

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re Tommie Copper Products Consumer  
Litigation

Lead Case No.: 7:15-cv-03183-AT

**STIPULATION AND  
SETTLEMENT AGREEMENT OF  
CLASS ACTION CLAIMS**

This Stipulation and Settlement Agreement (“Agreement”, “Settlement Agreement” or “Stipulation”) is made and entered into by and between Plaintiffs William Lucero, Rhonda Boggs, Jerome Jeffy, and Sandy Kontura, on their own behalf and on behalf of the Class defined below (hereafter collectively referred to as “Plaintiffs” or the “Class”), and Defendants Tommie Copper Inc., Tommie Copper Holdings, Inc., Thomas Kallish, and Montel Williams (“Tommie Copper” or “Defendants”) (collectively, the “Parties”).

**RECITALS**

**I. PROCEDURAL BACKGROUND**

1.1 WHEREAS, on April 22, 2015, Plaintiff George Potzner filed a class action complaint in the United States District Court for the Southern District of New York, Case No. 7:15-cv-3183 (the “*Potzner*” Action) against Defendant Tommie Copper, Inc., alleging causes of action for (1) violations of New York’s Deceptive Trade Practices Law, NY Gen. Bus. § 349; (2) breach of express warranties; (3) negligent misrepresentation; (4) unjust enrichment; (5) declaratory relief under 28 U.S.C. §§ 2201, *et seq.*; and (6) violation of Iowa’s Consumer Fraud Act, Iowa Code Ann. § 714H.3.

1.2 WHEREAS, on July 31, 2015 Plaintiffs William Lucero, Rhonda Boggs, Jerome Jeffy, and Sandy Kontura commenced a putative class action lawsuit in the United States District

Court for the Southern District of New York, Case No. 1:15-cv-6055, in a case captioned *Lucero, et al. v. Tommie Copper Inc., et al.* (the “*Lucero*” Action). Plaintiffs in the *Lucero Action* alleged the following causes of action on behalf of a Nationwide Class and Subclasses under California, New York, Georgia, and Ohio: negligent misrepresentation; unjust enrichment; violation of the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; New York’s Breach of Express Warranty, N.Y. U.C.C. § 2-313; New York’s Breach of Implied Warranty of Merchantability, N.Y. U.C.C. § 2-314; New York’s Unfair and Deceptive Practices Law, N.Y. Gen. Bus. Law § 349; New York’s False Advertising Law, N.Y. Gen. Bus. Law § 350; California’s Breach of Express Warranty, Cal. Com. Code § 2313; California’s Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314; California’s Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*; California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; Georgia’s Breach of Express Warranty, Ga. Code Ann. § 11-2-313; Georgia’s Breach of Implied Warranty of Merchantability, Ga. Code Ann. § 11-2-314; Georgia’s Fair Business Practices Act, Ga. Code Ann. § 10-1-393; Ohio’s Breach of Express Warranty, Ohio Rev. Code Ann. § 1302-26; Ohio’s Breach of Implied Warranty of Merchantability, O.R.C. § 1302-26; and the Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345, *et seq.*

1.3 WHEREAS, on August 3, 2015, the *Potzner* Complaint was amended to remove the causes of action for declaratory relief and for violations of New York’s Deceptive Trade Practices Law.

1.4 WHEREAS, on November 2, 2015, both the *Potzner* and *Lucero* Plaintiffs filed motions to consolidate, as well as for the appointment of interim lead class counsel. *See* ECF Nos. 38-44 in *Lucero* Action; ECF Nos. 47-53 in *Potzner* Action.

1.5 WHEREAS, on January 4, 2016, this Court granted consolidation of the two cases, and appointed Plaintiffs' counsel in the *Lucero* Action—the Law Offices of Ronald A. Marron, APLC and Faruqi & Faruqi, LLP—to serve as Interim Class Counsel for the Consolidated Action. ECF No. 50

1.6 WHEREAS, on March 4, 2016, a consolidated class action complaint was filed, bringing claims for unfair and deceptive business practices under N.Y. Gen. Bus. L. § 349; false advertising under N.Y. Gen. Bus. L. § 350; negligent and intentional misrepresentation; violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, False Advertising Law, *id.* §§ 17500, *et seq.*, and Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, breach of express and implied warranties, including under Cal. Comm. Code §§ 2313 and 2315; breach of express and implied warranty law and false advertising statutes of various other states as noted above; the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; and unjust enrichment under the common law.

1.7 WHEREAS, on November 24, 2015, a substantially similar putative class action lawsuit was filed in the United States District Court for the Southern District of Florida, Case No. 9:15-cv-81611-KAM, styled *Herst v. Tommie Copper, Inc.* (the "*Herst*" Action.)

1.8 WHEREAS, on January 25, 2016, Interim Class Counsel intervened in the *Herst* Action and moved to transfer venue of *Herst* to the Southern District of New York, where the earlier consolidated case was pending. On February 1, 2016, Defendant Tommie Copper, Inc. also moved to transfer the *Herst* Action to the Southern District of New York.

1.9 WHEREAS, on July 15, 2016, the motions to transfer venue of the *Herst* Action to the Southern District of New York was granted. Thereafter, the *Herst* matter was transferred to the Southern District of New York, Case No. 71:16-cv-7008.

1.10 WHEREAS, on November 27, 2015, subsequent to the filing of the initial complaints, the Federal Trade Commission (“FTC”) filed a substantially similar complaint against defendants Tommie Copper and Thomas Kallish pursuant to Section 13(b) of the Federal Trade Commission Act (the “FTC Action”).

1.11 WHEREAS, on December 1, 2015, Tommie Copper stipulated to the entry of a Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief in the amount of eighty-six million, eight hundred fifteen thousand, seven hundred seventy-eight dollars (\$86,815,778.00), which was suspended on the payment of one million, three hundred fifty thousand dollars (\$1,350,000.00) to the FTC (the “FTC Settlement”). The FTC suspension of part of the judgment was based on the financial statements submitted to the FTC, including financial statements from Defendant Thomas Kallish and Defendant Tommie Copper, establishing their inability to pay in excess of the unsuspended judgment. Per the terms of the consent order, the suspended judgment would be immediately due and owing if Tommie Copper or Thomas Kallish misrepresented their financial condition.

1.12 WHEREAS, on March 24, 2016, Interim Class Counsel and counsel for Tommie Copper initiated discussions about the prospect of opening settlement discussions to resolve the litigation, and since that date, Interim Class Counsel and counsel for Tommie Copper have had a series of negotiations about terms of a settlement.

