement and the matters set forth in said notices to all persons entitled to receive notice, and fully satisfies the requirements of Federal Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law;

vii. Provide that any Class Member who wishes to be excluded from the Settlement Class must send a written request for exclusion in the manner and to the address provided in the Notice, and that such requests must be postmarked or delivered on or before the date set by the Court (such date to be at least thirty (30) calendar days before the Final Settlement Hearing);

viii. Provide that any objections by Class Members to the Settlement reflected in this Agreement, including the Fee and Expense Amount, shall be heard at the Final Settlement Hearing, and that any papers submitted in support of said objections shall be received and considered by the Court in connection with the Final Settlement Hearing (unless, in its discretion, the Court shall direct otherwise) only if persons making objections file with the Court, and serve upon counsel for Plaintiff and counsel for Defendants, on or before the date set by the Court (such date to be at least thirty (30) calendar days before the Final Settlement Hearing), written notice of their intent to appear at the Final Settlement hearing, and/or copies of any papers they ask the Court to consider in connection with issues to be addressed at the Final Settlement Hearing;

ix. Provide that any objections by Class Members to the Settlement reflected in this Agreement, including the Fee and Expense Amount, must be made in the time and manner provided in the Long Form Notice, which is Exhibit B2 to this Agreement, and that any Class Member not submitting an objection in that manner shall be deemed to have waived such objection and be forever foreclosed from making any objection to the fairness or adequacy of the Settlement, including but not limited to the Fee and Expense Amount, the Incentive Award, the compensation to Class Members, or the Final Judgment.

x. Provide that, from the date of the Preliminary Approval Order until the Court determines whether final judgment should be entered in accordance with Paragraph 3 below, counsel for Plaintiff and all other Class Members, and any of them, and anyone acting on their behalf, are barred from commencing, prosecuting, instigating or in any way participating in the commencement or

prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Party;

xi. Provide that the Final Settlement Hearing may, from time to time and without further notice to Class Members, be continued or adjourned by order of the Court; and

xii. Schedule the Final Settlement Hearing as close to one hundred and twenty (120) days after the Court enters the Preliminary Approval Order as possible.

3. Final Order and Judgment.

a. Class Counsel shall file its motion for final approval of the settlement no less than ten (10) days in advance of the Final Settlement Hearing.

b. At the Final Settlement Hearing set by the Court, Class Counsel shall ask the Court immediately to enter a Final Judgment substantially in the form attached hereto as Exhibit D, although the proposed Final Judgment may be modified as needed to specifically address the arguments made in any objections to the Settlement. The Final Judgment shall specifically include provisions that:

i. Grant final certification of the Settlement Class solely for settlement purposes;

ii. Approve the Settlement set forth in this Stipulation as fair, reasonable, adequate, and direct consummation of the Settlement in accordance with the terms and provisions of this Agreement;

iii. Dismiss with prejudice all claims in the Action, without award of any damages, costs or fees, or the grant of any further relief, except as provided

for by this Agreement;

iv. Adjudge that Plaintiff and all other Class Members shall conclusively be deemed bound by the Release contained in Paragraph 13 of this Agreement and preclude (a) all Class Members from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complain in intervention in this Action if the person or entity filing such motion or complain in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim (as herein defined) as to any Released Party (as herein defined), and (b) all persons and entities from filing, commencing, or prosecuting any other lawsuit (individually or as a class action, including seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action) or other proceeding, if such other lawsuit is based upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises out of, or relates to the Action or the transactions or occurrences referred to in the Amended Complaint;

v. Completely bar the claims relating to or arising out of any Released Claims, as described in Paragraph 17 of the proposed Final Judgment;

vi. Adjudge that the notice previously given to Class Members pursuant to Paragraph 7 constituted the notice as directed by the Court in the Preliminary Approval Order, constituted due and sufficient notice of the Action,

the Settlement, and the matters set forth in said notices to all persons entitled to receive notice, fully satisfied the requirements of Federal Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), and otherwise complied with the terms of the Preliminary Approval Order;

vii. Approve the award of a reasonable Fee and Expense Amount to Class Counsel, as described in Paragraph 11a;

viii. Approve the payment of an Incentive Award to Plaintiff, as described in Paragraph 11b;

ix. Overrule any Objections made to the Settlement;

x. Find that Plaintiff and counsel for Plaintiff and the Settlement Class, Spangenberg Shibley & Liber LLP and Tycko & Zavareei LLP, have fairly and adequately represented the interests of the Settlement Class; and

xi. Retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Agreement and Settlement.

