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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ELAINE OXINA;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 3:14-cv-02577-MMA-NLS
CLASS ACTION

**NOTICE OF MOTION AND
JOINT MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: March 21, 2016

TIME: 2:30 p.m.

CRTRM: 3A

JUDGE: Hon. Michael M. Anello

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 21, 2016, at 2:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 3A of the United States District Courthouse, 333 West Broadway, Suite 1310, San Diego, California 92101, before the Honorable Michael M. Anello, Plaintiff ELAINE OXINA

**NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

1 (“Plaintiff”), on behalf of herself and all others similarly situated, will and hereby
 2 does move the Court for an Order: (1) Granting Preliminary approval of Class
 3 Action Settlement, (2) Scheduling a Final Approval Hearing, and (3) Directing that
 4 Notice be sent to Class Members.

5 This motion is brought pursuant to Fed. R. Civ. P. 23(e) and is based on this
 6 Notice of Motion and Motion, the Memorandum of Points and Authorities
 7 submitted herewith, the Declaration of Abbas Kazerounian, the Declaration of
 8 Joshua B. Swigart, the complete file and record in this action, and any such other
 9 evidence and argument the Court may choose to entertain.

10
 11 Dated: February 12, 2016

Respectfully submitted,

12 **KAZEROUNI LAW GROUP, APC**

13
 14 By: /s/ ABBAS KAZEROUNIAN
 15 ABBAS KAZEROUNIAN, ESQ.
 16 MONA AMINI, ESQ.
 17 ATTORNEYS FOR PLAINTIFF
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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1 Plaintiff Elaine Oxina (“Plaintiff”) hereby submits the instant Motion for
2 Preliminary Approval of Class Action Settlement of this action (the “Action”).

3 **I. INTRODUCTION**

4 This consumer class action arises from Plaintiff’s allegations that Defendant
5 engaged in false and misleading advertising, unfair competition, and deceptive conduct
6 toward consumers by advertising Defendant’s neckties, including the necktie
7 purchased by Plaintiff, with the false representation that Defendant’s product was
8 “Made in U.S.A.” in violation of, *inter alia*, California’s Unfair Competition Law
9 (“UCL”) Cal. Bus. & Prof. Code §§ 17200, et seq.; California’s False Advertising Law
10 (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.; and California’s “Made in USA”
11 law, Cal. Bus. & Prof. Code §§ 17533.7; and California’s Consumers Legal Remedies
12 Act (“CLRA”), Cal. Civ. Code § 1750, et seq.

13 The parties have reached a settlement in principal and have drafted a proposed
14 Settlement Agreement for the Court’s approval (the “Settlement” or “SA”), attached to
15 the Declaration of Abbas Kazerounian in Support of Preliminary Approval of Class
16 Action Settlement (“Kazerounian Decl.”) as Exhibit 1. The proposed Settlement
17 provides substantial relief to the Class as each Settlement Class Member shall be
18 eligible to receive a full refund of the purchase price of the product at issue in addition
19 to interest at the rate of ten (10) percent per annum from the date of purchase without
20 making a claim. Kazerounian Decl. ¶12; Swigart Decl. ¶ 3; SA § 6a. In consideration
21 for payment, Plaintiff, on behalf of the proposed Settlement Class, will dismiss the
22 Action and the Settlement class will release and discharge the Released Parties from
23 the Released Claims. *Id.* § 13. For the reasons set forth herein, Plaintiff assert that the
24 Settlement is fair and reasonable, and warrants the Court’s preliminary approval; and
25 Defendant does not oppose this motion.
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Accordingly, Plaintiff moves the Court for an Order preliminarily approving of the Settlement Class Action Settlement, requesting an Order of (1) preliminary approval of the proposed Settlement Agreement, (2) approval the proposed Notice procedure an the form, manner and content of the Notice, (3) staying all proceedings until the Court renders a final decision regarding the approval of the Settlement, (4) conditionally certify the proposed Settlement Class, (5) appointing Plaintiff as Class Representatives and Plaintiff' Counsel as Class Counsel, and (6) scheduling a hearing for Final Approval.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff has alleged in this Action that Defendant engaged in false and misleading advertising, unfair competition, and deceptive conduct toward consumers by advertising Defendant's neckties, including the necktie purchased by Plaintiff, with the false representation that Defendant's product was "Made in U.S.A." in violation of, *inter alia*, California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200, et seq.; California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.; and California's "Made in USA" law, Cal. Bus. & Prof. Code §§ 17533.7; and California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq.

Specifically, Plaintiff alleged that contrary to Defendant's claim that its Kid's to-be tied Necktie (hereinafter "Necktie" or the "Product") was advertised on Defendant's website as "Made in U.S.A." while the Product was in fact made in China, and thus foreign-made and/or incorporates foreign-made materials or component parts, contrary to Defendant's representations. *See* Plaintiff's Second Amended Complaint ("SAC") ¶¶ 1 and 3.

In response to the Action, Defendant filed a Motion to Dismiss on January 26, 2015. [Dkt. No. 11]. On February 17, 2015, Plaintiff filed her Response in Opposition

1 to Defendant's Motion to Dismiss. [Dkt No. 12]. Defendant filed a Reply on February
2 23, 2015. Thereafter, on June 19, 2015, the Court issued an order granting
3 Defendant's Motion to Dismiss without prejudice and with Leave to Amend.
4 Subsequently, Plaintiff filed her Second Amended Complaint ("SAC"), which is now
5 the operative complaint in the Action.

6 **III. THE SETTLEMENT**

7 **A. The Settlement Class**

8 Plaintiff has agreed to settle this action on behalf of all other similarly situated
9 consumers in California who, at any time from October 29, 2010 through October 29,
10 2014, purchased the "Kids To-Be-Tied Plaid Necktie" in the State of California (the
11 "Settlement Class"). SA § I. Defendant has represented to Plaintiff that the Settlement
12 Class consists of 38 consumers. *Id.* Excluded from the Settlement Class are all persons
13 who are employees, directors, officers, and agents of Defendants or its subsidiaries and
14 affiliated companies, the Court and its immediate family and staff, as well as any
15 person(s) who timely exercise their right to opt out of the Settlement Class. *Id.* § J.

16 **B. Settlement Payment**

17 The parties have agreed to the proposed Settlement which, if approved by this
18 Honorable Court, will result in the dismissal of the Action in consideration for
19 payment of the Settlement Funds to the Members of the Settlement Class. Under the
20 terms of the Settlement Agreement, in consideration for the dismissal of the Lawsuit
21 under the terms of this Agreement, the Parties agree as follows:

- 22 i. Settlement Class Members shall be eligible to receive a refund of
23 their purchase price plus interest at the rate of ten (10) percent per
24 annum from the date of purchase, without making a claim.
- 25 ii. Lands' End will administer payment to the Settlement Class
26 through its customer service department and all costs and expenses
27

1 of class notice and administration of claims shall be paid and borne
2 by Lands' End outside of the compensation being offered to Class
3 Members; and send a Declaration to Class Counsel of the timing
4 and results of the refund within ten (10) days of issuance.

5 iii. If Lands' End and Plaintiff's Counsel are unable to resolve any
6 disputes concerning the administration of the claims, those disputes
7 may be submitted to the Honorable Nita L. Stormes.

8 The Parties have agreed to undertake their respective Best Efforts to effectuate
9 the Settlement as described herein and in the proposed Settlement Agreement.
10 Accordingly, the parties encourage the Court to approve the proposed Settlement
11 Agreement. The parties further represent, agree and acknowledge that the Settlement is
12 a fair resolution of these claims for the Parties and the Settlement Class Members. SA
13 § 7.

14
15 **C. Notice and Administration of the Settlement**

16 As provided in the proposed Settlement Agreement, the parties agree that no
17 later than 30 days following the Court's entry of the Order of Preliminary Approval,
18 Lands' End shall cause notice to be disseminated as directed in the Order of
19 Preliminary Approval by sending Settlement Class Members direct notice by e-mail
20 and U.S. Mail to all Members of the Settlement Class for whom it has a valid e-mail
21 address and to the last known mailing address contained in Lands' End's records. SA §
22 4.

23 The parties agree that the method of notice set forth in the Settlement
24 Agreement constitutes the best form of notice to the Settlement Class that is
25 practicable under the circumstances. SA § 4. Lands' End shall pay all costs associated
26 with disseminating and publishing the Notice to the Settlement Class and all associated
27 expenses, which shall be in addition to and not deducted from the settlement
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1 compensation described in Section 6 of the Settlement Agreement or the amount of
2 attorneys' fees and expenses described in Section 12 of the Settlement Agreement. *Id.*

3 **D. Opportunity to Object or Opt Out**

4 Under the terms of the proposed Settlement Agreement, members of the
5 Settlement Class will have the right to object to the Settlement and/or its terms. SA §
6 8. Any Settlement Class Member who wishes to object to any term of this Agreement
7 must do so in writing by filing a written objection with the Clerk of the Court and
8 mailing it to the Parties' respective counsel at the addresses set forth in the Settlement
9 Agreement. Any such objection must (a) identify the date on which the objecting party
10 purchased a "Kids To-Be-Tied Plaid Necktie" in the state of California, (b) attach
11 copies of any materials that will be submitted to the Court or presented at the fairness
12 hearing, (c) be signed by the Settlement Class Member, (d) clearly state in detail (i) the
13 legal and factual ground(s) for the objection, (ii) the Settlement Class Member's name,
14 address and telephone number, and (iii) if represented by counsel, such counsel's
15 name, address and telephone number; and (e) Any attorney representing an objector
16 must list all objections previously filed for anyone, the case name, court, and case
17 number, and how much, if any amount, was paid in connection with the objection. Any
18 objection that fails to satisfy the requirements of this Section, or that is not properly
19 and timely submitted, may be deemed ineffective, and will be deemed by the Parties to
20 have been waived, and the Parties will argue that the Settlement Class Member
21 asserting such objection shall be bound by the final determination of the Court.

22 In addition, any Settlement Class Member who wishes to be excluded from
23 membership in the Settlement Class must do so in writing by mailing a written request
24 for exclusion from the Settlement to the Parties' respective counsel at the addresses set
25 forth in the Settlement Agreement. SA § 10. Such requests must (a) be signed by the
26 Settlement Class Member, (b) identify the date on which the Settlement Class Member
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1 purchased a “Kids To-Be-Tied Plaid Necktie” in the state of California, (c) clearly
2 express the Settlement Class Member’s desire to be excluded (or to “opt out”) from the
3 Settlement Class, and (d) include the Settlement Class Member’s name, address and
4 telephone number, and, if represented by counsel, counsel’s name, address and
5 telephone number. *Id.* Any request for exclusion that is untimely or fails to satisfy the
6 requirements of the Settlement Agreement, may be deemed ineffective, and the person
7 shall be deemed a Settlement Class Member for all purposes under this Agreement. *Id.*

8 **E. Class Counsel’s Application for Attorneys’ Fees and Costs**

9 The proposed Settlement contemplates that Class Counsel shall be entitled to
10 apply to the Court for an award of attorneys’ fees, costs. SA § 12. Lands’ End agrees
11 not to oppose an award by the Court of reasonable attorneys’ fees and litigation costs
12 through the entry of the Final Order and Judgment, to Plaintiff’s Counsel in an amount
13 not to exceed \$32,500 in fees and expenses, subject to Court approval. Plaintiff’s
14 Counsel agrees that they will not seek attorneys’ fees and litigation costs that exceed
15 \$32,500, in the aggregate. Plaintiff’s Counsel’s application for an award of attorneys’
16 fees and costs pursuant to this subsection shall be made no later than thirty (30) days
17 prior to any opt out or objection period. Such application will be heard at the time of
18 the Fairness Hearing or as soon thereafter as may be determined by the Court. *Id.* §
19 12a. The parties’ negotiation and agreement upon the foregoing attorneys’ fees and
20 expenses occurred only after the substantive terms of the proposed Settlement
21 Agreement had been negotiated and agreed upon. *Id.* § 12b.