1.13 WHEREAS, the Parties engaged in informal discovery thereafter. Defendants also produced various insurance policies, coverage summaries, notices regarding same, and financial statements and related documents to Interim Class Counsel. In addition, Interim Class Counsel conducted extensive research into the claims made in this case; the substantiation thereof; insurance available; and the implications of the FTC Settlement.

1.14 WHEREAS, on May 5, 2016, the Parties appeared for an in-person settlement conference before Magistrate Judge Lisa Smith in an attempt to resolve this action.

1.15 WHEREAS, on May 20, 2016, Defendants served a meet and confer pursuant to Section III(B) of Judge Annalisa Torres' Individual Practices in Civil Case-Special Rules for Motions to Dismiss, arguing among other points, that Plaintiffs' claims were subject to a Final Judgment.

1.16 WHEREAS, on June 3, 2016, Defendants filed a letter motion asserting that the FTC Judgment—initiated and ordered *after* the commencement of this action—precludes Plaintiffs from pursuing any claims, let alone a class action. That same day, the Parties also entered into a Case Management Plan and Scheduling Order.

1.17 WHEREAS, on June 8, 2016, the Action was stayed so that settlement discussions, which had been ongoing, could be explored more fully.

1.18 WHEREAS, on June 6, October 4, October 31, and November 17, 2016, the Parties participated in telephonic settlement conferences before Magistrate Judge Lisa Smith in an attempt to resolve this action. Magistrate Judge Smith's guidance and the negotiations between Interim Class Counsel and Tommie Copper resulted in this Agreement, which Plaintiffs and Interim Class Counsel believe provides benefits to the Settlement Class, is fair, reasonable and adequate, and is in the best interests of Plaintiffs and Settlement Class Members.

1.19 WHEREAS, this Agreement was reached after extensive review of the underlying facts and after extensive arm's length negotiations between Interim Class Counsel and counsel for Defendants.

1.20 WHEREAS, based upon the discovery and investigation to date and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Interim Class

Counsel have agreed to settle, subject to court approval, the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Plaintiffs and Interim Class Counsel have considered the terms of this Stipulation, the numerous risks of continued litigation and other factors, including but not limited to the following:

- a. the financial stability of Defendants' including Tommie Copper's inability to pay in excess of the suspended FTC judgment;
- b. the expense and length of time necessary to prosecute the Action through trial;
- c. the uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
- d. the possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal;
- e. the fact that Tommie Copper would file a motion for summary judgment that, if granted, would dispose of all or many of the claims in this Action; and
- f. the benefits being made available to Plaintiffs and the Settlement Class Members under the terms of this Agreement.

1.21 WHEREAS, weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiffs and Interim Class Counsel are satisfied that the terms and conditions of this settlement are fair, reasonable, adequate, and in the best interests of the Plaintiffs and the Settlement Class Members.

1.22 WHEREAS, Tommie Copper denies any liability or any wrongdoing of any kind whatsoever, and stands by its products and advertising. Nevertheless, Tommie Copper considers it desirable that the Action be resolved upon the terms and conditions set forth in this Agreement

in order to avoid the expense, risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to obtain the releases as described herein.

1.23 WHEREAS the Parties have engaged in long and hard-fought settlement negotiations. The combined result of the extensive negotiations is memorialized in the terms set forth in this Settlement Agreement.

1.24 **NOW, THEREFORE**, without any admission or concession whatsoever on the part of Plaintiffs of the lack of merit of this Action, or any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, and Defendants that the Action and all claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein and upon the Effective Date (as defined below).

1.25 Each party affirms that the recitals above as to such party are true and accurate as to such party and are hereby made a part of this Settlement Agreement.

## **II. TERMS AND CONDITIONS OF SETTLEMENT**

### **DEFINITIONS**

2.1 As used in this Agreement and the annexed exhibits hereto, the following terms and phrases have the following meanings, unless a section or subsection of this Agreement or its exhibits provides otherwise. Unless otherwise indicated, defined terms include the plural as well as the singular. Other capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement and the exhibits attached hereto.

A. “Action” means the consolidated civil action filed in the United States District Court for the Southern District of New York, styled *Lucero, et al. v. Tommie Copper Inc., et al.*, Case

No. 1:15-cv-6055, including the consolidated *Potzner* and transferred *Herst* actions and any actions transferred or related thereto.

B. “Agreement” or “Settlement Agreement” means this Settlement Agreement, including all Exhibits thereto.

C. “Authorized Claimant” means any Claimant who has timely and completely submitted a Proof of Claim Form that has been reviewed and validated by the Claims Administrator.

D. “Claim” means an assertion of a Class Member who submits a Proof of Claim Form to be reviewed by the Claims Administrator.

E. “Claims Deadline” means the date set by the Court in the Preliminary Approval Order by which Settlement Class Members must submit a claim to obtain the Class Benefits described in Section VI of this Stipulation of Settlement.

F. “Claim Form” or “Proof of Claim Form” means the documents to be submitted by Claimants seeking payment pursuant to this Stipulation that will be available online at the Settlement Website, substantially in the form attached hereto as Exhibit A.

G. “Claimant” means any Class Member who seeks a Settlement Payment that submits a Claim Form pursuant to this Settlement Agreement.

H. “Claims Administration Expenses” means the fees and expenses incurred by the Claims Administrator in completing the claims administration process set forth in this Agreement.

I. “Claims Administrator” or “Settlement Administrator” means CLASSAURA LLC Administration, which will provide the Class Notice and administer the claims process. Plaintiffs shall select a successor in the event one becomes necessary, subject to initial approval by Tommie Copper, which approval shall not be unreasonably withheld.



J. “Claim Deadline” or “Claim Period Close Date” means the date 120 days (not including the day of the event) following the later of: (i) the last published notice as identified in the Notice Plan; or (ii) establishment of the Settlement Website.

K. “Class Counsel” means, subject to Court approval to represent the Settlement Class, the Law Offices of Ronald A. Marron, APLC, Faruqi & Faruqi, LLP, and Vozzolo LLC and any attorneys at those firms assisting in the representation of the Class in this Action.

