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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

No. 14 Civ. 5731 (WHP)

*Plaintiffs,*

*-against-*

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

*Defendants.*

-----X  
**PRELIMINARY APPROVAL ORDER**

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

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

The Agreement has been filed with the Court, and Plaintiffs have filed an Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class (“Motion”). Upon considering the Motion and exhibits thereto, the Agreement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the proposed Agreement and Settlement Class meet the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed class representatives and Class Counsel; (4) the Agreement is the result of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (5) the Agreement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Agreement, Class Counsel’s application for an award of attorneys’ fees and expenses and request for Service Awards for Plaintiffs, their rights to opt-out of the Agreement or object to the Agreement, and Class Counsel’s fee application, and/or the request for Service Awards for Plaintiffs; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval of the Agreement and enter the Final Approval Order; and (8) the other related matters pertinent to the Preliminary Approval of the Agreement should also be approved.

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

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

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

3. Venue is proper in this District.

Provisional Class Certification and Appointment of Class Representatives and Class Counsel

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

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

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

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

7. Specifically, the Court finds, for settlement purposes, that the Settlement Class

satisfies the following factors of Federal Rule of Civil Procedure 23:

- i. Numerosity: In the Action, thousands of individuals are members of the proposed Settlement Class. Their joinder is impracticable. *In re Platinum & Palladium Commodities Litig.*, No. 10cv3617, 2014 U.S. Dist. LEXIS 96457, \*28 (S.D.N.Y. July 15, 2014) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 2005)). *See also* 1 Newberg on Class Actions 3.05, at 3-25 (3d ed. 1992) (suggesting that any class consisting of more than forty members “should raise a presumption that joinder is impracticable”). Thus, the Rule 23(a)(1) numerosity requirement is met.
- ii. Commonality: “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2541, 2551 (2011). Here, the commonality requirement is satisfied because there are multiple questions of law and fact that center on Michael Kors’ class-wide policies and practices that are common to the Settlement Class.
- iii. Typicality: “Typicality ‘requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal argument to prove the defendant’s liability.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at \*30 (quoting

*Marisol*, 126 F.3d at 376) (citation omitted). Thus, “[s]ince the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at \*30 (quoting *Bolanos v. Norweigen Cruise Lines Ltd.*, 212 F.R.D. 144, 155 (S.D.N.Y. 2002)). Accordingly, “[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at \*30 (quoting *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993)). Here, the typicality requirement is met.

- iv. Adequacy: “Adequacy requires determining whether ‘1) plaintiff’s interests are antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experience and able to conduct the litigation.’” *In re Platinum & Palladium Commodities Litig.*, 2014 U.S. Dist. LEXIS 96457 at \*31 (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). Rule 23(a)(4) is satisfied here because there are no conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have retained competent counsel to represent them and the Settlement Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Action, and have dedicated substantial resources to the prosecution of the Action.

Moreover, the Plaintiffs and Class Counsel have vigorously and competently represented the interests of the Settlement Class in the Action.

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

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

9. The following firm is appointed as Class Counsel:

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

Preliminary Approval of the Settlement

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

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

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

11. The Court preliminarily approves the Agreement, and the exhibits attached to the Motion, as fair, reasonable and adequate. The Court finds that the Agreement was reached in the absence of collusion, and is the product of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Agreement, including the exhibits appended to the Motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to

effectuate notice to the Settlement Class, as set forth below and in the Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter Final Approval Order.

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

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

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

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

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



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

*Published Notice Program*

15. The Settlement and Notice Administrator shall administer the Published Notice program, which shall be comprised exclusively of one time print advertising in national publications and Internet advertising targeted toward the Settlement Class and covering the areas in which Michael Kors had Michael Kors Outlet Stores during the Class Period. The Published Notice program shall commence as soon as practicable following the Court's entry of the Preliminary Approval Order.

*Settlement Website*

16. As soon as practicable following Preliminary Approval, the Settlement and Notice Administrator shall establish a Settlement Website as a means for members of the Settlement Class to obtain notice of and information about the Agreement, through and including hyperlinked access to the Agreement, the Long-Form Notice, this Preliminary Approval Order, and such other documents as Class Counsel and Michael Kors' Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be [www.korsoutletsettlement.com](http://www.korsoutletsettlement.com) or such other URL as Class Counsel and Michael Kors' Counsel

may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Michael Kors logo or Michael Kors trademarks. Ownership of the Settlement Website URL shall be transferred to Michael Kors within ten (10) days of the date on which operation of the Settlement Website ceases.