22 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS**
23 **ACTION SETTLEMENT**

24 A class action may not be dismissed, compromised or settled without the
25 approval of the court. Fed. R. Civ. P. 23(e). The purpose of the Court’s preliminary
26 evaluation of the settlement is to determine whether it is within the “range of
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1 reasonableness,” and thus whether notice to the class of the terms and conditions of the
2 settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* 4
3 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 et seq., and § 13.64 (4th ed.
4 2002 and Supp. 2004). Thus, the “judge must make a preliminary determination on the
5 fairness, reasonableness, and adequacy of the settlement terms and must direct the
6 preparation of notice of the certification, proposed settlement, and date of the final
7 fairness hearing.” Manual for Complex Litigation (Fourth) (Fed. Judicial Center 2004)
8 (“Manual”) at § 21.632.

9
10 **A. Public Policy Favors Settlement**

11 As a matter of public policy, settlement is a strongly favored method for resolving
12 disputes. *See Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th
13 Cir. 1989); *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir.
14 1982). This is especially true in class actions such as this one. As a result, courts should
15 exercise their discretion to approve settlements “in recognition of the policy encouraging
16 settlement of disputed claims.” *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163
17 F.R.D. 200, 209 (S.D.N.Y. 1995). To make the preliminary fairness determination,
18 courts may consider several relevant factors, including “the strength of the plaintiffs’
19 case; the risk, expense, complexity, and likely duration of further litigation; the risk of
20 maintaining class action status through trial; the amount offered in settlement; the extent
21 of discovery completed and the stage of the proceedings; [and] the experience and views
22 of counsel...” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

23 **B. Conclusions of Fact And Law Are Not Necessary At This Stage**

24 Furthermore, courts must give “proper deference to the private consensual
25 decision of the parties,” since “the court’s intrusion upon what is otherwise a private
26 consensual agreement negotiated between the parties to a lawsuit must be limited to
27 the extent necessary to reach a reasoned judgment that the agreement is not the product
28

of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1027.

In considering a potential settlement, the Court need not reach any ultimate conclusions on the issues of fact and law, which underlie the merits of the dispute, (*West Va. v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971)), and need not engage in a trial on the merits, *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement...may be submitted to members of the prospective class for their acceptance or rejection.” *Philadelphia Hous. Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970). Preliminary approval of the settlement should be granted if there are no “reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys.” Manual at § 21.632.

C. Counsel’s Experienced Judgment Holds Considerable Weight

The opinion of experienced counsel supporting the Settlement is entitled to considerable weight.¹ The decision to approve or reject a proposed settlement “is committed to the sound discretion of the trial judge[.]” *See Hanlon*, 150 F.3d at 1026. This discretion is to be exercised “in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned,” which minimizes substantial litigation expenses for both sides and conserves judicial

¹ *See e.g., Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.1988) (opinion of experienced counsel carries significant weight in the court’s determination of the reasonableness of the settlement); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) (recommendations of plaintiffs’ counsel should be given a presumption of reasonableness).

resources. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations omitted).

Based on these standards, Class Counsel respectfully submit that, for the reasons detailed below, the Court should preliminarily approve the proposed Settlement as fair, reasonable and adequate. Kazerounian Decl. ¶ 32; Swigart Decl. ¶ 3. Defendant, through its counsel, joins in this submission for Preliminary Approval. SA § 3.

V. THE SETTLEMENT IS FAIR, REASONABLE, ADEQUATE AND SHOULD BE PRELIMINARILY APPROVED BY THE COURT

A. Liability is Contested and Both Parties Face Significant Challenges in Litigating the Action

Based on Class Counsel's thorough analysis of the legal and factual issues raised by this case in Defendant's Motion to Dismiss [Dkt. No. 11], the Court's resulting Order [Dkt. No. 15], and Defendant's subsequent Motion to Dismiss [Dkt. No. 21], this litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp 610, 617 (N.D. Cal. 1979). Based on their experience with these types of cases and analysis of the issues raised in this action in Defendant's Motions to Dismiss, the parties share the view that this is a fair and reasonable settlement and in the best interests of the Class. Because of the detailed legal and actual analysis conducted by counsel for both parties, their endorsement of the Settlement "is entitled to significant weight" in deciding whether to approve the Settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.1980); *Boyd v. Bechtel Corp.*, 485 F.Supp. 616-617. Courts should not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *National Rural*

1 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

2 Here, in evaluating the settlement set forth in this Agreement, Plaintiff's
3 Counsel have concluded that the benefits provided to the Settlement Class under this
4 Agreement make a settlement with Lands' End and the other Released Parties pursuant
5 to such terms and conditions in the best interest of the Settlement Class in light of,
6 among other considerations, the benefits afforded to the Settlement Class, the
7 uncertainty associated with obtaining class certification for liability purposes, the
8 expense and length of time necessary to prosecute this action through trial, and the
9 uncertainty of the outcome of the Action. Accordingly, the parties respectfully request
10 that this Court preliminarily approve the Class Settlement.
11

12 **B. The Settlement Provides Fair and Substantial Benefit to the Class**

13 Defendant will provide Settlement Class Members with a full refund of their
14 purchase price plus interest at the rate of ten (10) percent per annum from the date of
15 purchase, without the need for Settlement Class Members to make a claim. *See* SA §
16 6a. Defendant will administer payment to the Settlement Class through its customer
17 service department and all costs and expenses of class notice and administration of
18 claims shall be paid and borne by Lands' End outside of the compensation being
19 offered to Class Members. *See* SA § 6b.

20 The Settlement payment that each Settlement Class Member will receive is fair,
21 appropriate, and reasonable given the purposes of the consumer protection laws at
22 issue in this action and in light of the anticipated risk, expense, and uncertainty of
23 continued litigation. Kazerounian Decl., ¶ 13 & 30; Swigart Decl. ¶ 3. Furthermore,
24 Class Counsel submits that the proposed Settlement is the best result possible, as
25 Settlement Class Members will receive a return of 100 cents on the dollar, in addition
26 to the rate of ten (10) percent per annum from the date of purchase without making a
27 claim. Kazerounian Decl. ¶ 12; Swigart Decl. ¶ 3. SA § 6a. Therefore, the Settlement
28

largely achieves the best recovery that Plaintiffs could achieve at trial, without the risks and inherent delays of an adverse trial decision or potential appeal. Moreover, the Settlement Class Members will also benefit from the effect of this Settlement, as it has a deterrent effect and sets a precedent for other businesses that misrepresent their products as “Made in USA” (or similar words). *See Lo v. Oxnard European Motors, LLC*, 2012 WL 1932283, *5 (S.D. Cal., May 29, 2012) (class members will also benefit from the deterrent effect of the Settlement). Thus, the Settlement will provide substantial benefit to the Settlement Class Members.

C. The Settlement Was Reached As A Result of Arms-Length Negotiations

Typically, “[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm's-length by counsel for the class, is presented for Court approval.” *NEWBERG*, supra, §11.41; see also *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (great weight given to the recommendation of counsel who are the most closely acquainted with the facts of the litigation); *In re Employee Benefit Plans Secs. Litig.*, No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) (same).

Here, the proposed Settlement is the result of intensive arms-length negotiations. *See* SA p. 2. The parties have actively litigated the Action for over a year, including engaging in extensive, adversarial motion practice. Kazerounian Decl. ¶ 10; Swigart Decl. ¶ 3; *see* Dkt. Nos. 11-21. Working independently of the Court, the Parties also participated in direct discussions about possible resolution of this litigation including numerous telephonic conferences, and were able to reach a Settlement. *Id.* After reaching an agreement in principle to settle the Action, Class Counsel engaged in extensive discussions that were necessary to determine the details surrounding the Settlement Agreement. Kazerounian Decl. ¶ 10 & 11; Swigart Decl. ¶ 3.

D. Experienced Counsel Have Determined That The Settlement is Appropriate and Fair to the Class

In negotiating the proposed Settlement, Plaintiff has had the benefit of highly skilled counsel, with extensive experience in litigating complex class action litigation. Class Counsel has extensive experience in class actions, as well as particular expertise in class actions relating to consumer protection. Kazerounian Decl. ¶¶ 34-43; Swigart Decl. ¶¶ 4-14. Similarly, Defendant's Counsel has extensive experience based upon a long track record in complex class action litigation.² Class Counsel believe that under the circumstances, the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class Members. Kazerounian Decl. ¶ 31; Swigart Decl. ¶ 3.

VI. THE COURT SHOULD PRELIMINARILY CERTIFY THE CLASS AS THE REQUIREMENTS OF FED. R. CIV. P. 23(a) ARE MET.

A. Numerosity

Fed. R. Civ. P. 23(a)(1) requires that certification be supported by a class "so numerous that joinder of all members is impracticable." *Little dove*, 2001 WL 42199, at * 2, citing *East Texas Motor Freight Sys. V. Rodriguez*, 431 U.S. 395, 405 (1977). In addition, the impracticality of joinder depends on the facts and circumstances of each case and does not, as a matter of law, require the existence of any specific minimum number of class members. *Kraszewski v. State Farms Ins. Co.*, 1981 WL 26982, *2 (N.D. Cal., September 9, 1981). The courts of this Circuit have adhered to the view that, "the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone." *Amone v. Aveiro*, 226 F.R.D. 677, 684 (D. Haw. 2005) *quoting* Newberg and Conte, *Newberg on Class Actions* § 3.6 (4th ed. 2002).

² See <http://www.gtlaw.com/Experience/Practices/Class-Action-Litigation>

1 Because Defendant, Lands' End, is a large American clothing retailer that sells
2 its products nationwide and internationally,³ and the product at issue in this Action is a
3 mass-produced product which was advertised and distributed to consumers in the same
4 way via Defendant's website with the same "Made in USA" representation, the class is
5 so numerous that the joinder of all members would be impracticable. As such, the
6 numerosity requirement under Rule 23(a)(1) has been satisfied.

7 **B. Commonality**

8 Rule 23(a)(2) requires that the class members' claims be linked through
9 common questions of law or fact. "Commonality requires the plaintiff to demonstrate
10 that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*,
11 131 S. Ct. 2541, 2551 (2011). This means that the Settlement Class Members' claims
12 "must depend on a common contention . . . of such a nature that it is capable of
13 classwide resolution – which means that determination of its truth or falsity will
14 resolve an issue that is central to the validity of each one of the claims in one stroke."
15 *Id.* A common nucleus of operative fact is generally enough to satisfy the commonality
16 requirement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). "The
17 existence of shared legal issues with divergent factual predicates is sufficient, as is a
18 common core of salient facts coupled with disparate legal remedies within the class."
19 *Id.*

20 Here, the commonality requirement is met for the Class because the claims of all
21 Class Members arise from the same common questions of both law and fact
22 concerning the "Made in USA" representation Defendant's made regarding its product.
23 Every prospective class member purchased and viewed the same "Made in USA"
24 representation advertised on Defendant's website. Plaintiff's Complaint addresses the
25
26

27 ³ See <http://www.landsend.com/aboutus/company/>
28

following legal issues and each applies equally to each and every member of the class, namely:

1. Whether Defendant participated in or committed the wrongful conduct alleged in Plaintiff's Complaint;
2. Whether Defendant's acts, transactions, or course of conduct constituted violations of California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200, et seq.; California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.; and California's "Made in USA" law, Cal. Bus. & Prof. Code §§ 17533.7; and California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq.
3. Whether members of the Class sustained and/or continue to sustain damages attributable to Defendant's conduct, and, if so, the proper measure and appropriate formula to be applied in determining such damages; and
4. Whether members of the Class are entitled to injunctive and/or equitable relief.