L. “Class Notice” means the Court-approved notices to the Class to be disseminated by the Claims Administrator as set forth in the Claims Administrator’s Notice Media Plan and in accordance with the Court’s Preliminary Approval Order, but which may be modified as necessary to comply with the provisions of this Settlement, and which are to be provided to the Class Members pursuant to this Agreement.

M. “Class Period” or “Settlement Class Period” shall mean and refer to the time period beginning on April 11, 2011 and ending on the date a motion for preliminary approval of the Settlement Agreement is entered in this Action.

N. “Class Representatives” means named Plaintiffs William Lucero, Rhonda Boggs, Jerome Jeffy, and Sandy Kontura.

O. “Class Representative Enhancement” or “Incentive Award” means any award sought by application to and approved by the Court that is payable to the Class Representatives and named plaintiffs from the Settlement Fund for their role as the class representatives and/or named plaintiffs and for the responsibility and work attendant to those roles.

P. “Competent and Reliable Scientific Evidence” means tests, analyses, research, and/or studies that have been conducted by a qualified person in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence

consists of a human clinical trial, Defendants must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

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

R. “Defendants” or “Tommie Copper” means Defendant Tommie Copper Inc., Tommie Copper Holdings, Inc., Thomas Kallish, and Montel Williams.

S. “Defense Counsel” means the law firms of Sidney Austin LLP, Clayman & Rosenberg, and any attorneys at those firms assisting in the representation of Defendants in the Action.

T. “Escrow Account” means the escrow account managed by the Escrow Agent, which shall be the sole escrow account for compensation of Class Members under the Class Action Settlement Agreement.

U. “Escrow Agent” means the agreed-upon entity to address and hold for distribution the funds identified in this Class Action Settlement Agreement. The Parties agree that CLASSAURA LLC shall serve as Escrow Agent, subject to approval by the Court.

V. “Fee and Expense Award” means the amount of any attorneys’ fees and reimbursement of litigation expenses awarded to Class Counsel under their Fee Application based on their work prosecuting the Action and creating the benefits of this Settlement.

W. “Final Approval Date” or “Effective Date” means the first date that is three business days after all of the following have occurred: (i) the Court has entered an order granting final approval of the Agreement in accordance with the terms of this Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement

has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected. For purposes of this paragraph, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s request for attorneys’ fees and expenses and for Incentive Awards to the Class Representatives.

X. “Final Judgment” means the “Final Judgment and Order of Dismissal” to be entered by the Court, which, among other things, fully and finally approves the settlement and dismisses the litigation with prejudice, and retains continuing jurisdiction over the interpretation, implementation, and enforcement of the settlement. Plaintiffs will submit a proposed Final Judgment and Order of Dismissal as an exhibit to their Motion for the Final Approval.

Y. “Judgment” means the Court’s order approving the Settlement and dismissing the Action with prejudice.

Z. “Notice” or “Class Notice” means the Court approved “Notice of Proposed Class Action Settlement” attached as Exhibits “B”, “C” and “D”).

AA. “Notice Date” or “Notice Deadline” means the date on which the Settlement Administrator completes the initial emailing of Notice, consistent with the Preliminary Approval Order, to Settlement Class Members.

BB. “Objection” is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in Section 4.3 of this Stipulation of Settlement.

CC. “Objection/Exclusion Deadline” means the first business day on or after ten (10) calendar days from the filing of the Motion for Final Approval of the Settlement and application for Fee and Expense Awards, or such other date as the Court may order in its Preliminary Approval Order, as referred to in Section 4.2 of this Agreement.

DD. “Party” or “Parties” means Plaintiffs and Defendants in this litigation.

EE. “Plaintiffs” means the Class Representatives, on behalf of themselves and each of the Settlement Class Members.

FF. “Person” means any individual, corporation or any other entity of any nature whatsoever.

GG. “Preliminary Approval Date” means the date of entry of the Court’s order granting preliminary approval of the Settlement substantially in the form of the Preliminary Approval Order attached to this Agreement as Exhibit “E”.

HH. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement Agreement set forth in this Stipulation of Settlement, approving the Settlement Notice Plan, and conditionally certifying the Settlement Class.

II. “Products” and “Tommie Copper Products” means all Tommie Copper clothing and compression wear products that are made with copper infused fabric, in any package, size, or iteration purchased by Class Members during the Class Period for personal or household use and not for resale, including, but not limited to: Defendants’ Crew Compression Socks, Calf Compression Socks, Back Braces, Men’s Long Sleeve Compression Shirts, Women’s Long Sleeve Compression Shirts, Women’s Compression Tights, Wrist Compression Sleeves, Ankle Compression Sleeves, Calf Compression Sleeves, Elbow Compression Sleeves, Knee Compression Sleeves, Men’s Compression Under-Shorts, Women’s Compression Shorts, Men’s Compression Shirts, Women’s Compression Shirts, Half Finger Compression Gloves, and Full Finger Compression Gloves.

JJ. “Released Claims” or “Class Released Claims” means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost,

attorneys' fee or expense, action or cause of action, of every kind and description that a Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party in the Action against any of the Released Parties arising out of or relating to the allegations in the complaints filed in the Action.

KK. "Released Persons" means each of the Defendants, and their parent companies (including intermediate parents and ultimate parents) and subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective officers, directors, employees, agents, attorneys, insurers, stockholders, representatives, heirs, administrators, executors, successors and assigns, and any other person or entity acting on their behalf.

LL. "Request for Exclusion" means the written communication that must be sent to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

MM. "Settlement Class Member(s)" or "Member(s) of the Settlement Class" or "Class Members" means: All persons in the United States, its territories, or at any United States military facility or exchange who purchased the Tommie Copper Products directly from Defendants through the internet, telephone or at the Tommie Copper retail location in Westchester, New York on or after April 11, 2011 and ending on the date a motion for preliminary approval of the Settlement Agreement is entered. Excluded from the Class are: (a) Tommie Copper employees, officers and directors, (b) persons or entities who purchased the Settlement Class Products for the purpose of re-sale, (c) retailers or re-sellers of the Settlement Class Products, (d) governmental entities, (e) persons who timely and properly exclude themselves from the Class as provided

herein, (f) any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning any of the Settlement Class Products, and (g) the Court, the Court's immediate family, and Court staff.

NN. "Settlement Fund" means the total amount to be deposited by Defendants into the Escrow Account from which the Claims Administrator to pay all expenses associated with Settlement as approved by the Court including without limitation, Class Notice, administration, Class Member claims, the Settlement Payment, Class Representative Enhancement or Incentive awards and Class Counsel legal expenses and attorneys' fees, as described in Section VI.