4. Effect of Court Disapproval.

Except as may otherwise be agreed to by the Parties pursuant to the terms hereof, in the event this Court (or any other court, including a court of appeals):

a. Disapproves or sets aside this Agreement or any material part hereof for any reason;

b. Declines for any reason to enter or give effect to a Preliminary Approval Order identical in substance to that set forth in Exhibit C;

c. Declines for any reason to enter or give effect to a Final Judgment identical in substance to that set forth in Exhibit D to this Agreement; or

d. Holds that the Final Judgment, or any judgment entered pursuant hereto, should in any material part be overturned or modified;

then this Agreement, and all negotiations, transactions, and proceedings in connection therewith (including the Memorandum of Understanding) shall not be deemed to prejudice in any way the respective positions of the Parties, and the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Agreement; the provisions contained in this Agreement and all negotiations, discussions, and proceedings in connection with this Agreement (including the Memorandum of Understanding) shall not be deemed a presumption, concession, or admission by any Party of any fault, liability or wrongdoing or lack of any fault, liability or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement; the Defendants shall not be obligated to pay any of the fees or expenses provided for in this Agreement (other than, if already incurred, the notice costs addressed in Paragraph 7 of this Agreement); the conditional certification of the Settlement Class as provided for herein shall be vacated and be of no further force and effect; provided, however, that in the event that the Parties, within ten (10) business days of any such action of any court described above jointly elect to appeal from or otherwise seek to review or reconsideration of such court action, this Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the Parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned.

5. Effect of Certain Future Events on Stipulation.

a. If any action that would be barred from releases contemplated by this

Agreement is commenced, prosecuted, continued, or instigated, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties (as defined herein) in any Court prior to the Effective Date (as defined herein) and if a motion to dismiss such action is not granted, or a motion to stay such action is not granted in contemplation of dismissal after the Effective Date, then all or any of the Defendants, at its sole option, prior to the Effective Date, may withdraw from this Agreement; provided, however, that such Defendant has first given five (5) business days' notice to each of the counsel listed below so as to be received by such counsel the following day after notice is given. Within five (5) business days of receipt of such notice, counsel may attempt to cause dismissal of the action asserting any of the Released Claims (as defined herein). If counsel succeeded in obtaining dismissal of the action asserting the Released Claims (as defined herein) within the five (5) business day period, then any termination or cancellation by such Defendant shall be deemed a nullity. In order to constitute dismissal for the purposes of this paragraph, an appropriate notice of dismissal, or motion to stay such an action in contemplation of dismissal after the Effective Date, must have been filed with the proper court, and dismissal with prejudice, or an order granting a motion to stay such action in contemplation of dismissal after the Effective Date, must have been entered. This Agreement shall remain binding as to any Defendant not so withdrawing.

b. If a Defendant elects to withdraw from this Agreement pursuant to this Paragraph 5, then (i) such Defendant and the Parties shall be restored to their respective positions as they existed immediately prior to execution of the Memorandum of Understanding, and this Agreement and all negotiations, transactions, and proceedings in connection herewith (including the Memorandum of Understanding) shall not be deemed

to prejudice in any way their respective positions, and the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of the Memorandum of Understanding; (ii) the provisions contained in this Agreement and all negotiations, discussions, and proceedings in connection with this Agreement (including the Memorandum of Understanding) shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement; (iii) such Defendant shall not be obligated to pay any of the fees or expenses provided for in this Agreement (other than, if already incurred, the notice costs addressed in Paragraph 7 of this Agreement); and (iv) the conditional certification of the Settlement Class as provided herein shall be vacated and of no further force and effect with respect to such Defendant.

6. Effective Date of Settlement.

The Settlement contemplated by this Agreement shall be deemed effective, and the Parties and Class Members shall be definitively bound thereto, on the Effective Date.