Consequently, the determination of these common legal issues will resolve an issue that is central to the validity of each one of the claims on a class wide basis in "one stroke." Therefore, the commonality requirement of Rule 23(a)(2) is satisfied.

C. Typicality

Rule 23(a)(3) requires that the proposed Class Representatives' "claims or defenses" be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality requirement is intended to "assure that the interest of the named representative aligns with the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Courts consistently find that the typicality

1 requirement is met if the claims arise from a common course of conduct. A named
2 Plaintiff's claim is typical if "it arises from the same practice or course of conduct that
3 gives rise to the claims of other class members and is based on the same legal theory as
4 their claims." *Newman v. CheckRite California, Inc.*, 1996 WL 1118092, *5 (E.D.
5 Cal., August 2, 1996). Typicality is so closely related to commonality that "a finding
6 of one will generally satisfy the other." *Newman*, 1996 WL 1118092, at *5, citing H.
7 Newberg, *Class Actions*, § 3.13 (1997).

8 Here, each and every member of the proposed class is alleged to have purchased
9 the same product and viewed the same "Made in USA" representation on Defendant's
10 website in connection with purchase of the product at issue. Thus, each member of the
11 Class has the very same claims against the Defendant arising from the same common
12 course of conduct, and each of those claims would be susceptible to the same defenses.
13 Plaintiff respectfully submits that, since the claims of all Class members, including the
14 Plaintiff, arise from the same event, practice or course of conduct, namely, the
15 purchase of Defendant's product advertised with a "Made in USA" representation from
16 Defendant's website, typicality is satisfied.

17
18 **D. Fair and Adequate Representation**

19 The Ninth Circuit recognizes two criteria for determining fairness and adequacy
20 of representation under Rule 23(a)(4): "First, the named representatives must appear
21 able to prosecute the action vigorously through qualified counsel, and second, the
22 representatives must not have antagonistic or conflicting interests with the unnamed
23 members of the class." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th
24 Cir. 1978). As the U.S. Supreme Court has held, "a class representative must be part of
25 the class and 'posses the same interest and suffer the same injury' as the class
26 members." *East Texas Motor Freight System Inc. v. Rodriguez*, 431 U.S. 395, 403
27 (1977); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009).

1 Plaintiff has sufficiently demonstrated her desire and ability to vigorously
2 prosecute this action. Declaration of Elaine Oxina (“Oxina Decl.”), ¶ 3; Kazerounian
3 Decl. ¶¶ 21-23; Swigart Decl. ¶ 3. Since the case’s inception, Plaintiff has maintained
4 regular contact with her counsel and has remained available and accessible to them. *Id.*
5 Plaintiff recognizes that, as the named Plaintiff, she must represent all consumers in
6 the Class. Oxina Decl. ¶ 1; *Id.*; *Id.* Plaintiff’s interests are aligned with those of the
7 other Class Members and there have been no indication or suggestion that their
8 interests may conflict with the interests of unnamed Class Members. Oxina Decl. ¶ 6;
9 *Id.*; *Id.*

10
11 For the foregoing reasons, the Court must conclude that Plaintiff has and will
12 continue to provide fair and adequate class representation in satisfaction of the fourth
13 prong of Fed. R. Civ. P. 23(a).

14 Appointment of Class Counsel is one of the obligations of the trial court. The
15 Court may consider any “matter pertinent to counsel’s ability to fairly and adequately
16 represent the interests of the class,” Fed. R. Civ. P. 23(g)(1)(B). However, Fed. R. Civ.
17 P. 23(g)(1)(A) sets forth four (4) factors which must be considered by the Court in
18 order to satisfy its obligations. Those factors are: (i) the work counsel has done in
19 identifying or investigating potential claims in the action; (ii) counsel’s experience in
20 handling class actions, other complex litigation, and types of claims asserted in the
21 action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that
22 counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

23 In evaluating the adequacy of representation, the court may also examine the
24 attorney’s professional qualifications, skills, experience and resources. *See Newman v.*
25 *CheckRite California, Inc.*, 1996 WL 118092, *6 (E.D. Cal., Aug. 2 1996) (citing
26 *North American Acceptance Corp. v. Arnall, Golden & Gregory*, 593 F.2 d 642 (5th
27 Cir. 1979)). The Court is entitled to look to counsel’s demonstrated performance in this
28

1 suit in rendering its determination. Assessment of the quality of the pleadings and
2 motions presented during the course of the litigation can be a useful tool in assessing
3 adequacy of counsel. See *Sullivan v. Chase Inv. Serv. Of Boston*, 79 F.R.D. 246, 258
4 (N.D. Cal. 1978) (citing *Wofford v. Safeway stores, Inc.*, 78 F.R.D. 460, 486-487
5 (N.D. Cal 1978)).

6 This Court should find that the counsel chosen by Plaintiff meets the standards
7 imposed by Rule 23. Kazerouni Law Group, APC, and Hyde & Swigart have extensive
8 experience in consumer class actions and other complex litigation. Kazerouni Law
9 Group, APC has engaged exclusively in the area of consumer rights litigation and class
10 action litigation. Kazerounian Decl. ¶¶ 34-43; Swigart Decl. ¶¶ 4-14.

11 From the outset, Kazerouni Law Group, APC and Hyde & Swigart have
12 vigorously pursued this action on behalf of Plaintiff and the proposed class members
13 and have demonstrated their ability to do so before this court and have worked
14 diligently with Defendant's Counsel in reaching a meaningful settlement in the best
15 interest of all the parties. Finally, Defendant does not oppose the appointment of
16 Kazerouni Law Group, APC and Hyde & Swigart to represent the proposed class. As
17 such, Plaintiff's Counsel, Abbas Kazerounian of Kazerouni Law Group, APC and
18 Joshua B. Swigart of Hyde & Swigart, should be appointed as Class Counsel.

19
20 **E. The Proposed Method of Class Notice is Appropriate**

21 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the
22 court must direct to class members the "best notice practicable" under the
23 circumstances. Rule 23(c)(2)(B) does not require "actual notice" or that a notice be
24 "actually received." *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need
25 only be given in a manner "reasonably calculated, under all the circumstances, to
26 apprise interested parties of the pendency of the action and afford them an opportunity
27 to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.

306, 314 (1950). “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.

Pursuant to Rule 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” The notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class; (iii) the class claims, issues, or defenses; (iv) that class members may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

Here, the direct notice sent by both e-mail and U.S. Mail to all Members of the Settlement Class for whom Defendant has a valid e-mail address and to the last known mailing address contained in Defendant’s records meet all the notice requirements. See SA § 4; Exhibit B attached thereto. In addition, Class Counsel’s website will allow Settlement Class Members to access a copy of the direct e-mail and mail notice and the Settlement Agreement. *See* Exhibit B.

The Class Counsel and Defendant agree that the method of notice set forth in the Settlement Agreement constitutes the best form of notice to the Settlement Class that is practicable under the circumstances. Defendant, Lands’ End, shall pay all costs associated with disseminating and publishing the Notice to the Settlement Class and all associated expenses, which shall be in addition to and not deducted from the settlement compensation or the amount of attorneys’ fees and expenses described in the Settlement Agreement. *See* SA §§ 4, 6, 12.

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VII. THE REQUIREMENTS OF FED. R. CIV. P. 23(b)(3) ARE ALSO MET

In addition to meeting the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a), the proposed class must also meet one of the three provisions of Rule 23(b). It is the Parties' position that the class may be certified under Fed. R. Civ. P. 23(b)(3).

For certification under Fed. R. Civ. P. 23(b)(3), a two-pronged test must be met. First, "questions of law or fact common to class members [must be found to predominate over questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Additionally, the Court must find that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.* In reaching its conclusions, the Rule requires a Court to consider the interests of individual members of the class in controlling their own individual litigation, the nature and extent of any existing parallel litigation, the desirability of concentrating the litigation in one forum and the manageability of the class action. Fed. R. Civ. P. 23(b)(3); see *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615-16 (1997). The Court will find that the Rule 23(b)(3) criteria have been met.

A. Common Questions Predominate

The predominance inquiry considers whether "questions of law or fact common to the class will predominate over any questions affecting only individual members as the litigation progresses." *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013). This analysis starts with the underlying causes of action. *Erica P. John Fund, Inc. v. Halliburton Co.*, 133 S. Ct. 2179, 2184 (2011).

Here, Defendant's alleged misrepresentation regarding the country of origin of the product at issue in this Action clearly predominates over any questions affecting only individual members of the Settlement Class. As such, individual issues concerning identification of prospective class members and entitlement to actual

1 damages are capable of determination and considered “ancillary to the Court’s
2 evaluation of the predominantly common issues.” *Wyatt v. Creditcare, Inc.*, 2005 WL
3 2780684, *5 (N.D. Cal., October 25, 2005). Therefore, the “predominance”
4 requirement is met.

5 **B. A Class Action is Superior to Other Methods of Adjudication**

6 The law favors settlements, particularly in class actions and complex cases
7 where substantial resources can be conserved by avoiding the time, costs and rigors of
8 prolonged litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
9 1976); CONTE & NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41(2003)
10 [“By their very nature, because of the uncertainties of outcome, difficulties of proof,
11 length of litigation, class action suits lend themselves readily to compromise.”].
12 Furthermore, the size of individual claims is usually so small there is little incentive to
13 sue individually.
14

15 Here, the parties have stipulated and agreed that the putative Settlement Class
16 consisting of 38 members shall be awarded the full amount of their purchase price of
17 the product at issue, plus interest at a rate of ten (10) percent per annum. Thus, the
18 proposed Settlement largely achieves what Plaintiff would strive to achieve at trial,
19 without the use of additional resources, the inherent delay of continued litigation, or
20 the risks of an adverse trial verdict or necessity for a potential appeal.

21 Finally, concerns of judicial efficiency and consistency favor litigating the
22 propriety of the Defendant’s conduct by all class members in one action rather than
23 several individual suits. Moreover, the Defendant, class representatives and a vast
24 majority of the putative class members reside in this district, therefore the current
25 venue is ideal. In light of the Congressional intent behind consumer protection laws
26 such as those at issue in this Action, a class action under the circumstances presented
27 here would be superior to any other method of adjudication.
28

VIII. THE PARTIES JOINTLY REQUEST AN ORDER APPROVING THE PROPOSED CLASS SETTLEMENT

The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re Gen. Motors*, 55 F.3d 768, 784 (3d Cir.1995). Because the requirements of Fed. R. Civ. P. 23 have been met, the parties respectfully request that the defined class be conditionally certified for settlement purposes and jointly request that the Court schedule a Final Approval Hearing. The parties respectfully request that the Court approve and adopt the parties' proposed Settlement Agreement.

By settling this matter, both parties avoid the expense of trial and uncertainty of outcome. If this matter proceeded to trial the net value of the recovery would be further decreased due to the costs of compelling further discovery, retaining expert witnesses, preparing for trial and possibly, engaging in post trial matters, including the lodging of an appeal. The Court, after reviewing the terms negotiated upon by the parties, will find that the settlement reached will be fair, adequate and reasonable for all involved. Therefore, the circumstances of this matter, as discussed above, heavily weigh in favor of the proposed settlement.

IX. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal fairness hearing or final approval hearing, at which time the Court may hear all evidence and arguments, for and against, to evaluate the proposed Settlement. A true and correct copy of the parties' proposed Final Approval Order is attached to the Agreement as Exhibit C.