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

Final Approval Hearing, Opt-Outs, and Objections

18. A Final Approval Hearing shall be held before the undersigned on **January 7, 2016, at 11:00 a.m.** in Courtroom 20B of the United States District Court for the Southern District of New York, located at 500 Pearl Street, Room 1920, New York, NY 10007, to determine, among other things: (a) whether the Agreement should be finally approved as fair, reasonable, and adequate; (b) whether the Action should be dismissed with prejudice as to the Plaintiffs and all Settlement Class Members, pursuant to the terms of the Agreement; (c) whether Settlement Class Members should be bound by the Release set forth in the Agreement; (d) whether Settlement Class Members should be subject to a permanent injunction that bars them from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit, claim, demand or proceeding in any jurisdiction that is based on or related to, directly or indirectly, matters within the scope of the Released Claims; (e) whether the Settlement Class should be finally certified; (f) the amount of Service Awards for Plaintiffs; and (g) the amount of attorneys' fees and costs to be awarded to Class Counsel. The Final Approval Hearing may be adjourned or continued by the Court without further notice to the members of the Settlement Class.

19. The Court directs that any person within the Settlement Class definition who

wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by completing and mailing a request for exclusion (“Opt-Out”) to the address set forth in the Notices. Such request for exclusion must be postmarked no later than the last day of the Opt-Out Period, as specified in the Notices. For a Class Member’s Opt-Out to be valid, it must:

- (i) be signed by all holders of the applicable Account;
- (ii) include the full name, address, and Account number(s) of the person(s) requesting exclusion;
- (iii) be timely postmarked and mailed to the address designated in the Class Notice; and
- (iv) include the following statement “I/we request to be excluded from the proposed class settlement in *Gattinella v. Michael Kors (USA)*, S.D.N.Y., Case No. 1:14-cv-05731-WHP.”

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

Settlement Class who successfully Opt-out of the Agreement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

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

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

(vii) the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;

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

(ix) the identity of all counsel representing the objector who will appear at the Final Approval Hearing;

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

(xi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

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

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

having waived his or her objections in this Action, and shall forever be barred from making any such objections in this Action.

Further Papers In Support of Settlement and Fee Application

22. Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their fee application and request for Service Awards for Plaintiffs, no later than **November 9, 2015** [60 days prior to the Final Approval Hearing].

23. Plaintiffs and Class Counsel shall file their responses to timely filed Objections to the Motion for Final Approval of the Settlement, the Fee Application and request for Service Awards for Plaintiffs no later than **December 23, 2015** [15 days prior to the Final Approval Hearing]. If Michael Kors chooses to file a response to timely filed Objections to the Motion for Final Approval of the Settlement, it also must do so no later than **December 23, 2015** [15 days prior to the Final Approval Hearing].

Effect of Failure to Approve Settlement or Termination

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

Stay/Bar of Other Proceedings

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

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

- (i) The Settlement and Notice Administrator shall establish the Settlement Website as soon as practicable following Preliminary Approval, but no later than the date of the Notice Program;
- (ii) The Settlement and Notice Administrator shall complete the Published Notice Program by **November 9, 2015**.
- (iii) Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and Request for Service Awards for Plaintiffs, no later than **November 9, 2015** [60 days before the Final Approval Hearing];
- (vi) Settlement Class Members must file any Objections to the Agreement, the Motion for Final Approval of the Settlement, Class Counsel's fee application and/or the Request for Service Awards no later than **December 8, 2015** [30 days before the Final Approval Hearing];

- (vii) Members of the Settlement Class must file requests for exclusion from the Agreement by no later than **December 8, 2015** [30 days before the Final Approval Hearing];
- (viii) Plaintiffs and Class Counsel shall file their responses to timely filed Objections to the Motion for Final Approval of the Settlement and Fee Application no later than **December 23, 2015** [15 days before the Final Approval Hearing];
- (ix) If Michael Kors chooses to file a response to timely filed objections to the Motion for Final Approval of the Settlement, it shall do so no later than **December 23, 2015** [15 days before the Final Approval Hearing];
- (x) All Claim Verification Forms, whether the initial or second submission, must be submitted online or postmarked no later than 45 days after the entry of the Final Approval Order.
- (xi) The **Final Approval Hearing** will be held on **January 7, 2016 at 11:00 a.m.** before the undersigned Judge in Courtroom 20B of the United States District Court for the Southern District of New York, located at 500 Pearl Street, Room 1920, New York, NY 10007.

IT IS SO ORDERED.

DATED: August 10, 2015

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.