7. Notice and Claim Form.

a. Defendants shall retain Tilghman to coordinate direct notice to certain Target customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014, maintain the Settlement Website, and otherwise administer the Settlement, as described in this Agreement.

b. Defendants shall retain Heffler to notify potential Class Members by

utilizing cross-device targeting on desktop and mobile to Target consumers with children ages six (6) to twelve (12) or those who follow Target's Facebook page, and a press release via PR Newswire. This program will be implemented for thirty (30) days.

c. Defendants cannot directly identify all Target customers who purchased Up & Up flushable toddler wipes from April 18, 2010 through the discontinuation of the "Buckeye" product formulation on October 31, 2014. Defendants can identify at least 53% of Target customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014.

d. Within thirty (30) days from the date of the Order of Preliminary Approval, Tilghman will work with Target to send direct e-mail notice to Target customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014 for whom e-mail addresses are available. Such email notice will be sent in substantially the same form and content as the E-mail Summary Notice, attached as Exhibit B1. To the extent such e-mail notice is rejected or otherwise not able to be delivered, notice will be sent to those individuals for whom physical addresses are also available in substantially the same form and content as the Postcard Summary Notice, attached as Exhibit B3.

e. Within thirty (30) days from the date of the Order of Preliminary Approval, Tilghman will work with Target to send direct notice to Target customers who purchased Up & Up flushable toddler wipes from January 1, 2013 through October 31, 2014 for whom only physical addresses are available. Such notice will be sent in substantially the same form and content as the Postcard Summary Notice, attached as Exhibit B3. To the extent a Postcard Summary Notice is returned as undeliverable, Tilghman will attempt to identify a new and/or correct address and if such an address can

be ascertained, send a Postcard Summary Notice to that address.

f. Within twenty-one (21) days from the date of the Order of Preliminary Approval, Tilghman shall establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a Contact Information page that includes the address for Tilghman and addresses and telephone numbers for Class Counsel and Defendants' Counsel; the Agreement; the signed Order of Preliminary Approval; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Class Members may exclude themselves from the Settlement Class; and (when they become available) the motion for final approval and Plaintiff's application(s) for Attorneys' Fees, Costs and an Incentive Award.

g. Within twenty-one (21) days from the date of the Order of Preliminary Approval, Tilghman shall establish and operate a toll-free telephone number which Class Members can contact with requests for information about the settlement. Class Members who request copies of the Long Form Notice will be sent copies by their choice of U.S. mail or email.

h. The Settlement Website shall remain accessible until one hundred eighty (180) days after all disbursements are made to Class Members.

i. The Parties shall supervise Heffler and Tilghman in the performance of the notice functions set forth in this Section 7.

j. As set forth in the Class Action Fairness Act of 2005 ("CAFA"), Defendant shall timely serve the requisite CAFA notices within ten (10) days of the filing of this Agreement with the Court. Prior to the Final Settlement Hearing, Defendants shall cause to be served on Plaintiff's counsel and filed with the Court, by affidavit or

declaration, proof of compliance with CAFA's notice provisions (28 U.S.C. § 1715(b)).

k. At least fourteen (14) days prior to the Final Settlement Hearing, Defendants and Tilghman and/or Heffler shall certify to the Court that they have complied with the notice requirements set forth in this Section 7.

l. Defendants shall be responsible for paying all costs of notice—including but not limited to as set forth in this Section 7—and all costs of Tilghman processing objections and exclusion requests—including but not limited to as set forth in Section 8.

8. Requests for Exclusion and Notice of Intent to Object.

a. Any Class Member seeking to be excluded from the Settlement Class must send a written request for exclusion to Tilghman, at an address designated in the Notice, and postmarked or received by Tilghman by the Claims Deadline, which date will be stated in the Notices.

b. To be effective, a request for exclusion from the Settlement Class must include the Class Member's name and address, a clear and unequivocal statement that the Class Member wishes to be excluded from the Settlement Class, and the signature of the Class Member.

c. Within seven (7) days after the Claims Deadline, Tilghman shall submit to Plaintiff's counsel and Defendants' counsel a report of the names and addresses of all Class Members who have timely and properly excluded themselves from the Settlement Class. Upon reasonable request of Plaintiff's counsel or Defendants' counsel, Tilghman shall make available for inspection and copying any exclusion requests received.

d. Any Class Member who does not request exclusion from the Settlement Class may object to the Settlement by filing with the Court a written notice of intent to object, with a copy served on counsel for Plaintiff and counsel for Defendants. A notice

of intent to object must be filed with the Court no less than thirty (30) days before the Final Settlement Hearing, and must contain the following information:

- i. The case name and case number(s) of this Action;
- ii. The full name, address, telephone number, and signature of the objecting Class Member;
- iii. The specific reasons for the Class Member's objections to the Settlement, and a detailed statement of the factual and legal basis for such objections; and
- iv. Information identifying all witnesses, by name, address, and a summary of proposed testimony, who the objecting Class Member may call to testify at the Final Settlement Hearing, and describe and produce copies of all evidence such objecting Class Member may offer at the Final Settlement Hearing.
- e. Any Class Member who does not file a timely and properly supported notice of intent to object in accordance with this Agreement shall waive the right to object or to be heard at the Final Settlement Hearing and shall be forever barred from making any objection to the Settlement.
- f. The Parties will request that the Court, within its discretion, exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

9. Claims Process and Determination of Eligibility for Compensation.

- a. At the election of the Settlement Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms must be received by Tilghman (not just postmarked) or submitted online no later than the Claims Deadline. Any Class Member who fails to timely submit the Claim Form by the

deadline specified shall not be eligible to participate in the disbursement of compensation to Class Members. Tilghman may track Claim Forms with unique security identifiers or control numbers. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g. jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image files uploaded, and the date and time the Claim Form was received.

b. The eligibility of a Class Member who timely submits a completed Claim Form to receive a disbursement of compensation under the Settlement may be subject to verification based on whether the claimant correctly identifies the Up & Up flushable toddler wipes at issue in the Action, when compared to Up & Up moist toilet tissue..

c. The electronic and paper Claim Forms will require claimants to attest under penalty of perjury as to the fact of and number of units of Up & Up flushable toddler wipes purchased during the Class Period. Claimants will be further required to submit their contact information, including email addresses.

d. Tilghman will review submitted Claim Forms to determine if they were timely and to determine Class Members' eligibility for compensation under this Agreement by examination of the Claim Form and any Proof of Purchase submitted by the Class Member.

e. Within sixty (60) days after the Claims Deadline, Tilghman shall notify counsel for Plaintiff and counsel for Defendants in writing of those persons who have submitted claims that Tilghman has determined: (i) are untimely; or (ii) for whom information submitted by the Class Member demonstrates the claimant is ineligible for

compensation. Within thirty (30) days after such notice from Tilghman, counsel for Plaintiff and counsel for Defendants shall send written notice to the other, objecting to any individual claims determinations of Tilghman. Objections not submitted in that time period will be deemed waived. Upon receipt of timely objections by either Party to claims determinations by Tilghman, the Parties will attempt to resolve such objections. Any objections to claims determinations not resolved within thirty (30) days after notice of objection is provided shall be submitted in writing to the Court for final, binding, non-appealable determination. Provided, however, that any determination of the Court upholding eligibility of a claim shall not require payment contrary to the terms of Paragraph 10. Subject to the foregoing, the determination by Tilghman of any Class Member's eligibility for and the amount of compensation under this Agreement shall be final and shall not be subject to any further review or appeal.

f. All persons who submit Claim Forms who are not within the Settlement Class will be notified in writing by Tilghman that they are not eligible to participate in the Settlement along with a brief statement of why they are ineligible.

g. For each unit of Up & Up flushable toddler wipes purchased during the Class Period, a Class Member can opt to receive either a \$1.35 Target gift card or a coupon for a free unit of current Up & Up wipes manufactured by Nice-Pak (double 48-count package or equivalent depending on wipes product).

h. The number of units for which a Class Member can recover a Target gift card or a coupon for current product without Proof of Purchase shall be capped at 20 units. If the Class Member provides Proof of Purchase for any number of units purchased during the Class Period, there shall be no cap imposed on the Target gift card amount the Class Member is entitled to recover. If a Class Member who provides Proof of Purchase

chooses to receive a coupon for current product, the number of units for which that Class Member can receive a coupon shall be capped at 20 units. Recovery for any number of units in excess of 20 units for such a Class Member shall be in the form of a Target gift card in the amount of \$1.35 per unit.

i. Tilghman shall maintain records of all Claims Forms and all determinations of eligibility for and amount of compensation payments to Class Members and shall make those records available for review upon the reasonable request of counsel for Plaintiff or counsel for Defendants. Tilghman shall retain all records of Claim Forms submitted, correspondence with Class Members, and Target gift cards and/or coupons issued for a minimum period of one (1) year after disbursements under this Agreement have been completed.