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X. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court (1) grant preliminary approval of the proposed Settlement, (2) approve the proposed Notice procedure an the form, manner and content of the Notice, (3) stay all proceedings until the Court renders a final decision regarding the approval of the Settlement, (4) conditionally certify the proposed Settlement Class, (5) appoint Plaintiff as Class Representative and Plaintiff's Counsel, Abbas Kazerounian and Joshua B. Swigart as Class Counsel, and (6) schedule a hearing for Final Approval.

Respectfully submitted,

Dated: February 12, 2016

KAZEROUNI LAW GROUP, APC

BY: /s/ Abbas Kazerounian
 ABBAS KAZEROUNIAN, ESQ.
 MONA AMINI, ESQ.
*Attorneys for Plaintiff
 and the Putative Class*

Respectfully submitted,

Dated: February 12, 2016

GREENBERG TRAURIG, LLP

BY: /s/ Francis A. Citera
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Attorneys for Plaintiff,

Elaine Oxina

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ELAINE OXINA;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 3:14-cv-02577-MMA-NLS

CLASS ACTION

**DECLARATION OF ABBAS
KAZEROUNIAN IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: March 21, 2016

TIME: 2:30 p.m.

CRTRM: 3A

JUDGE: Hon. Michael M. Anello

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**DECLARATION OF ABBAS KAZEROUNIAN IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

DECLARATION OF ABBAS KAZEROUNIAN

I, ABBAS KAZEROUNIAN, declare:

1. I am one of the attorneys for Plaintiff in this action, Elaine Oxina (“Plaintiff”). I am over the age of 18 and am fully competent to make this declaration.
2. I was admitted to the State Bar of California in 2007 and have been a member in good standing ever since that time. I have litigated cases in both state and federal courts in California, Washington, Nevada, Arizona, Arkansas, New York, New Jersey, Colorado, Georgia, Tennessee, North Carolina, Ohio, Illinois and Texas. I am admitted in every federal district in California and have handled federal litigation in the federal districts of California. I am also admitted to the Ninth Circuit Court of Appeals and the United States Supreme Court. I am also admitted to the state bar of Texas, Illinois, Washington, the District of Columbia, and Michigan. If called as a witness, I would competently testify to the matters herein from personal knowledge.
3. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
4. I submit this declaration in support of the Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class in the action against defendant, Lands’ End, Inc. (“Defendant”).
5. This action was commenced on October 29, 2014 against Defendant, by filing a putative class action complaint alleging that Defendant engaged in false and misleading advertising, unfair competition, and deceptive conduct toward consumers.
6. Defendant’s product was falsely represented as “Made in U.S.A.” in violation of, *inter alia*, California’s Unfair Competition Law (“UCL”) Cal. Bus. & Prof. Code §§ 17200, et seq.; California’s False Advertising Law

1 (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.; and California’s “Made
2 in USA” law, Cal. Bus. & Prof. Code §§ 17533.7; and California’s
3 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq.

4 7. Defendant filed a Motion to Dismiss on January 26, 2015.

5 8. Plaintiff then filed her Response in Opposition to Defendant’s Motion to
6 Dismiss on February 17, 2015.

7 9. Thereafter, on June 19, 2015, the Court issued an order granting
8 Defendant’s Motion to Dismiss without Prejudice and with Leave to
9 Amend.

10 10. Plaintiff then filed her Second Amended Complaint (“SAC”) on July 24,
11 2015, which is now the operative complaint in the action.

12 11. Since its inception, the parties have actively litigated this Action, including
13 engaging in extensive, adversarial motion practice. Following the filing of
14 the SAC, the Parties engaged in settlement discussions and negotiations
15 regarding this Action, through direct discussions and numerous telephonic
16 conferences. As a result of this process and the Parties’ representations to
17 each other, I believe that the Parties are fully apprised of the relative
18 strengths and weaknesses of each other’s claims and defenses and the
19 potential risks to each party of pursuing further litigation in this matter.

20 12. In order to put the settlement details in writing, and in projecting the
21 implementation of its terms, the Parties negotiated how the Settlement
22 details would be resolved, including how best to identify the persons in the
23 Settlement Class and the amount of the Settlement Fund. The Parties agreed
24 to settle on the terms in the Settlement Agreement as set forth therein, on
25 behalf of a Settlement Class of 38 persons who purchased Defendant’s
26 product. Plaintiff’s counsel is satisfied the information provided about the
27 number of persons in the Settlement Class is correct as Defendant has
28 provided the Declaration of Steven Peterson, attached hereto as **Exhibit 2**,

1 which states under the penalty of perjury that thirty-eight (38) of
2 Defendant's products at issue in this action were purchased by California
3 consumers during the Class Period.

4 13. Pursuant to the Settlement Agreement (the "Agreement" or "SA"), those
5 persons in the Settlement Class shall be eligible to receive a full refund of
6 their purchase price plus interest at the rate of ten percent per annum from
7 the date of purchase, without making a claim. Attached hereto as **Exhibit 1**
8 is a true and correct copy of the executed Settlement Agreement. Also,
9 **Exhibits A** through **C** to the Settlement Agreement are true and correct
10 copies of those documents as described in the Settlement Agreement itself.

11 14. It is my opinion that the Class as defined sufficiently identifies the Class
12 because all persons within California who purchased one or more of
13 Defendant's neckties with SKU # 3668260 that were advertised with a
14 "Made in USA," but were in fact foreign-made and/or composed of foreign-
15 made component parts, within the four years prior to the filing of the
16 Complaint make up the Class. I also believe the Settlement is fair,
17 appropriate, and reasonable.

18 15. The Settlement Class Members for whom address information is known
19 will be sent a direct mail and e-mail notice by Lands' End informing them
20 that they are members of the Settlement Class and are entitled to a monetary
21 payment, providing a detailed summary of the Settlement and the Release,
22 and including instructions on how to opt out or object.

23 CLASS DEFINITION

24 16. The Class or Settlement Class Members refers to:

25 All persons who, at any time from October 29, 2010
26 through October 29, 2014, purchased the "Kids To-Be-
27 Tied Plaid Necktie" in the State of California.

28 Agreement § I.

1
2 17. The Settlement will be terminable if:

3 A. The Court does not preliminarily or finally approve the
4 settlement in substantially the same form as set forth in the Settlement
5 Agreement; or

6 B. The Settlement is appealed and not approved in substantially
7 the same form as set forth in the Settlement Agreement.

8 18. After approval of Preliminary Approval of Settlement, Defendant shall
9 cause notice to be disseminated by e-mail and U.S. Mail to all Members of
10 the Settlement Class, as directed in the Settlement Agreement.

11 19. The Parties agree that the method of notice set forth in the Settlement
12 Agreement constitutes the best form of notice to the Settlement Class.

13 **ADEQUACY OF SETTLEMENT**

14 20. Defendant shall provide class benefits of a refund of their purchase price
15 plus interest at the rate of ten percent per annum from the date of purchase.

16 21. Costs of litigation, notice, and attorneys' fees are being paid by the
17 Defendant.

18 22. Plaintiff understands the obligations of serving as class representatives, have
19 adequately represented the interests of the putative class, and have retained
20 experienced counsel.

21 23. Further, Plaintiff's interests are not antagonistic nor in conflict with the
22 interests of the Class Members.

23 24. Plaintiff has sufficiently demonstrated her desire and ability to vigorously
24 prosecute this action. Plaintiff has maintained regular contact with class
25 counsel and has remained available and accessible to counsel. Plaintiff
26 recognizes that, as the named Plaintiff, she represents all consumers in the
27 Class and thus her interests are aligned with those of the other Class
28

Members. There has not been any indication or suggestion that their interests may conflict with the interests of unnamed Class Members.

25. Defendant will be permitted to maintain that they deny liability.

26. The proposed Settlement contemplates that Class Counsel shall be entitled to apply to the Court for an award of attorneys' fees, costs, and expenses to be paid by the Defendant. Defendant has agreed not to oppose an application by Class Counsel for an award of attorneys' fees up to \$32,500. I believe the excellent results of this Settlement warrant attorneys fees in this amount.

27. The attorneys' fees and costs application will be prepared solely by Class Counsel, and any attorneys' fees and costs shall be paid to all counsel through Class Counsel.

28. The Parties have prepared a direct mail notice (**Exhibit B** to Settlement Agreement). This notice adequately informs the Settlement Class Members about the settlement and their rights to opt out or object to the Settlement. I believe the proposed notice complies with any notice requirements. Defendant will use the Class List containing all Class Members' names, e-mail addresses, and addresses, to send out the direct mail notice and emails within thirty (30) days of preliminary approval, where possible.

29. I am unaware of any conflict of interest between Plaintiff and any putative class member or between Plaintiff and Plaintiff's attorneys.

30. I am unaware of any competing litigation.

RISKS OF CONTINUED LITIGATION

31. Taking into account the burdens, uncertainty and risks inherent in this litigation, Class Counsel have concluded that further prosecution of this action could be protracted, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial to the class that the action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in the Settlement Agreement.

32. The named Plaintiff and her counsel believe that the claims asserted in the action have merit. However, taking into account the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation including the risks in any subsequent appeal, they believe that it is desirable that the action be fully and finally compromised, settled and terminated now with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. Class Counsel have concluded that with the Settlement Benefit and with the deterrent effects of the this Settlement, Class Counsel believe the terms and conditions of this Settlement Agreement are fair, reasonable and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action. Class Counsel believe that this is the best possible result for the Settlement Class, as each member of the Class will receive a full refund in addition to interest calculated at the rate of 10% per annum from the date of purchase.

33. A settlement was finalized, agreed upon by all Parties and counsel and a formal Settlement Agreement was executed. Defendant does not oppose this motion and joins Plaintiff in the submission of this Motion for Preliminary approval of Class Action Settlement. SA § 3.

34. The named Plaintiff and the Class will provide a global release to the Released Parties as outlined in the Settlement Agreement. SA § 13.

CLASS COUNSEL'S EXPERIENCE

35. Kazerouni Law Group, APC, and Hyde & Swigart seek appointment as Class Counsel in this Action. As will be reflected in both my declaration and the declaration to be submitted by Joshua B. Swigart, I am informed and believe that Class Counsel are qualified and able to conduct this litigation as a class action. It is my understanding that Hyde & Swigart is submitting a separate declaration with this unopposed submission in support of its adequacy to continue to serve as Class Counsel.

36. I am an attorney admitted to practice in the State of California and am a partner at Kazerouni Law Group, APC (“KLG”), which has been retained to represent Plaintiff Elaine Oxina in the above-captioned matter. I am a Partner of the law firm of Kazerouni Law Group, APC, co-counsel of record for Plaintiff.

37. Since my admission to the California bar in 2007, I have been engaged exclusively in the area of consumer rights litigation, primarily in the area of fair debt collections, the defense of debt collection lawsuits, and class action litigation under California’s Unfair Competition Law (“UCL”) Cal. Bus. & Prof. Code §§ 17200, et seq.; California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.; and California’s “Made in USA” law, Cal. Bus. & Prof. Code §§ 17533.7; and California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq..

38. My firm, Kazerouni Law Group, APC, in which I am a principal, has litigated over 1000 individual consumer cases and 400 consumer class actions. My firm has six offices in Orange County, San Luis Obispo, Riverside, Phoenix, Austin, and Las Vegas. Kazerouni Law Group, APC has extensive experience in consumer class actions and other complex litigation. A significant focus of Kazerouni Law Group, APC’s practice concerns consumer rights litigation in general, and my firm has a history of aggressive, successful prosecution of consumer class actions.