OO. "Settlement Hearing" or "Fairness Hearing" means the hearing(s) , to be held after notice has been provided to the Settlement Class in accordance with this Agreement (1) to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Class Representatives as the representatives of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the Settlement; (2) to consider whether to enter the Final Approval Order; and (3) to rule on Class Counsel's Fee and Expense Award application. The Parties shall ask the Court to schedule a date for the Settlement Hearing 120 days after the Court enters the Preliminary Approval Order, and no sooner than 90 days after the date the Motion for Preliminary Approval is filed to permit the necessary notices under the Class Action Fairness Act of 2005 (28 U.S.C. §1715).

PP. "Settlement Notice and Other Administrative Costs" means all fees, costs and expenses actually incurred by the Settlement Administrator in the creation and dissemination of Class Notice, establishment of the Settlement Website, and the processing, handling, reviewing, and paying of claims made by Claimants.

QQ. “Settlement Payment” means the amount to be paid to Authorized Claimants as described in Section VI.

RR. “Settlement Website” means the website to be created and maintained by the Claims Administrator to provide the Settlement Class with information relating to the Settlement, including relevant documents and electronic and printable forms relating to the settlement, including the Claim Form which can be submitted online through an Internet-based Claim form or printed and mailed. The Settlement Website shall be activated no later than ten (10) days after the Court enters the Preliminary Approval Order.

SS. “Stipulation” means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel for Defendant.

2.2 Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

### **III. CERTIFICATION OF A SETTLEMENT CLASS**

3.1 Defendants hereby consent, solely for purposes of the settlement set forth herein, to the certification of a nationwide Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), to the appointment of Class Counsel as counsel for the Settlement Class, and to the conditional approval of Plaintiffs as suitable representatives of the Class; provided, however, that if this Stipulation fails to receive Court approval or otherwise fails to be consummated, including, but not limited to, the Judgment not becoming final as provided in § IX of this Stipulation, then Defendants retain all rights they had immediately preceding the execution of this Stipulation to object to the maintenance of this Litigation as a class action, and in that event, nothing in this Stipulation or other papers or proceedings related to the settlement shall be used as evidence or

argument by any Party concerning whether the Litigation may properly be maintained as a class action.

#### **IV. APPROVAL PROCEDURES AND RELATED PROVISIONS**

##### **MOTION FOR PRELIMINARY APPROVAL AND SETTLEMENT HEARING**

4.1 Preliminary Approval. As soon as reasonably practicable after the signing of this Agreement, the Parties shall file with the Court a Joint Motion for Preliminary Approval of Class Settlement that seeks entry of an order, (substantially in the form attached hereto as Exhibit E), which, in accordance with the terms of this Agreement, for settlement purposes only would:

- a. Certify a tentative Settlement Class under Federal Rule of Civil Procedure 23(b)(3) composed of the Settlement Class Members;
- b. Preliminarily approve this Settlement Agreement;
- c. Approve and authorize the distribution of the Settlement Notice;
- d. Approve the Claims Administrator;
- e. Approve the claims process;
- f. Appoint Plaintiffs as the representatives of the Settlement Class; and
- g. Appoint Class Counsel.

#### 4.2 Requests for Exclusion

a. Any Settlement Class Member who does not wish to participate in this Settlement must submit a Request for Exclusion to the Claims Administrator stating an intention to be “excluded” from this Settlement. The request for exclusion must contain the Settlement Class Member’s name, current address, and telephone number. The Request for Exclusion must be either (i) personally signed by the Settlement Class Member, dated and mailed to the Claims Administrator and postmarked on or before the Objection/Exclusion Deadline, or (ii) electronically signed by the Settlement Class Member, and submitted to the Claims Administrator through the



Settlement Website on or before the Objection/Exclusion Deadline. So-called “mass” or “class” opt-outs shall not be allowed. The date of the postmark on the return mailing envelope and/or the date of online submission through the Settlement Website shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member whose request to be excluded from the Settlement Class is approved by the Court will not be bound by this Settlement Agreement or have any right to object, appeal or comment thereon.

b. Any Settlement Class Member who does not file a timely written request for exclusion as provided in the preceding paragraph shall be bound by all subsequent proceedings, orders, and the Judgment in the Litigation relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates litigation, arbitration, or any other proceeding against Defendants relating to the Released Claims.

#### 4.3 Objections to the Settlement

a. Any Settlement Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the settlement or to any of the terms of this Settlement Agreement or Class Counsel’s application for an Award of Attorneys’ Fees and Expenses and/or the Incentive Awards. Any such objection must be filed with the Court and served on Class Counsel and Defendants’ Counsel. To be effective, any such objection must be in writing and included the contents described in Paragraph (b) below, and must be filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline or as the Court otherwise directs. Any objections not raised properly and timely will be waived. Such papers must be sent to each of the following persons:

If to Plaintiffs, then to:

- (1) Ronald A. Marron  
Law Offices of Ronald A. Marron, APLC  
651 Arroyo Drive

San Diego, CA 92103  
Telephone: (619) 696-9006  
Email: ron@consumersadvocates.com

Michael Mallow  
Sidley Austin LLP  
555 West Fifth Street  
Los Angeles, CA 90013  
Telephone (213) 896-6666  
Email: mmallow@sidley.com

b. To be effective, any objection described in Paragraph (a) must contain all the following information: (i) a reference at the beginning to this case, *In re Tommie Copper Products Consumer Litigation*; (ii) the objector's full name, address, and telephone number (and your lawyer's name, address and telephone number if you are objecting through counsel); (iii) a statement of his/her membership in the Settlement Class, including a verification under oath as to the date and location of their purchase of Tommie Copper Product and/or a Proof of Purchase reflecting such purchase and any other information required by the Claim Form; (iv) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (v) copies of any papers, briefs, or other documents upon which the objection is based; (vi) a list of all persons who will be called to testify in support of the objection; (vii) a statement of whether the objector intends to appear at the Settlement Hearing (Note, if the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing); (viii) a list of the exhibits that you may offer during the fairness hearing, along with copies of such exhibits; and (ix) your signature. In addition, Settlement Class Members, if applicable, must include with their objection (i) the identity of all counsel who represent the objector, including former or current counsel who may be entitled to compensation for any reason related to the objection; (ii) a detailed list of any

other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years.

c. The filing of an objection allows “Class Counsel and Defendants Counsel to take the objector’s deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to make himself or herself available for a deposition or otherwise comply with expedited discovery requests may result in the Court striking the objector’s objection and otherwise denying the objector the opportunity to make an objection or be further heard.

d. Any Settlement Class Member who fails to file and serve timely a written objection containing all of the information listed above in the previous paragraphs, including notice of his/her intent to appear at the final approval hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

#### **COOPERATION**

4.4 The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including without limitation, in seeking Preliminary Approval and Final Approval of the Settlement Agreement and the Settlement embodied herein, carrying out the terms of this Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. The Parties shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the events described in this Agreement.