10. Disbursements to Class Members.

a. Within forty-five (45) days of the Effective Date, Tilghman will coordinate with and assist Target in making the distribution of gift cards and/or coupons to eligible Class Members, as they have elected, as described in Paragraph 9. Tilghman will use its best efforts to complete and confirm distribution of gift cards and/or coupons within ninety (90) days.

b. Target shall send the gift cards and coupons via electronic mail to the Class Members at the electronic mail addresses as shown on their submitted Claim Forms. Class Members who select coupon compensation shall receive one coupon per unit of Up & Up flushable toddler wipes purchased during the Class Period, subject to the limitations set forth in Paragraph 9h. Class Members who select gift card compensation shall receive one gift card subject to the limitations set forth in Paragraph 9h. Tilghman shall monitor and confirm the distribution of gift cards and/or settlements to eligible

Class Members.

c. Within ninety (90) days after confirming all coupons and gift cards have been sent to eligible Class Members, Tilghman shall report in writing to counsel for Plaintiff and counsel for Defendants the total number and amounts of gift cards and coupons (1) issued to Class Members; and (2) returned as undeliverable.

d. Within ten (10) days of confirming all disbursements of the gift cards and coupons, Tilghman shall so report to counsel for Plaintiff and counsel for Defendants, and the Parties shall submit an agreed order to the Court in the form of Exhibit E, dismissing the Action with prejudice without costs or attorneys' fees (except such costs and fees as are awarded pursuant to this Agreement) as to all claims that were asserted or could have been asserted by Plaintiff and/or Class Members.

e. The gift cards shall not have an expiration date. The coupons shall remain valid for ninety (90) days after issuance.

11. Attorneys' Fees, Costs, and Incentive Compensation.

a. Class Counsel shall apply to the Court for, and Defendants shall not object to, an award of attorneys' fees and reimbursement of expenses and costs in connection with the representation of the Settlement Class in this Action in an amount not to exceed One Million Six Hundred Fifteen Thousand Dollars (\$1,615,000.00) ("Fee and Expense Amount").

b. Class Counsel shall apply to the Court for, and Defendants shall not object to, an Incentive Award to the Plaintiff in the amount of Ten Thousand Dollars (\$10,000.00).

c. Class Counsel shall submit its application for the Fee and Expense Amount and Incentive Award not later than forty-five (45) days prior to the Final

Settlement Hearing.

d. Defendants shall pay the Court's award of the Fee and Expense Amount directly to counsel for Plaintiff within ten (10) business days of the following: (i) the Court entering the Settlement Order and Final Judgment that includes an award of attorneys' fees and/or expenses to Class Counsel, and (ii) Hassan Zavareei, Jonathan Tycko, and Stuart Scott have executed the Undertaking attached hereto as Exhibit F. If Final Approval or the award of attorneys' fees, costs or expenses is later reversed on appeal then, within seven (7) days of such order, Class Counsel shall repay to Defendants the amount received, plus interest as stated in the Undertaking. If Class Counsel fails to do so, Defendants may, *ex parte*, obtain a judgment for the amount owed plus interest, as further set forth in the Undertaking.

e. Defendants shall pay the Court's award of an Incentive Award to Plaintiff, as set forth in the Settlement Order and Final Judgment, directly to Plaintiff or send a check payable to Plaintiff to counsel for Plaintiff within ten (10) business days of the Effective Date.

f. Defendants shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among counsel for Plaintiff and/or any other person who may assert a claim thereto, of the Fee and Expense Amount that the Court may award or that are paid by Defendants pursuant to this Agreement.

g. Notwithstanding anything else contained in this Agreement, no fees or expenses may otherwise be payable pursuant to this Agreement shall or paid prior to, or in the absence of entry of the Final Judgment by the Court approving the Fee and Expense Amount, or similar judgment and/or order approving Plaintiff's counsel's fees and costs.

h. The entry of the Final Judgment shall not divest the Court of jurisdiction over the amount of fees and expenses to be paid to Plaintiff's Counsel.

12. Settlement Administration Costs.

a. Defendants shall be responsible for all costs of Heffler and Tilghman as described in this Agreement, including evaluating Claim Forms and the confirmation of gift card and coupon disbursements described in Paragraph 9e.

b. Upon request, Tilghman shall timely report to counsel for Plaintiff and counsel for Defendants of the actions it has taken in connection with the administration of this Settlement. The Parties, counsel for Plaintiff, and counsel for Defendant shall in good faith cooperate in the implementation of the Settlement and this Agreement.