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**KAZEROUNI LAW GROUP, APC'S
CONSUMER RELATED EXPERIENCE AND RESULTS**

39. Kazerouni Law Group, APC has extensive experience in other consumer related issues. A brief summary of a non-inclusive list of notable published decisions are as follows:

- a. *Franklin v. Wells Fargo Bank, N.A.*, 14-cv-2349 MMA (BGS) (S.D. Cal.) (TCPA Class Action Settlement finally approved on January 29, 2016 in the amount of \$13,859,103.80);
- b. *Knell v. FIA Card Services, N.A.*, 12-cv-426 AJB (WVG) (S.D. Cal.) (California class action settlement under Penal Code 632 et seq., for claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$2,750,000; finally approved by Court;
- c. *Knutson, et al. v. Schwan's Home Service, Inc.*, 12-CV-00964-GPC-DHB (S.D. Cal.) (Heavily contested TCPA class action; Settlement resulted in a common fund in the amount of \$2,500,000, finally approved);
- d. *Zaw v. Nelnet, Inc.*, C 13-5788 RS (N.D. Cal.) (California class action settlement under Penal Code 632 et seq., for claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$1,188,110.00; finally approved on November 14, 2014;
- e. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290 IEG (BLM) (Served as co-lead counsel for a settlement class of borrowers in connection with residential or automotive loans and violations of the TCPA in attempts to collect on those accounts; obtained a common settlement fund in the amount of \$17,100,000; final approval granted in 2013);
- f. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284 DMS (BGS) (S.D. Cal.) (Served as co-lead counsel for the settlement class of

1 borrowers in connection with residential loans and TCPA violations
2 stemming from the collection of those accounts; Settlement of more
3 than \$11,000,000.00 finally approved);

4 g. *In Re: Midland Credit Management, Inc., Telephone Consumer*
5 *Protection Act Litigation*, 11-md-2286 MMA (MDD) (S.D. Cal.)
6 (Counsel for a Plaintiff in the lead action, prior to the action being
7 recategorized through the multi-district litigation process;
8 preliminarily approved for \$18,000,000);

9 h. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer*
10 *Protection Act Litigation*, 11-md-02295-JAH (BGS) (Counsel for a
11 Plaintiff in the lead action, prior to the action being recategorized
12 through the multi-district litigation process; still actively involved in
13 the MDL litigation and settlement process);

14 i. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.)
15 (nationwide settlement achieving the then-largest monetary settlement
16 in the history of the TCPA: \$24.15; final approval granted in 2012)

17 j. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD
18 (S.D. Cal.) (achieving one of the highest class member payouts in a
19 TCPA action of \$1,331.25; final approval granted in 2012);

20 k. *Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS
21 (S.D. Cal.) (approved as co-lead counsel and worked to obtain a
22 national TCPA class settlement where claiming class members each
23 received payment in the amount of \$70.00; final approval granted in
24 2013);

25 l. *Barani v. Wells Fargo Bank, N.A.*, 12-CV-02999-GPC-KSC (S.D.
26 Cal.) (Class action settlement under the TCPA for the sending of
27 unauthorized text messages to non-account holders in connection to
28 wire transfers; finally approved for over \$1,000,000)

- m. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion for summary judgment was denied holding that a single call or text message with the use of an ATDS may be actionable under the TCPA).
- n. *Olney v. Progressive Casualty Insurance Company*, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.); 13-CV-2058-GPC-NLS (Defendant's motion to dismiss or in the alternative to strike the class allegations was denied finding that debt collection calls were not exempt from coverage under the TCPA);
- o. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D. Cal.); 13-CV-00843-JAM-AC (the court denying Defendant's motion to dismiss and to strike class allegations holding that the TCPA applies to any call made to a cellular telephone with an ATDS);
- p. *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-CV-04010-SI (N.D. Cal.) (TCPA class action, settled and finally approved for \$39,975,000);
- q. *In Re Jiffy Lube International, Inc.*, MDL No. 2261 [Finally approved for \$47,000,000.00];
- r. *Sherman v. Kaiser Foundation Health Plan, Inc.*, 13-CV-0981-JAH (JMA) (S.D. Cal.) (TCPA class action, settled and drafting preliminary approval papers);
- s. *Hoffman v. Bank of America*, 12-cv-539 JAH (DHB) (S.D. Cal.) (California class action settlement under Penal Code 632 et seq., for claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$2,600,000; finally approved by Court;
- t. *Couser v. Comenity Bank.*, 12-cv-484 MMA (BGS) (S.D. Cal.) (California class action settlement under Penal Code 632 et seq., for

claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$8,400,000; preliminarily approved on October 2, 2014;

u. *Lemieux v. EZ Lube, Inc.*, 12-cv-1791 BAS (JLB) (S.D. Cal.) (Class settlement approved and Kazerouni Law Group, APC appointed as class counsel);

v. *Newman v. Americredit Financial Services, Inc.*, 11-cv-3041 DMS (BLM) (S.D. Cal.) (TCPA Class settlement in the amount of \$8,500,000.00 preliminarily approved on November 26, 2014); and

w. *Gehrich v. Chase USA and JPMC Bank*, Case No. 1:12-CV-5510 (N.D. Ill.) (finally approved for \$34 Million).

**ADDITIONAL RELEVANT TRAINING,
SPEAKING/TEACHING ENGAGEMENTS AND ASSOCIATIONS**

40.I have undergone extensive training in the area of consumer law. The following is a list of recent training conferences I attended:

- a. Four-day National Consumer Law Center Conference; Nashville, TN – 2008;
- b. Three-day National Consumer Law Center Conference; Portland, OR - 2008;
- c. Three-day National Consumer Law Center Conference; San Diego, CA - 2009;
- d. Three-day National Consumer Law Center Conference; Seattle, WA - 2011;
- e. Three-day CAALA Conference; Las Vegas, NV – 2009;
- f. Three-day CAALA Conference; Las Vegas, NV – 2013;
- g. Three-day CAALA Conference; Las Vegas, NV – 2014;
- h. Speaker for webinar re First Look at the FCC's TCPA Declaratory Rulings; July 2015;

- i. Speaker at the ABA National Conference, Business Litigation Section; Trends in Consumer Litigation; San Francisco, CA – 2013; and
- j. Speaker at the ABA TCPA National Webinar (Consumer Protection, Privacy & Information Security, Private Advertising Litigation, and Media & Technology Committees) – September 2013.
- k. Speaker at the 2014 ACA Conference in November 2014.

41. As one of the main plaintiff litigators of consumer rights cases in the Southern of California, I have been requested to and have made regular presentations to community organizations regarding debt collection laws and consumer rights. These organizations include Whittier Law School, Iranian American Bar Association, Trinity School of Law and Chapman Law School, University of Southern California, Irvine, and California Western School of Law. I was the principle anchor on Time Television Broadcasting every Monday night, as a consultant on consumer law for over a year in 2012.

42. I am an adjunct professor at California Western School of Law where I teach a three-credit course in consumer law.

43. I have been named Super Lawyer by San Diego Daily Tribune in 2012; Rising Star in Super Lawyers Magazine in 2013, 2014, 2015; and Super Lawyer in 2016.

44. I am a member in good standing of the following local and national associations:

- a. National Association of Consumer Advocates;
- b. Federal Bar Association;
- c. Orange County Bar Association;
- d. California Attorneys Association of Los Angeles;
- e. Iranian American Bar Association (President for 2008 and 2009);
- f. Member of the Leading Forum of the American Association of Justice;

1 g. Board Member of the Consumer Attorneys of California.
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3 I declare under penalty of perjury under the laws of California and the
4 United States of America that the foregoing is true and correct, and that this
5 declaration was executed on February 12, 2016 in Costa Mesa, California
6

7 By: s/ Abbas Kazerounian
8 ABBAS KAZEROUNIAN, ESQ.
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PLAINTIFF'S EXHIBIT 1

Class Settlement Agreement and Release

Elaine Oxina
Individually and On Behalf of
All Others Similarly Situated,

v.

Lands' End, Inc.

Case No. 3:14-cv-02577-MMA-NLS

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626
TELEPHONE: (800) 400-6808

CLASS SETTLEMENT AGREEMENT AND RELEASE

This Class Settlement Agreement and Release (“Agreement”) is made and entered into this ____ day of February 2016, by and between defendant Lands’ End, Inc. (“Lands’ End”) and the Settlement Class (as defined below), acting by and through plaintiff Elaine Oxina (“Oxina” or “Plaintiff” and together with Lands’ End, the “Parties”) and her counsel (collectively, “Plaintiff’s Counsel”).

BACKGROUND

WHEREAS, on October 29, 2014, Oxina, individually and on behalf of a putative class of all similarly situated Lands’ End customers, filed a Complaint captioned *Elaine Oxina v. Lands’ End, Inc.* Case No. 3:14-cv-02577, alleging, *inter alia*, that Lands’ End engaged in unfair and deceptive trade practices in violation of the California Consumer Legal Remedies Act. Specifically, plaintiff alleges that Lands’ End falsely labeled certain apparel products as “Made in the USA” (the “Lawsuit”); and

WHEREAS, Lands’ End and the other Released Parties (defined below) deny any wrongdoing of any kind whatsoever, and, without admitting liability, nevertheless have agreed to enter into this Agreement to avoid further expense, as well as the burdens and risks of litigation; and

WHEREAS, Plaintiff has agreed to serve as the representative of the Settlement Class, has been informed by his counsel of the duties and obligations of a class representative, is familiar with the pleadings in the Lawsuit and the results of the factual investigation undertaken by her counsel, and has been fully advised by counsel as to the terms and effects of this Agreement, including the nature of the claims released, the risk if the Lawsuit were to be litigated to its conclusion, and the relief obtained by the settlement; and

WHEREAS, in evaluating the settlement set forth in this Agreement, Plaintiff's Counsel have concluded that the benefits provided to the Settlement Class under this Agreement make a settlement with Lands' End and the other Released Parties pursuant to such terms and conditions in the best interest of the Settlement Class in light of, among other considerations, the benefits afforded to the Settlement Class, the uncertainty associated with obtaining class certification for liability purposes, the expense and length of time necessary to prosecute this action through trial, and the uncertainty of the outcome of the Lawsuit; and

WHEREAS, the Parties desire to compromise and settle all issues and claims relating to the allegations made in the Lawsuit or that could have been made under the facts alleged in the Lawsuit, by or on behalf of all persons included in the Settlement Class; and

WHEREAS, the Parties, through their respective counsel, have engaged in arm's length negotiations in reaching this Agreement; and

WHEREAS, the Parties, and their respective counsel, believe that the terms of the settlement set forth in this Agreement are fair, reasonable and adequate; and

WHEREAS, the Parties desire and intend to seek Court approval of the settlement as set forth in this Agreement;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Agreement and subject to the entry by the Court of a Final Order and Judgment (as defined below), the Lawsuit shall be settled and compromised on the terms and conditions set forth herein. It is further agreed that each of the recitals stated above is true and accurate, and is hereby made a part of this Agreement.

DEFINITIONS

In addition to any definitions set forth above or elsewhere in this Agreement, the following terms, as used in the Agreement, shall have the meanings set forth below:

- A. The phrase “Kids To-Be-Tied Plaid Necktie” shall refer to the necktie (SKU No. 3668260) identified in Plaintiff’s Second Amended Complaint.
- B. The term “Complaint” shall refer to the Complaint filed in the Lawsuit.
- C. The term “Amended Complaint” shall refer to Plaintiff’s First Amended Complaint filed on November 19, 2014.
- D. The term “Second Amended Complaint” shall refer to Plaintiff’s Second Amended Complaint filed on July 24, 2015.
- E. The term “Court” shall refer to the United States District Court for the Southern District of California.
- F. The phrase “Released Parties” shall refer individually and collectively, as appropriate, to Lands’ End and to all of its predecessors and successors-in-interest, including but not limited to, all of its respective past and present parents, subsidiaries, joint ventures, partnerships, related companies, affiliates, controlled entities, assignees, distributors, retailers, unincorporated entities, divisions, groups, present or former directors, officers, members, agents, employees, representatives, administrators, insurers, indemnitees, and attorneys.
- G. The term “Persons” shall refer to persons and entities, including, without limitation, any individuals, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any other persons or entities.
- H. The phrase “Released Claims” shall refer to any and all claims, damages, suits, demands, liabilities, judgments, losses, and causes of action relating to Lands’ End sale of the “Kids

To-Be-Tied Plaid Necktie” in the state of California from October 29, 2010 through October 19, 2014 of any kind or character, whether known or unknown, matured or unmatured, sounding in law or equity, seeking damages or any other relief (including attorneys’ fees), that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including but not limited to, claims sounding in tort, contract, and the consumer protection laws of the United States or of any state or other jurisdiction within the United States, and all claims, damages, suits, demands, liabilities, judgments, losses, or causes of action which have been, might have been, are now, or could be asserted by any Plaintiff or any Settlement Class Member in an individual or representative capacity (including on behalf of the general public) arising out of, based upon, or related to, in whole or in part, the facts and circumstances underlying the claims and causes of action set forth in the Lawsuit.