#### **V. CLASS NOTICE OF SETTLEMENT**

##### **GENERAL TERMS**

5.1 The Class Notice shall:

- a. Inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- b. contain a short, plain statement of the background of the Litigation, the Class certification and the proposed settlement;
- c. describe the proposed settlement relief outlined in this Stipulation; and
- d. explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding; and
- e. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

**5.2 Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions.**

5.3 Cost of Notice. The costs, fees and expenses of administration and of disseminating Notice in accord with the Notice plan as described herein shall be paid from the Settlement Fund.

5.4 Notice to State and Federal Officials. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, the Claims Administrator and/or Tommie Copper shall cause notice of this proposed Settlement to be served on the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides. Tommie Copper shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. The Claims Administrator and/or Tommie

Copper will provide Class Counsel with any substantive responses received in response to any CAFA notice served by it.

5.5 Notice to the Settlement Class Members

a. Identification of Settlement Class Members. Defendants shall conduct a reasonable search of its records to identify the name and the email address of all persons within the Settlement Class, but shall have no further obligation to locate Persons within the settlement Class. Within fourteen days (14) of the entry of Preliminary Approval Order, Defendant shall compile a list of email addresses for Settlement Class Members and provide it to the Settlement Administrator and Class Counsel.

b. Upon Preliminary Approval of this Agreement, the Claims Administrator shall cause the Settlement Notice to be made as follows and as set forth below:

c. E-mail Notice. On or before the Notice Deadline, the Claims Administrator will cause Notice, in the form approved by the Court, to be mailed to Settlement Class Members at an e-mail address for the Settlement Class Member's account reflected in Tommie Copper's reasonably available computerized records, as of the date of entry of the Preliminary Approval Order. An additional e-mail will be sent within 30 days of the initial e-mail notice through Defendant Tommie Copper's servers. The Claims Administrator may also send reminder notices to Settlement Class Members. The E-mail Notice will be substantially in the form of Exhibit D. To ensure a high degree of deliverability of the email notice and to avoid spam filters, the Claims Administrator must utilize industry-recognized best practices and comply with the Can-Spam Act. The Email Notice shall have a hyperlink that Class Member recipients may click and be taken to a landing page on the Settlement Website, prepopulated with Class Member data, if practicable.

d. Publication in the *Journal News* (Westchester edition), on two separate occasions, for those consumers who purchased from Tommie Copper's retail store located in Westchester, New York.

e. Settlement Website. On or before the Notice Deadline, the Settlement Administrator shall establish the Settlement Website, from which Settlement Class Members may download or print the Website Notice, a complete copy of this Agreement and the Preliminary Approval Order and submit a Claim Form. The Settlement Website shall include the deadlines for filing claims, requests for exclusion from the Settlement Class, objections and the hearing date for final approval and other information pertaining to the Settlement, a voice recorded IVR with FAQ's and an interactive function that permits Settlement Class Members to download a Claim Form online and/or to file a Claim Form via the website or by mail and post-marked by the Claims Deadline. The Claims Administrator shall establish the Settlement Website using a website name to be mutually agreed upon by the Parties. The website shall be operative no later than the Notice Date and shall be accessible for a period of not fewer than five (5) days following the expiration of the time for submissions of claims.

f. Toll-Free Interactive Voice Response ("IVR"). On or before the Notice Deadline, the Settlement Administrator shall establish a Toll-Free IVR phone number with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the language contained in the Notice and Claim Form. The phone number shall remain open and accessible through the Claim Deadline. The Settlement Administrator shall make reasonable provision for Class Counsel to be promptly advised of recorded messages left on the phone number by potential Settlement Class Members concerning the Action and/or this Settlement, so that Class Counsel may timely and accurately respond to such

inquiries; provided however, the Settlement Administrator shall review the recorded messages before providing them to Class Counsel, and if one or more of the messages requests a blank Claim Form or other similar administrative assistance only, then the Settlement Administrator shall handle such administrative request(s), but the Settlement Administrator shall provide all other messages to Class Counsel for any further response to the Settlement Class Member.

g. Social Media. On or before the Notice Deadline, Defendants' shall post notices to Tommie Copper's Facebook and Twitter accounts notifying followers of the Settlement in this case and providing a link to the Settlement website so that they could review the Court-approved notice and submit claims. The Tommie Copper Facebook account is located at <https://www.facebook.com/tommiecopper/>, and the Tommie Copper Twitter account is located at <https://twitter.com/TommieCopper>.

h. Defendants' Website. On or before the Notice Deadline, Defendants shall post notices regarding the settlement and will post a link to the Settlement Website URL from Defendants' website [www.tommiecopper.com](http://www.tommiecopper.com).

i. Defendant's Retail Location. On or before the Notice Deadline, Defendants' shall provide posters containing the court-approved notice language for posting at the point-of-sale at Tommie Copper's sole retail location in Westchester County, New York.

5.6 Retention of Class Action Settlement Administrator. Subject to Court Approval, CLASSAURA LLC shall be retained as the Class Action Settlement Administrator to help implement the terms of the proposed Settlement Agreement.

5.7 **Responsibilities of Settlement Administrator.** The Settlement Administrator will help implement the terms of this Stipulation of Settlement. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in this

Section and in the Preliminary Approval Order, for distribution of Class Notice (in the form approved by the Court) and Claims Forms (in the form approved by the Court) to Settlement Class Members, (b) answering inquiries from Settlement Class Members and/or forwarding such written inquiries to Class Counsel or their designee, (c) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding Requests for Exclusion from the Settlement Agreement, (d) posting notices on the Settlement Website, Claim Forms, and other related documents, (e) receiving and processing claims and distributing cash payments to Settlement Class Members, and (f) otherwise assisting with implementation and administration of the Settlement Agreement terms.