13. Release and Covenant Not to Sue.

a. Upon entry by the Court of the Settlement Order and Final Judgment in this Action, Plaintiff and all Class Members who have not timely and properly excluded themselves, regardless of whether such Class Members have claimed or obtained benefits hereunder, on behalf of each of their successors and assigns, shall release and forever discharge Defendants from any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, liabilities, and obligations of every kind and nature, known and unknown, that they ever had, now have, or hereafter assert, in law or equity, class or individual, that were asserted or could have been asserted by Plaintiff in this Action against Defendants, for any injuries or damages relating to or arising out of the facts alleged in the Action, including but not limited to: (1) any and all claims relating to the design, manufacture, distribution, and sale of Up & Up flushable toddler wipes during the Class Period; (2) any and all claims relating to the warranties, advertisements, representations, and warnings relating to the flushability of Up & Up

flushable toddler wipes during the Class Period; and (3) any and all claims to attorneys' fees and/or expenses in connection with the prosecution of this Action, except for the amount set forth in and awarded pursuant to Paragraph 11 ("Released Claims").

b. The Court determined that Plaintiff failed to provide sufficient evidence to prove Up & Up flushable toddler wipes caused his alleged property damage and further found that the price premium theory was the only appropriate measure of damages for which the class could potentially recover. As a result, the Parties agree and stipulate that a Class Member's individual claim for property damage and/or personal injury arising out of the use of Up & Up flushable toddler wipes during the Class Period is outside the scope of the Released Claims set forth in Paragraph 13a.

c. Effective upon the entry by the Court of the Settlement Order and Final Judgment in this Action, all Class Members who have not timely or properly excluded themselves hereby covenant not to sue Defendants in respect to any of the Released Claims identified in Paragraph 13a (subject to the limitation in Paragraph 13b) and agree not to file, institute, maintain, collect, proceed against, or seek to establish liability against Defendants in any federal, state, or local court of forum, in or before any administrative agency, or in any other proceeding, based upon, arising out of, or relating to, in whole or in part, the Released Claims identified in Paragraph 13a.

d. Plaintiff, for himself and the Settlement Class, accepts and assumes the risk that if any fact or circumstance found, suspected, or claimed hereafter to be other than or different from the facts or circumstances now believed to exist, the release and covenant not to sue set forth in Paragraph 13a shall remain effective notwithstanding any such difference in any such facts or circumstances.

e. Effective upon entry by the Court of the Settlement Order and Final

Judgment, all claims of Plaintiff and of all Class Members, except for those who have timely and properly excluded themselves, shall be dismissed with prejudice and without costs, provided, however, that the Court shall retain jurisdiction over the interpretation, enforcement, and implementation of this Agreement and the Settlement.

f. Plaintiff agrees that Defendants have offered consideration for the Released Claims by Class Members who do not opt out, regardless of whether Class Members file Claim Forms, are eligible for compensation, or receive the gift cards and coupons described in Paragraph 9.

g. This Settlement reflects, among other things, the compromise and settlement of disputed claims, and neither the Settlement nor the releases given herein, nor any consideration therefore, nor any actions taken to carry out this Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or of any point of fact or law. Defendants deny the allegations of the Complaint and Amended Complaint filed in this Action.

14. Stay of Proceedings.

a. Pending entry of the Preliminary Approval Order and the entry of the Final Judgment, the Parties agree to stay all proceedings in the Action, except those incident to the Settlement itself.

b. The Parties agree to use their best efforts to prevent, stay, or seek dismissal of, or to oppose entry of any interim or final relief in favor of, any claim by any member of the Settlement Class in any other litigation that would be barred by the releases contemplated by this Agreement, and any other litigation against any of the Parties challenging the Settlement, or that otherwise involves, directly or indirectly, a Released Claim.