- I. The phrase “Settlement Class” shall refer to all Persons who, at any time from October 29, 2010 through October 29, 2014, purchased the “Kids To-Be-Tied Plaid Necktie” in the State of California. Lands’ End has represented to Plaintiff that the Settlement Class consists of thirty-eight (38) consumers. The Released Parties, and their respective officers, directors, employees, and counsel, and Plaintiffs’ Counsel, are not included in the Settlement Class, nor are any federal judges or members of their families within the first degree of consanguinity.
- J. The phrase “Settlement Class Member” shall refer to any Person included within the Settlement Class who does not timely exercise his or her right to opt out of the Settlement Class pursuant to Section 10 below.

- K. The phrase “Settlement Effective Date” shall mean the later of the date upon which all appeals, if any, from the Final Order and Judgment (defined below) have been finally concluded and exhausted, or the date upon which the time to seek any appellate remedy (including rehearing or writ of *certiorari* to the United States Supreme Court) from the Final Order and Judgment has expired.
- L. The phrase “Final Order and Judgment” shall mean an order of dismissal and final judgment entered by the Court in the Lawsuit dismissing the claims asserted in the Lawsuit, granting final approval of the terms and conditions of the settlement as set forth in this Agreement, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and entering judgment according to the terms set forth in this Agreement.
- M. The phrase “Best Efforts” shall mean the efforts that a reasonable person in the position of the Party would use to fulfill an obligation as diligently and expeditiously as possible under the circumstances.

TERMS OF AGREEMENT

1. Non-Admission of Liability. This Agreement is made for settlement purposes only, and neither the fact of, nor any specific provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged by Plaintiff or by any other Person included within the Settlement Class of any wrongdoing, fault, violation of law, or liability of any kind on the part of Lands’ End. This Agreement constitutes a compromise pursuant to Fed. R. Evid. 408(a) and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable. It shall not be offered or be admissible, either in whole or in part, as evidence against Lands’ End, except in any action or proceeding to enforce its terms.

2. Settlement Class. For purposes of settlement only, not for purposes of liability, and subject to Court approval, there will be certified in the Lawsuit a statewide class of Lands' End' customers, pursuant to Fed. R. Civ. P. 23(a) and (b)(2), whose members shall comprise only those Persons defined above as the Settlement Class. Subject to the terms and conditions of this Agreement, the Parties agree not to oppose any efforts to certify such a class. Any certification pursuant to this Section shall not constitute, in this or any other proceeding, an admission, finding or evidence that any requirement for class certification is otherwise satisfied, except for the expressly enumerated purposes in this Agreement.

3. Preliminary Approval. No later than 30 business days from the date of full execution of this Agreement (unless such time is extended by mutual agreement of the Parties), Plaintiff, through Plaintiff's Counsel, shall present this Agreement to the Court by way of motion or otherwise, seeking certification of the Settlement Class and preliminary approval of this Agreement (the "Submission for Preliminary Approval"). Lands' End, through its counsel, shall join in the Submission for Preliminary Approval. In connection with the Submission for Preliminary Approval, Plaintiff, through Plaintiff's Counsel, shall apply for an order substantially in the form of Exhibit A to this Agreement ("Order of Preliminary Approval"). The Submission for Preliminary Approval shall request:

- (a) Preliminary approval of this Agreement;
- (b) Certification for settlement purposes of the Settlement Class, pursuant to Fed. R. Civ. P. 23(b)(3);
- (c) Appointment of Plaintiff's Counsel as counsel for the Settlement Class;
- (d) Appointment of Plaintiff as class representative for the Settlement Class; and

- (e) Approval of the notice proposed in this Agreement in a form substantially similar to Exhibit B.

4. Notice to the Settlement Class. No later than 30 days after the entry of the Order of Preliminary Approval (unless otherwise specifically modified below), Lands' End shall cause notice to be disseminated as directed in the Order of Preliminary Approval as follows:

Lands' End will send the direct notice by e-mail and U.S. Mail to all Members of the Settlement Class for whom it has a valid e-mail address and to the last known mailing address contained in Lands' End's records.

The Parties agree that the method of notice set forth in this Section constitutes the best form of notice to the Settlement Class that is practicable under the circumstances. Lands' End shall pay all costs associated with disseminating and publishing the Notice to the Settlement Class and all associated expenses, which shall be in addition to and not deducted from the settlement compensation described in Section 6 below or the amount of attorneys' fees and expenses described in Section 12 below. Except as provided for in subsection (e) above, the Parties and their respective counsel will refer inquiries from the press and all parties other than individual consumers to the settlement documents.

5. Final Approval

a. The Parties shall request that the Court hold a fairness hearing no later than 90 days from entry of the Order of Preliminary Approval. At the fairness hearing, the Parties shall jointly request that the Court enter an order and judgment pursuant to Fed. R. Civ. P. 54(a) in the form of Exhibit C to this Agreement (the "Final Order and Judgment"), which shall finally approve the terms of this Agreement, dismiss the Lawsuit with prejudice and order the Parties and Settlement Class Members to dismiss any related actions, discharge the Released Parties of

and from all further liability to Plaintiff and Settlement Class Members with respect to the Released Claims (but not as to any obligations created or owed pursuant to this Agreement), and permanently barring and enjoining Plaintiff and Settlement Class Members from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, assisting in any way, formally or informally, or receiving any benefits from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or cause of action in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims. The actual form of Final Judgment and Order entered by the Court may include additional provisions as to which the Parties may subsequently agree, or which the Court may direct, that are not inconsistent with any of the express terms or conditions of this Agreement.

b. Following entry by the Court of the Final Order and Judgment, no default by any Person in the performance of any covenant or any obligation arising under this Agreement, or any order of judgment entered in connection therewith, shall affect the dismissal of the Lawsuit, the discharge and release of the Released Parties, or any other provision of this Agreement. The above notwithstanding, nothing in this sub-section shall prevent a Party from seeking enforcement of or compliance with the terms of this Agreement, or the intervention of the Court to compel any such default to be cured.

6. Settlement Consideration. In consideration for the dismissal of the Lawsuit under the terms of this Agreement, the Parties agree as follows:

a. Settlement Class Members shall be eligible to receive a refund of their purchase price plus interest at the rate of ten percent per annum from the date of purchase, without making a claim.

b. Lands' End will administer payment to the Settlement Class through its customer service department and all costs and expenses of class notice and administration of claims shall be paid and borne by Lands' End outside of the compensation being offered to Class Members; and send a Declaration to Class Counsel of the timing and results of the refund within ten (10) days of issuance.

c. If Lands' End and Plaintiffs' Counsel are unable to resolve any disputes concerning the administration of the claims, those disputes may be submitted to the Honorable Judge Nita L. Stormes.

7. **Best Efforts of Parties.** The Parties agree to undertake their respective Best Efforts to effectuate the Settlement described in this Agreement. The Parties shall encourage the Court to approve the Agreement, and shall not encourage anyone included within the Settlement Class to object to the Court's approval of the Agreement. The Parties further represent, agree and acknowledge that the Settlement is a fair resolution of these claims for the Parties and the Settlement Class Members. Neither the Parties nor their respective counsel shall make any statements suggesting the contrary, either before or after the Court's approval of the Settlement and this Agreement.

8. **Objections to Settlement.** Any Settlement Class Member may object to the fairness, reasonableness or adequacy of the proposed Settlement. Each Settlement Class Member who wishes to object to any term of this Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to the Parties' respective counsel at the addresses set forth in Section 24 below. Any such objection must be filed with the Clerk of the Court and received by the Parties' respective counsel no later than 15 days prior to the date for the fairness hearing. Any such objection must (a) identify the date on which the objecting

party purchased a “Kids To-Be-Tied Plaid Necktie” in the state of California, (b) attach copies of any materials that will be submitted to the Court or presented at the fairness hearing, (c) be signed by the Settlement Class Member, and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Settlement Class Member’s name, address and telephone number, and (iii) if represented by counsel, such counsel’s name, address and telephone number. (e) Any attorney representing an objector must list all objections previously filed for anyone, the case name, court, and case number, and how much, if any amount, was paid in connection with the objection. Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, may be deemed ineffective, and will be deemed by the Parties to have been waived, and the Parties will argue that the Settlement Class Member asserting such objection shall be bound by the final determination of the Court.

9. Requests to Appear at Fairness Hearing. Settlement Class Members or their counsel who wish to appear at the fairness hearing must make such request by notifying the Court and the Parties’ respective counsel in writing at the addresses set forth in Section 24 below. Any such request must be filed with the Clerk of the Court and received by the Parties’ respective counsel no later than 15 days before the date of the fairness hearing, and must state the name, address and telephone number of the Settlement Class Member, as well as the name, address and telephone number of the person who will appear on his or her behalf. Any such request must further (a) indicate that the Settlement Class Member has previously or contemporaneously objected to the Settlement in compliance with the requirements of Section 8 of this Agreement, (b) identify the date on which the objecting party purchased a “Kids To-Be-Tied Plaid Necktie” in the state of California, (c) contain the Settlement Class Member’s signature, and (d) include a detailed statement of the ground(s) for objection that the Settlement

Class Member intends to raise at the fairness hearing. Any request for appearance that fails to satisfy the requirements of this section, or that has not been properly or timely submitted, may be deemed ineffective, and shall be deemed to constitute a waiver of such Settlement Class Member's rights to appear and to comment on the settlement at the fairness hearing.

10. Requests for Exclusion (Opt Out) from Settlement Class Membership. Any Person included within the Settlement Class who wishes to be excluded from membership in the Settlement Class must do so in writing by mailing a written request for exclusion from the Settlement to the Parties' respective counsel at the addresses set forth in Section 24 below. Such request must be postmarked no later than 15 days before the date for the fairness hearing. The request must (a) be signed by the Settlement Class Member, (b) identify the date on which the Settlement Class Member purchased a "Kids To-Be-Tied Plaid Necktie" in the state of California, (c) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from the Settlement Class, and (d) include the Settlement Class Member's name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number. Any Person within the Settlement Class who wishes to be excluded from the Settlement Class can only opt out for himself or herself and, except for minors, cannot opt out for any other Person. Nor can any Person within the Settlement Class authorize any other Person to opt out on his or her behalf. Any request for exclusion that fails to satisfy the requirements of this Section, or that has not been timely sent, may be deemed ineffective, and any Person included within the Settlement Class who does not properly and timely submit a request for exclusion shall be deemed by the Parties to have waived all rights to opt out, and shall be deemed a Settlement Class Member for all purposes under this Agreement.