5.8 General Claims Administration and Review of Claims. The Claims Administrator shall be responsible for reviewing and administering all claims to determine their validity. The Claims Administrator shall reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of this Agreement, or is submitted after the Claim Period Close Date.

5.9 Claims Process. The Claims Administrator shall retain copies of all claims submitted and all documentation of claims approved or denied and all payments made. The Claims Administrator agrees to be subject to the direction and authority of the Court with respect to the administration of the Settlement and the payment of refunds for Accepted Claims pursuant to the terms of this Agreement. Upon determining that a claim submitted pursuant to this Agreement is valid and determining the cash or voucher amount payable, the Claims Administrator shall notify Defendants and Class Counsel of that determination. Defendants shall have 30 days following this notice to challenge the claim. Defendants shall be permitted to submit to the Claims Administrator, with a copy to Class Counsel, any information demonstrating that the submitted



claim is not valid. The Claims Administrator may then contact the Settlement Class Member who submitted the claim to request any further information. The Claims Administrator shall then make a final determination that is not challengeable by any Party.

5.10 The contract with the Class Action Settlement Administrator shall obligate the Class Action Settlement Administrator to abide by the following performance standards:

- i. the Class Action Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Settlement Agreement in communications with Settlement Class Members;
- ii. the Class Action Settlement Administrator shall provide prompt, accurate, and objective responses to inquiries from Class Counsel, Defendants, or Defendants' Counsel.

5.11 All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully carried out.

5.12 **Declaration of Compliance.** Within five (5) calendar days of the Claims Deadline, the Settlement Administrator shall provide the Parties with a declaration attesting to completion of the notice process set forth in this section.

## **VI. SETTLEMENT CONSIDERATION**

6.1 Class Benefits. Class Counsel and Class Representatives believe the Settlement confers substantial benefits upon the Class, as identified below, particularly as weighed against the risk associated with the inherent uncertain nature of a litigated outcome; the complex nature of the Action in which Class Counsel have reviewed internal and confidential documents; the FTC

Action and implications thereof; the difficulty and complexity of calculating actual economic harm attributable to allegedly false representations related to the benefits of the Products in contrast to benefits of Defendants' products that are not challenged in this litigation; and the length and expense of continued proceedings through additional fact depositions, expert depositions, third party document productions and depositions, summary judgment briefing, trial and appeals. Based on their evaluation of such factors, Class Counsel and Class Representatives have determined that the Settlement, based on the following terms, is in the best interests of the Class.

6.2 The settlement relief includes cash payments or monetary relief and non-monetary relief as set forth below.

A. Cash Payments

1. Class Members' Cash Recovery

a. With Proof of Purchase: Settlement Class Members may seek reimbursement of \$10.00 per Product for every Product purchased during the Settlement Class Period, for which they can present written proof of purchase in the form of a receipt or a retail rewards submission or whose purchases appear in Defendants' records.

b. Without Proof of Purchase: For those Settlement class members who neither return the Settlement Class Products nor provide a valid receipt or a retail rewards submission, nor whose purchases appear in Defendants' records, but who substantiate their claims through a submission of an Affidavit attesting to their purchase of the Settlement Class Products under penalty of perjury, together with additional information requested by the Settlement Administrator on the Claim Form, a total of \$5.00.

B. Cash Recovery Enhancement. Alternatively and in lieu of receiving a cash payment under both Paragraphs 6.2.A.(1)a. and b. , Settlement Class Members may apply their cash

recovery to an on-line purchase of Tommie Copper products at [www.tommiecopper.com](http://www.tommiecopper.com). Settlement Class Members who apply their cash recovery to a product purchase will receive a 40% enhancement of the cash recovery good toward the purchase of Tommie Copper products (the “Cash Recovery Enhancement”). For example, if a Settlement Class Member presents written proof of purchase for two Products for a total cash recovery of \$20.00, the Settlement Class Member would be entitled to a \$28.00 ( $\$20.00 + 40\%$ ) credit to apply toward the purchase of Tommie Copper products.

C. Class Members may obtain relief under both Paragraphs 6.2.A(i) (a) and (b) or Paragraph 6.2.B with the appropriate paper work and subject to the maximum recovery amounts permitted for each type of claim.

D. Claimants may seek reimbursement by submitting a Claim Form either by mail or electronically. Each Claim Form will be signed (electronic or manual) under penalty of perjury. The actual amount paid to individual Claimants will depend upon the number of valid claims made. Adequate and customary procedures and standards will be used by the Class Action Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims.

## 2. Settlement Fund

a. Defendant Tommie Copper, on behalf of all Defendants, shall pay \$700,000.00 into an Escrow Account by wire transfer no later than ten (10) days after the Court enters the Preliminary Approval Order.

b. The Settlement Fund shall be applied to pay in full and in order: (i) any necessary taxes and tax expenses; (ii) all costs associated with the Class Action Settlement Administration, including costs of providing notice to the Class Members and processing claims and all costs relating to providing the necessary notices in accordance with the Class Action

Fairness Act of 2005, 28 U.S.C. § 1715; (iii) any Fee and Expense Award made by the Court to Class Counsel under § VIII, 8.2; (iv) any class representative Incentive Award made by the Court to the Class Representatives under § VIII, 8.3; and (v) payments to authorized Claimants and any others as allowed by this Stipulation and to be approved by the Court.

3. Settlement Fund: Insufficient or Excess Funds

a. If the total amount of eligible claims exceeds the Settlement Fund, then each claim's award shall be proportionately reduced.

b. If after all valid claims (plus other authorized fees, costs and expenses) are paid, and money remains in the Settlement Fund, the remaining amount shall be used to proportionately increase pro rata the recovery of each eligible claim.

4. Delivery of Payments to Settlement Class Members

a. The Class Action Administrator shall send a correspondence to any applicable Settlement Class Member explaining the rejection of any claim no later than fifteen (15) days after the Effective Date. Settlement Class Members' time to appeal any such rejection decisions shall expire forty-five (45) days after the Effective Date.

b. The Class Action Administrator will send payment directly to the eligible Settlement Class Member in accordance with the following schedule:

(i) Within thirty (30) calendar days after the entry of a Final Approval Order and Judgment and exhaustion of any appeals, the Settlement Administrator will process direct credit or payment via any of the following options including PayPal, Venmo, Amazon, or electronic Automated Clearing House ("ACH") transactions. Additionally, within 30 days, Settlement Class Members who choose the Cash Recovery Enhancement options will receive an

electronic code number via email that may be used as a credit towards any purchase on Defendants' website.