15. Miscellaneous Provisions

a. The Parties and the Parties' counsel shall use their best efforts to secure Preliminary Approval of this Settlement as promptly as possible, to take all steps necessary to effectuate this Settlement, and to obtain Final Approval.

b. This Agreement was entered into only for purposes of compromise and settlement and is not an admission of liability by Defendants. In the event that Final Approval is for any reason not ordered, then no terms or condition of this Settlement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action or in any other proceeding.

c. This Agreement is intended to and shall be governed by the laws of the State of Ohio.

d. The terms and conditions set forth in this Agreement, including all attached exhibits, constitute the complete and exclusive agreement between the Parties relating to the subject matter of this Settlement, superseding all previous negotiations, representations, and understandings, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Settlement. Prior or contemporaneous representations not contained in this Agreement shall be of no force or effect. Any modification of this Agreement must be in writing signed by or on behalf of counsel for Plaintiff and counsel for Defendants.

e. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all

Parties and their counsel. No terms or provisions of this Agreement shall be construed against any Party on the basis that such Party or its counsel drafted this Agreement.

f. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision of this Agreement.

g. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

h. As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

i. The headings in this Agreement are solely for the convenience of the Parties, their counsel, and the Court. The headings shall not be deemed to be a part of this Stipulation and shall not be considered in construing or interpreting this Agreement.

j. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement and the Settlement.

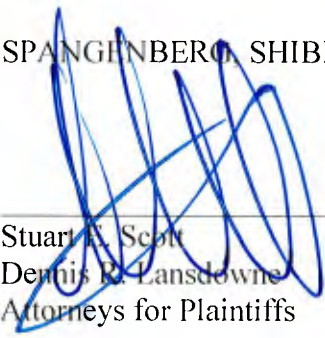
k. Any disputes concerning this Settlement Agreement or its implementation and enforcement, if they cannot be resolved by the Parties, shall be submitted to the United States District Court for the Northern District of Ohio.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the first date it has been executed by all of the undersigned.

APPROVED AS TO FORM:

DATED: March 26th, 2018


SPANGENBERG, SHIBLEY & LIBER LLP



Stuart A. Scott
Dennis R. Lansdowne
Attorneys for Plaintiffs

DATED: March 27, 2018

TYCKO AND ZAVAREEI LLP



Hassan A. Zavareei, Esq.
Andrew J. Silver, Esq.
Attorneys for Plaintiff

DATED: _____, 2018

TUCKER ELLIS LLP

John Q. Lewis
Karl A. Bekeny
Dustin B. Rawlin
Jennifer L. Mesko
Michael J. Ruttinger
Attorneys for Defendants

APPROVED AND AGREED

DATED: March 26, 2018

CHRISTOPHER META



Christopher Meta

APPROVED AS TO FORM:

DATED: _____, 2018

SPANGENBERG, SHIBLEY & LIBER LLP

Stuart E. Scott
Dennis R. Lansdowne
Attorneys for Plaintiffs

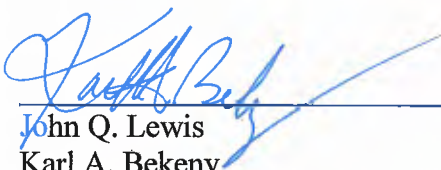
DATED: _____, 2018

TYCKO AND ZAVAREEI LLP

Hassan A. Zavareei, Esq.
Andrew J. Silver, Esq.
Attorneys for Plaintiff

March,
DATED: 28, 2018

TUCKER ELLIS LLP



John Q. Lewis
Karl A. Bekeny
Dustin B. Rawlin
Jennifer L. Mesko
Michael J. Ruttinger
Attorneys for Defendants

APPROVED AND AGREED

DATED: _____, 2018

CHRISTOPHER META

Christopher Meta

DATED: March 27, 2018 NICE-PAK PRODUCTS, INC.

By: Joseph J. Bozzuti, Jr.

Name: Joseph J. Bozzuti, Jr.

Its: Associate General Counsel & Assistant Secretary

DATED: _____, 2018 TARGET CORP.

By: _____

Name: _____

Its: _____

DATED: _____, 2018

TYCKO AND ZAVAREEI LLP

Hassan A. Zavareei, Esq.
Andrew J. Silver, Esq.
Attorneys for Plaintiff

DATED: _____, 2018

TUCKER ELLIS LLP

John Q. Lewis
Karl A. Bekeny
Dustin B. Rawlin
Jennifer L. Mesko
Michael J. Ruttinger
Attorneys for Defendants

APPROVED AND AGREED

DATED: _____, 2018

CHRISTOPHER META

Christopher Meta

DATED: _____, 2018

NICE-PAK PRODUCTS, INC.

By: _____

Name: _____

Its: _____

DATED: March 28, 2018

TARGET CORP.

By: _____

Name: _____

Its: _____

Carter J. Lenty
Carter J. Lenty
Vice President, Law