11. Failure of Court to Approve this Settlement Agreement. If (a) preliminary or final approval of this Agreement and the Settlement is not obtained from the Court, (b) the Final Order and Judgment in the form attached as Exhibit C to this Agreement is materially modified by the Court, and any of the Parties objects to such modification, or (c) any objector appeals from the Court's entry of the Final Order and Judgment and such order is reversed in whole or in part by a final decision of an appellate court (in the event of a partial reversal, the Parties shall have the right to elect to be bound by this Agreement as modified by the appellate court), and (d) either Party provides written notice to the other Party within 20 business days of one of the occurrences described in these sub-sections (a) through (c) above, then this Agreement shall be null and void, shall have no further force and effect with respect to any Party, and shall not be offered in evidence or used in the Lawsuit (or in any other matter) for any purpose, including that relating to the existence, certification or maintenance of any putative class or subclass of plaintiffs. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties or the Settlement Class Members, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter for any purpose, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. In such event, any Party may move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement, and no Party shall object thereto. To the extent feasible, the Parties shall be returned to their respective positions in the Lawsuit as of August 24, 2015, the date on which Lands' End filed its Motion to Dismiss Plaintiff's Second Amended Complaint. The Lawsuit shall then proceed in all material respects as if this Agreement and any related orders had never been executed. A modification or

reversal on appeal of the resolution of any dispute relating to the claim of anyone claiming to be a Settlement Class Member shall not be deemed a material modification of this Agreement.

12. Attorneys' Fees and Expenses.

a. Lands' End agrees not to oppose an award by the Court of reasonable attorneys' fees and litigation costs through the entry of the Final Order and Judgment, to Plaintiff's Counsel in an amount not to exceed \$32,500 in fees and expenses, subject to Court approval. Plaintiff's Counsel agrees that they will not seek attorneys' fees and litigation costs that exceed \$32,500, in the aggregate. Plaintiff's Counsel's application for an award of attorneys' fees and costs pursuant to this subsection shall be made no later than thirty (30) days prior to any opt out or objection period. Such application will be heard at the time of the Fairness Hearing or as soon thereafter as may be determined by the Court. Within 14 days of the entry of an Order of Final Approval or a separate Order entered after Final Approval, if applicable, approving Plaintiffs' application for fees and expenses, Lands' End will pay to Plaintiff's Counsel the amount ordered by the Court up to \$32,500. The amount paid to Plaintiff's Counsel shall be held in escrow by Plaintiff's Counsel until the Effective Date, at which time the money may be disbursed. If any objector appeals from the Court's entry of the Final Order and Judgment and such order is reversed in whole or in part by a final decision of an appellate court, Plaintiff's Counsel shall refund any and all attorneys fees and expenses paid, unless the whole or part of the attorneys' fees and costs are affirmed.

b. The Parties' negotiation of and agreement to the foregoing attorneys' fees and expenses did not occur until after the substantive terms of this Agreement had been negotiated and agreed upon.

c. If and to the extent that counsel other than those counsel identified in this Agreement apply for an award of attorneys' fees and expenses, Lands' End reserves the right to oppose all such applications on any grounds, including, but not limited to, that Lands' End has not agreed to pay such fees and expenses and that they are unreasonable or duplicative. Plaintiff's Counsel hereby warrant and represent that, as of the date of this Agreement, they are unaware of any other counsel who intend to apply for an award of attorneys' fees and expenses.

d. If this Agreement is terminated pursuant to any of its provisions or for any other reason, Lands' End's obligations under this Section, including the obligation to pay any amount of attorneys' fees, expenses or incentive awards, shall likewise be terminated.

e. Payment by Lands' End of any attorneys' fee and expense award pursuant to this Section, as approved by the Court, will completely satisfy any and all obligations on its part or on the part of the other Released Parties to pay attorneys' fees, costs and expenses under this Agreement. The Released Parties shall have no responsibility or liability whatsoever regarding the payment of attorneys' fees, costs and expenses other than as set forth in this Section.

f. Any application for an award of attorneys' fees and expenses is to be considered separate from the approval of this Settlement, and any challenges thereto shall not terminate or delay the Settlement.

13. Release, Waiver and Covenant Not to Sue.

a. Effective as of the Settlement Effective Date, and in consideration of this Agreement and the benefits extended to the Settlement Class, Plaintiff, on behalf of herself and the Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities,

divisions, groups, directors, officers, shareholders, employees, agents, attorneys, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, fully release and forever discharge the Released Parties from the Released Claims.

b. Effective as of the Settlement Effective Date, and in consideration of this Agreement and the benefits extended to the Released Parties, Lands' End fully releases and forever discharges Plaintiff, Plaintiffs' Counsel and the Settlement Class from any claims, damages, suits, demands, liabilities, judgments, losses, and causes of action relating to the filing of the Lawsuit.

c. Plaintiff, on behalf of herself and the Settlement Class Members, fully understands that if any fact relating to any matter covered by this Agreement is later found to be other than or different from the facts now believed by Plaintiff to be true, Plaintiff, on behalf of herself and the Settlement Class Members, expressly accepts and assumes the risk of such possible differences in fact, and agrees and acknowledges that this Agreement shall nevertheless remain fully binding and effective.

d. Plaintiff expressly understands and acknowledges that certain state statutes and principles of common law provide that a "general" release does not extend to claims that a releasor does not know or suspect to exist in his, her or its favor at the time of executing the release and which, if known, must have materially affected the settlement with the releasee. To the extent that any Settlement Class Member may argue that such statutes or principles of common law are applicable here, Plaintiff, on behalf of herself and the Settlement Class Members, agree that any such statutes, principles of common law or other sources of legal authority of any and all jurisdictions that may be applicable are hereby knowingly and

voluntarily waived and relinquished by the Settlement Class Members, and further agree and acknowledge that this is an essential term of this Agreement.

e. Upon entry of the Final Order and Judgment, Plaintiff shall have, and each and every Settlement Class Member shall be deemed to have, on behalf of the Settlement Class Member and the Settlement Class Member's respective successors assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, covenanted and agreed to:

i. forever refrain from instituting, maintaining, or proceeding in any action against the Released Parties with respect to any Released Claims;

ii. release and forever discharge the Released Parties from each and every such Released Claim; and

iii. indemnify and hold harmless the Released Parties from all liability and expenses (including attorneys' fees) incurred by the Released Parties as the result of a breach of this covenant-not-to-sue by a Settlement Class Member. Liability for this indemnification shall be limited solely to the Settlement Class Member(s) responsible for breaching the covenant-not-to-sue.

f. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for a temporary restraining order or preliminary or permanent injunction against, any action, suit or other proceeding, which has been or may be instituted, prosecuted, continued to be prosecuted, or attempted, asserting any claim released by this Agreement, if not voided through one of the mechanisms described in the Agreement.

14. Entire Agreement. This Agreement shall constitute the entire agreement between Lands' End and Plaintiff, on behalf of herself and the Settlement Class, and supersedes and replaces any prior agreements and understandings, whether oral or written, between and among them, with respect to such matters. This Agreement shall not be subject to any change, modification, amendment, or addition, without the express written consent of all Parties, and may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. If after the Order of Preliminary Approval, this Agreement shall not be subject to any change, modification, amendment or addition without the express written consent of all Parties and approval by the Court.

15. Binding, Severable Agreement. This Agreement shall benefit and bind the Parties, as well as their representatives, heirs and successors, and shall be construed as a whole, according to its plain meaning. If for any reason any provision of this Agreement other than Sections 6 or 13 shall be determined by a court of competent jurisdiction to be invalid, inoperative, illegal, unenforceable, or void, the validity and effect of the other provisions shall not be affected thereby, and this Agreement shall continue in full force and effect without said provision.

16. Continuing Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, over the administration and enforcement of the Settlement and this Agreement, and over the distribution of benefits to the Settlement Class. The Court also shall retain continuing and exclusive jurisdiction in connection with the injunction set forth in Section 5(a) above. The Court also shall retain continuing and exclusive jurisdiction in connection with any Person included within the Settlement Class who wishes to opt out, as set forth in Section 10 above. Any disputes or controversies arising with

respect to the interpretation, enforcement or implementation of the settlement or this Agreement must be submitted by formal and proper motion to the Court.

17. No Assignment. The Parties each represent and warrant that they have not assigned, transferred or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement.

18. Choice of Law. The validity, construction, interpretation, performance, and enforcement of this Agreement shall be governed by the internal, substantive laws of California without giving effect to California choice of law principles.

19. Counterparts. This Agreement may be executed in one or more counterparts, either manually or by telecopy. All executed counterparts, and each of them, shall be deemed to be one and the same original instrument. This Agreement shall be deemed executed as of the date of the last signature executed below. The Parties shall exchange among themselves original, signed counterparts, and a complete set of such counterparts shall be filed with the Court as an exhibit to the Submission for Preliminary Approval.

20. Advice of Counsel. Each of the Parties has had the benefit of the advice of counsel in the negotiation, drafting and execution of this Agreement, and the language in all parts of this Agreement is the product of the efforts of such counsel.

21. Authority. The Parties each represent and warrant that they have authority to enter into this Agreement, subject to certification of the Settlement Class and approval of this Agreement by the Court.

22. CAFA Notice. Lands' End shall serve notice of this Settlement in a form that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 14 days after this Agreement has been filed with the Court.

23. Neither Party is Drafter. Neither of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement, or of any of its provisions, for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

24. Notification. Except as otherwise described in the Settlement Notice attached as Exhibit B to this Agreement, all notices and other communications referenced in this Agreement shall be in writing and shall be served by overnight mail or by registered or certified mail, return receipt requested, addressed to the Parties' counsel at their respective addresses as set forth below:

Notices to Plaintiff or the Settlement Class Members

Abbas Kazerounian, Esq.
Kazerouni Law Group, APC
245 Fischer Avenue, Unit D1
Costa Mesa, California 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

Joshua B. Swigart, Esq.
Hyde & Swigart
2221 Camino Del Rio South, Suite 101
San Diego, California 92108
Telephone: (619) 233-7770
Facsimile: (619) 297-1022

Notices to Lands' End

Francis A. Citera, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601

25. Time for Compliance. If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of February ____, 2016, but actually signed this Agreement on the dates set forth below.

ELAINE OXINA

By: _____
Abbas Kazerounian
Counsel for Plaintiff

Dated: _____, 2016

By: _____
Joshua B. Swigart
Counsel for Plaintiff

Dated: _____, 2016

LANDS' END, INC.

By: _____

Dated: _____, 2016

CHI 66403508v3

25. Time for Compliance. If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of February __, 2016, but actually signed this Agreement on the dates set forth below.

ELAINE OXINA

By: 

Abbas Kazerounian
Counsel for Plaintiff

Dated: February 10, 2016

By: 

Joshua B. Swigart
Counsel for Plaintiff

Dated: 02/10/16, 2016

LANDS' END, INC.

By: _____

Dated: _____, 2016

CHI 66403508v3

25. **Time for Compliance.** If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of February __, 2016, but actually signed this Agreement on the dates set forth below.

ELAINE OXINA

By: 

Abbas Kazerounian
Counsel for Plaintiff

Dated: February 10, 2016

By: 

Joshua B. Swigart
Counsel for Plaintiff

Dated: 02/10/16, 2016

LANDS' END, INC.

By: 

Counsel For Lands' End

Dated: February 11, 2016

CHI 66403508v3

EXHIBIT A

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7 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

8 **ELAINE OXINA;**
9 **INDIVIDUALLY AND ON**
10 **BEHALF OF ALL OTHERS**
11 **SIMILARLY SITUATED,**

12 Plaintiff,

13 v.