(ii) If Settlement Class Members affirmatively opt for physical check payments, checks will be sent out 120 calendar days after entry of Final Approval.

c. Failure to provide all information requested in the Claim Form will not result in nonpayment of a claim. Instead, the Class Action Settlement Administrator will take all adequate and customary steps to determine the Settlement Class Member's eligibility for payment and the amount of payment based on the information contained in the Claim Form or otherwise submitted, the amount of money available to pay all valid claims, and such other reasonably available information from which eligibility for payment can be determined.

#### 5. Claim Form Availability

The Claim Form will may be completed and submitted online at the Settlement Website, and the Claim Form will be available for downloading on Class Counsel's websites, at Class Counsel's option. The Claim Form may also be requested by calling the toll-free number provided by the Class Action Settlement Administrator or by writing to the Class Action Settlement Administrator.

#### 6. Eligibility for Cash Payment

a. To be eligible for a cash payment, the Settlement Class Member must timely submit a signed and completed Claim Form containing his or her name, mailing address and email address. The Settlement Administrator may pay claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and timely claims in full plus untimely but otherwise valid claims from the Settlement Fund, and payment of any such untimely but valid claims is administratively feasible and otherwise reasonable, taking into account the need to timely pay

claims. The determination of the Class Action Settlement Administrator, after consultation with Class Counsel and Defendants' Counsel, concerning the eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees with such a determination, the Class Action Settlement Administrator agrees to reconsider such determination, which includes consultation with Class Counsel.

b. To be eligible, Claim Forms must be postmarked or submitted online no later than 120 days following the later of: (i) the last published notice identified in the Notice Plan; or (ii) the establishment of the Settlement Website.

#### B. Other Relief

1. No later than thirty (30) calendar days after the Effective Date, Defendants shall cease, and shall not recommence, advertising, promoting, distributing, offering for sale, or selling the Tommie Copper Products with any unsubstantiated claims, any false representations, or statements (express or implied) that the copper content in Tommie Copper Products will: relieve pain, including arthritis and other chronic joint and muscular pain; aid in injury management; accelerate or speed muscle and joint recovery; and improve muscular power, strength, and endurance. Additionally, Defendants' marketing and advertising will not feature or provide client testimonials that misrepresent the above claims. Nothing herein prevents Tommie Copper from representing truthful statements regarding the benefits of the compressive nature of its Products or any other claims for which they have Competent and Reliable Scientific Evidence.

### **VII. RELEASES**

7.1 As of the Effective Date, and except as to such rights or claims created by the Settlement, Plaintiffs and each Settlement Class Member, and each of their heirs, guardians, executors, administrators, representatives, agents, attorneys, insurers, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment

shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons.

7.2 In connection with the Released Claims, each Settlement Class Member shall be deemed to have forever waived any and all provisions, rights, and benefits conferred by §1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which provides as follows:

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

7.3 The Final Judgment shall further provide for and effect the release of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorneys' fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Defendants now have against Plaintiffs, Settlement Class Members, or Class Counsel by reason of any act, omission, harm, matter, cause or event whatsoever arising out of the initiation, prosecution, or settlement of the Tommie Copper Litigation or the claims and defenses asserted in the Tommie Copper Litigation.

7.4 Notwithstanding the above, the Court shall retain continuing jurisdiction over the Parties and the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Settlement Agreement

**VIII. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

8.1 The Parties agree that Class Counsel may apply for an award of attorneys' fees and reasonable, actual out-of-pocket expenses from the Settlement Fund not to exceed \$233,310.00 or up to 33% of the Settlement Fund ("Fee and Expense Award"). Subject to the terms and conditions of this Stipulation and any order of the Court, the Fee and Expense Award awarded by the Court to Class Counsel shall be paid out of the Settlement Fund within ten (10) days after the Effective Date. Such payment will be in lieu of any statutory fees Plaintiffs and/or their attorneys might otherwise have been entitled to recover from Defendants.

8.2 Class Counsel shall have the sole and absolute discretion to allocate and distribute the Court's Fee and Expense Award among Plaintiffs' Counsel and any other attorneys for Plaintiffs.

8.3 Class Counsel may ask the Court for the award of an Incentive Award from the Settlement Fund to each of the Class Representatives of \$1,000. Any Incentive Awards approved by the Court shall be paid from the Settlement Fund within ten (10) days after the Effective Date.

**IX. CONDITIONS OF SETTLEMENT EFFECT OF DISAPPROVAL CANCELLATION OR TERMINATION**

9.1 The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

9.2 The Court has preliminarily approved this Stipulation and entered the Preliminary Approval Order;

9.3 The Court has entered the Final Judgment; and

9.4 Unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) in the event there is a properly and timely filed



objection to entry of the Final Judgment, the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment; (ii) the final dismissal of all appeals from the Final Judgment; (iii) affirmance on appeal of the Final Judgment in substantial form; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Judgment, the time to petition for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review with respect to such ruling or decision has expired; or (v) if a petition for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review with respect to the Final Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment in substantial form.

9.5 If all of the conditions specified in §IX of this Stipulation are not met, then this Stipulation shall be canceled and terminated unless Class Counsel and Defendants mutually agree in writing to proceed with this Stipulation.

9.6 In the event that this Stipulation is not approved by the Court or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-settlement positions in the Litigation, including with regard to any agreements concerning tolling and similar agreements, and this entire Stipulation shall become null and void.

9.7 Defendants' shall bear all reasonable and necessary costs incurred in connection with the implementation of this Class Action Settlement Agreement up until its termination. Neither the Class Representatives nor Class Counsel shall be responsible for any such settlement-related costs.

9.8 In the event that this Stipulation is not approved by the Court or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, any

reasonable costs associated with the Class Action Settlement Administrator or administration incurred prior to that time will be paid by Tommie Copper.

**X. MISCELLANEOUS PROVISIONS**

10.1 The Parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to promptly effectuate this Stipulation and the terms of the settlement set forth herein, including taking all steps and efforts contemplated by this Stipulation and any other steps and efforts which may become necessary by order of the Court or otherwise.

10.2 The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

10.3 This Stipulation contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. Except for § I, all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all Parties. The presumption found in California Civil Code section 1654 (and equivalent, comparable or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law) that uncertainties in a contract are interpreted against the party causing an uncertainty to exist hereby is waived by all Parties.

10.4 The terms of this Stipulation are and shall be binding upon each of the Parties, their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter through any of the Parties, including any Settlement Class Member.

10.5 Whenever this Stipulation requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by facsimile, email and/or next day (excluding Sunday) express delivery service as follows:

If to Plaintiffs, then to:

- (1) Ronald A. Marron

Law Offices of Ronald A. Marron, APLC  
651 Arroyo Drive  
San Diego, CA 92103  
Telephone: (619) 696-9006  
Email: ron@consumersadvocates.com

(2) Anthony Vozzolo  
Vozzolo, LLC  
345 Route 17 South  
Upper Saddle River, NJ 07458  
Telephone: (201) 630-8820  
Email: avozzolo@vozzolo.com

If to Defendants, then to:

Michael Mallow  
Sidley Austin LLP  
555 West Fifth Street  
Los Angeles, CA 90013  
Telephone (213) 896-6666  
Email: mmallow@sidley.com

10.6 The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendants' Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

10.7 All time periods set forth herein shall be computed in business days if seven days or less, and calendar days if eight days or more, unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in

which weather or other conditions have made the Office of the Clerk or the Court inaccessible, in which event the period shall run until the end of the next day as not one of the aforementioned days. As used in this subsection, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

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

10.9 This Stipulation may be amended or modified only by a written instrument signed by Class Counsel and any of Defendants’ Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

10.10 Neither this Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants, or of the propriety of Class Counsel maintaining the Litigation as a class action; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, except that Defendants may file this Stipulation or the Judgment in any action that may be brought against any Released Person in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,

release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.11 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

10.12 This Stipulation shall be deemed to have been executed upon the last date of execution by all of the undersigned.

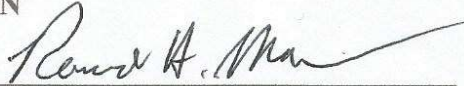
13.1 This Stipulation may be executed in counterparts, each of which shall constitute an original.

IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed by their duly authorized representatives.

**UNDERSTOOD AND AGREED:**

Dated: 11/22, 2017

**THE LAW OFFICES OF RONALD A. MARRON**

By:   
Ronald A. Marron (*pro hac vice*)  
651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Facsimile: (619) 564-6665  
Email: ron@consumersadvocates.com  
bill@consumersadvocates.com

Dated: \_\_\_\_\_, 2017

**FARUQI & FARUQI, LLP**

By: \_\_\_\_\_  
Nadeem Faruqi  
685 Third Avenue, 26th Floor  
New York, New York, 10017  
Telephone: (212) 983-9330  
Facsimile: (212) 983-9331  
Email: nfaruqi@faruqilaw.com

release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.11 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

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Dated: \_\_\_\_\_, 2017

**THE LAW OFFICES OF RONALD A. MARRON**

By: \_\_\_\_\_  
Ronald A. Marron (*pro hac vice*)  
651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Facsimile: (619) 564-6665  
Email: ron@consumersadvocates.com  
bill@consumersadvocates.com


Dated: Nov. 22, 2017

**FARUQI & FARUQI, LLP**  
By:   
Nadeem Faruqi  
685 Third Avenue, 26th Floor  
New York, New York, 10017  
Telephone: (212) 983-9330  
Facsimile: (212) 983-9331  
Email: nfaruqi@faruqilaw.com



Dated: Nov. 22, 2017

**VOZZOLO LLC**

By:   
Antonio Vozzolo  
Vozzolo LLC.  
345 Route 17 South  
Upper Saddle River, New Jersey 074578  
Telephone: 201-630-8820  
Facsimile: 201-604-8400  
Email: avozzolo@vozzolo.com

*Co-Class Counsel for Plaintiffs*

Dated: \_\_\_\_\_, 2017

**SIDLEY AUSTIN LLP**

By: \_\_\_\_\_  
Michal Mallow  
**SIDLEY AUSTIN LLP**  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6666  
Email: mmallow@sidley.com

*Counsel for Defendants Tommie Copper, Tommie  
Copper Holdings, Inc., and Thomas Kallish*

Dated: \_\_\_\_\_, 2017

**CLAYMAN & ROSENBERG**

By: \_\_\_\_\_  
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305 Madison Avenue, Suite 1301  
New York, New York 10165  
Telephone: 212-922-1080  
Facsimile: 212-949-8255  
Email: kelleher@clayro.com

*Counsel for Defendant Montel Williams*

Dated: \_\_\_\_\_, 2017


**VOZZOLO LLC**

By: \_\_\_\_\_  
Antonio Vozzolo  
Vozzolo LLC.  
345 Route 17 South  
Upper Saddle River, New Jersey 074578  
Telephone: 201-630-8820  
Facsimile: 201-604-8400  
Email: avozzolo@vozzolo.com

*Co-Class Counsel for Plaintiffs*

Dated: November 22, 2017

**SIDLEY AUSTIN LLP**

By:   
Michal Mallow  
**SIDLEY AUSTIN LLP**  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6666  
Email: mmallow@sidley.com

*Counsel for Defendants Tommie Copper, Tommie Copper Holdings, Inc., and Thomas Kallish*

Dated: \_\_\_\_\_, 2017

**CLAYMAN & ROSENBERG**

By: \_\_\_\_\_  
Denis Patrick Kelleher, Jr.  
305 Madison Avenue, Suite 1301  
New York, New York 10165  
Telephone: 212-922-1080  
Facsimile: 212-949-8255  
Email: kelleher@clayro.com

*Counsel for Defendant Montel Williams*



Dated: \_\_\_\_\_, 2017

**VOZZOLO LLC**

By: \_\_\_\_\_  
Antonio Vozzolo  
Vozzolo LLC.  
345 Route 17 South  
Upper Saddle River, New Jersey 074578  
Telephone: 201-630-8820  
Facsimile: 201-604-8400  
Email: avozzolo@vozzolo.com

*Co-Class Counsel for Plaintiffs*

Dated: \_\_\_\_\_, 2017

**SIDLEY AUSTIN LLP**

By: \_\_\_\_\_  
Michal Mallow  
**SIDLEY AUSTIN LLP**  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6666  
Email: mmallow@sidley.com

*Counsel for Defendants Tommie Copper, Tommie  
Copper Holdings, Inc., and Thomas Kallish*

Dated: Nov 22, 2017

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