14 **LANDS' END, INC.,**

15 Defendant.
16

Case No.: 3:14-cv-02577-MMA-NLS

ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND DIRECTING DISSEMINATION
OF CLASS NOTICE

17
18 WHEREAS Plaintiff Elaine Oxina ("Plaintiff"), moved for an Order,
19 pursuant to Federal Rule of Civil Procedure 23(e), seeking preliminary approval of
20 a class action settlement, and directing the dissemination of class notice (the
21 "Motion"); and

22 WHEREAS Defendant Lands' End, Inc. ("Lands' End") joined in the
23 Motion; and

24 WHEREAS the Court reviewed the submissions of the parties, held a
25 hearing on _____ (the "Preliminary Approval Hearing"), and found that the
26 parties are entitled to the relief they seek;

27 IT IS ORDERED that the Motion is GRANTED, subject to the following
28 terms and conditions:

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

1 1. The proposed Class Settlement Agreement and Release dated
2 February __, 2016 (the “Settlement Agreement”), submitted with the Motion, is
3 preliminarily approved as being within the range of potential final approval.¹

4 2. Based upon the submissions of the parties, and for purposes of this
5 settlement only, the Court conditionally makes the following findings:

6 a. With respect to the Settlement Class, the Court finds and
7 concludes that:

8 (i) the Settlement Class Members are so numerous as to make
9 joinder of them impracticable;

10 (ii) there are questions of law and fact common to the
11 Settlement Class;

12 (iii) Plaintiff’s claims and the defenses asserted thereto are
13 typical of the claims of Settlement Class Members and the
14 defenses asserted thereto;

15 (iv) Plaintiff and her counsel have fairly and adequately
16 protected the interests of Settlement Class Members throughout
17 this action; and

18 (v) Accordingly, for settlement purposes only, the Court
19 preliminarily approves Plaintiff as a representative of the
20 Settlement Class, and conditionally certifies a Settlement Class
21 comprised of all Persons who, at any time from October 29,
22 2010 through October 29, 2014, purchased the “Kids to-be-tied
23 Plaid Necktie” (SKU No. 3668260) in the State of California.

24 3. The Settlement Class is preliminarily certified for settlement purposes
25 only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). If the Court
26 does not finally approve the settlement, Lands’ End retains the right to assert that

27 _____
28 ¹ All defined terms set forth herein shall have the same meaning as that in the Settlement
Agreement.

1 this action may not be certified as a class action, and no party shall rely on this
2 preliminary approval as support for the certification of a class in this or any other
3 action.

4 4. Kazerouni Law Group, APC and Hyde & Swigart appointed as Class
5 Counsel.

6 5. A final hearing (the "Fairness Hearing") shall be held before this
7 Court on _____, 2016 at _____ a.m./p.m., to determine whether (a) this
8 action meets each of the prerequisites for class certification set forth in Federal
9 Rule of Civil Procedure 23(a), and may properly be maintained as a class action on
10 behalf of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b)
11 the Settlement Agreement should receive final approval as fair, reasonable,
12 adequate, and in the best interests of the Settlement Class; (c) orders granting final
13 approval of the Settlement Agreement, entering final judgment and dismissing the
14 Second Amended Complaint with prejudice, as provided in the Settlement
15 Agreement, should be entered; and (d) the application of Class Counsel for the
16 payment of attorneys' fees and expenses. The Fairness Hearing may be postponed,
17 adjourned or continued by further order of this Court, without further notice to the
18 parties or the members of the Settlement Class.

19 6. At the Fairness Hearing the Court will consider and determine
20 whether the Settlement Agreement should be finally approved as fair, adequate
21 and reasonable in light of any objections presented by Settlement Class Members
22 and the parties' responses to any such objections.

23 7. Any Settlement Class Member may object to the fairness,
24 reasonableness or adequacy of the settlement. Any member of the Settlement
25 Class who so objects may appear at the Fairness Hearing, in person or through
26 counsel, to show cause why the settlement should not be approved as fair,
27 adequate and reasonable. Each Settlement Class Member who wishes to object to
28 any term of the Settlement Agreement must do so in writing by filing a written

objection with the Clerk of the Court and mailing it to counsel for the parties at the addresses set forth in the Settlement Agreement. Any such objection must be filed with the Clerk of the Court and received by counsel for the parties no later than 30 days before the date of the Fairness Hearing. The objection must

(a) identify the date on which the objecting party purchased a “Kids to-be-tied Plaid Necktie” (SKU No. 3668260) in the State of California.

(b) attach copies of any materials that will be submitted to the Court or presented at the Fairness Hearing;

(c) be signed by the Settlement Class Member; and

(d) clearly state in detail

(i) the legal and factual ground(s) for the objection;

(ii) the Settlement Class Member’s name, address and telephone number; and

(iii) if represented by counsel, such counsel’s name, address and telephone number.

(e) any attorney representing an objector must list all objections previously filed for anyone, the case name, court, and case number, and how much, if any amount, was paid in connection with the objection.

Any objection that fails to satisfy the requirements of this paragraph, or that is not properly and timely submitted, shall not be effective, will not be considered by this Court, and will be deemed waived, and those Settlement Class Members shall be bound by the final determination of this Court.

8. Any Person included within the Settlement Class who wishes to be excluded, or to “opt out,” from membership in the Settlement Class must do so in writing by mailing a request for exclusion from the Settlement to counsel for the parties at the addresses set forth in the Settlement Agreement, so that such request is postmarked no later than 30 days before the date of the Fairness Hearing. Such a request must

1 (a) be signed by the Settlement Class Member;

2 (b) identify the date on which the objecting party purchased a “Kids to-be-
3 tied Plaid Necktie” (SKU No. 3668260) in the State of California.

4 (c) clearly express the Settlement Class Member’s desire to be excluded
5 from the Settlement Class; and

6 (d) include the Settlement Class Member’s name, address and telephone
7 number; and, if represented by counsel, counsel’s name, address and telephone
8 number.

9 Any Person within the Settlement Class who wishes to be excluded from the
10 Settlement Class can only opt out for himself or herself and, except for minors,
11 cannot opt out for any other Person. No Person within the Settlement Class may
12 authorize another Person to opt out on his or her behalf. Any request for exclusion
13 that fails to satisfy the requirements of this paragraph, or is not properly or timely
14 submitted, shall not be effective, and the Person making such a request shall be
15 deemed to have waived all rights to opt out of the Settlement, and to be a
16 Settlement Class Member for all purposes pursuant this Order.

17 9. Except for good cause shown, no person (other than the parties and
18 their respective representatives and counsel) may appear or be heard at the Fairness
19 Hearing, or file papers, briefs or other submissions regarding the Fairness Hearing,
20 unless no later than 15 days prior to the date of the Fairness Hearing, such person
21 or their counsel files with the Clerk of this Court and simultaneously serves on
22 counsel for all parties at the addresses set forth in the Settlement Agreement a
23 timely, written notice of request to appear at the Fairness Hearing. Such notice
24 must:

25 (a) state the name, address and telephone number of the Settlement Class
26 Member, as well as the name, address and telephone number of the person who
27 seeks to appear at the Fairness Hearing on his or her behalf;
28

(b) indicate that the Settlement Class Member has previously or contemporaneously objected to the Settlement in compliance with the requirements of paragraph 8 of this Order;

(c) identify the date on which the objecting party purchased a “Kids to-be-tied Plaid Necktie” (SKU No. 3668260) in the State of California;

(d) contain the Settlement Class Member’s signature; and

(e) include a detailed statement of the ground(s) for objection that the Settlement Class Member intends to raise at the Fairness Hearing.

Any request to appear that fails to satisfy the above requirements, or that is not properly and timely submitted, shall not be effective and will not be considered by this Court, and the Person who made such a request shall not be permitted to appear or be heard at the Fairness Hearing, or otherwise comment on the settlement.

10. The Court finds that the manner and content of the Settlement Notice set forth in Exhibit B to the Settlement Agreement will provide the best notice practicable to the Settlement Class under the circumstances. All costs incurred in connection with the preparation and dissemination of any notices to the Settlement Class shall be borne by Lands’ End.

11. If the Settlement Agreement is finally approved, the Court shall enter a separate order finally approving the Settlement Agreement, entering judgment and dismissing the Class Action Complaint with prejudice. Such order and judgment shall be fully binding with respect to all members of the Settlement Class.

12. In the event that the proposed settlement provided for in the Settlement Agreement is not approved by this Court, or entry of the final order and judgment described above does not occur for any reason, then the Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by this Court in connection therewith shall become null and void. In such event, the Settlement Agreement and all negotiations and

1 proceedings relating thereto shall be withdrawn without prejudice to the rights
2 of the parties, who shall be restored to their respective positions as of August 24,
3 2015.

4 13. The parties shall abide by the following scheduled dates:

5 (a) The direct notice to the Settlement Class shall be disseminated by
6 Lands' End, as more fully described in the Settlement Agreement, within 30 days
7 of entry of this Order.

8 (b) The parties shall file and serve papers in support of final approval
9 of the settlement, including any responses to proper and timely objections filed
10 thereto, within 120 days following dissemination of notice to the Settlement Class.

11 (c) Class Counsel shall file any applications for an award of attorneys'
12 fees, costs and litigation expenses, or incentive awards to Plaintiff within forty-five
13 (45) days prior to the Fairness Hearing and subject to the terms of the Settlement
14 Agreement. Defendant has agreed not to oppose such application by Class
15 Counsel so long as the amounts requested are not more than a total of \$32,500.

16 (d) The Fairness Hearing shall be held at _____ a.m./p.m. on
17 _____, 2016 in Courtroom 3A of the United States District Court for the
18 Southern District of California, Edward J. Schwartz U.S. Courthouse, 221 West
19 Broadway, San Diego, California 92101. Plaintiff requests that the hearing be held
20 not before 150 days after the dissemination of notice to the Settlement Class in
21 order to allow sufficient time for Class Members to opt-out or object to the
22 Settlement.

23 14. This Court hereby enters a Preliminary Injunction barring and
24 enjoining Plaintiff and all Settlement Class Members, to the extent permissible by
25 existing law, from bringing, filing, commencing, prosecuting (or further
26 prosecuting), maintaining, intervening in, participating in, or receiving any benefits
27 from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding
28 in law or equity that asserts, arises from, concerns, or is in any way related to the

Released Claims identified in the Settlement Agreement, until such time as this Court has ruled on the fairness of the settlement terms following the Fairness Hearing.

IT IS SO ORDERED.

Dated: _____, 2016

Honorable Michael M. Anello
United States District Court Judge

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, SUITE D1
COSTA MESA, CA 92626

EXHIBIT B

**IF YOU PURCHASED A “KIDS TO-BE-TIED PLAID NECKTIE” FROM
LANDS’ END YOU MAY BE ELIGIBLE
TO RECEIVE BENEFITS FROM A CLASS ACTION SETTLEMENT**

WHAT’S THIS CASE ABOUT?

This lawsuit, *Elaine Oxina v. Lands’ End, Inc.*, Case No. 3:14-cv-01577 (S.D. Ca.) filed in the Southern District of California claims that Lands’ End engaged in unfair and deceptive trade practices. Specifically, Plaintiff alleges that Lands’ End falsely labeled a “Kids to-be-tied Plaid Necktie” (SKU No. 3668260) as “Made in the U.S.A.” Lands’ End denies any wrongdoing in connection with the sale of the “Kids to-be-tied Plaid Necktie” (SKU No. 3668260).

WILL THERE BE A HEARING?

The Court will hold a fairness hearing at _____ a.m./p.m. on _____, 2016 to consider whether to approve the settlement. The hearing will be held at the U.S. District Court for the Southern District of California, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, Courtroom 3A, San Diego, California 92101. You may appear at the Fairness Hearing, but it is not required.

WHO IS INCLUDED?

The “Settlement Class” includes all Persons who, at any time from October 29, 2010 through October 29, 2014, purchased the “Kids to-be-tied Plaid Necktie” (SKU No. 3668260) (“the Necktie”) in the State of California.

WHAT BENEFITS DOES THE SETTLEMENT PROVIDE?

If the settlement is approved by the Court, all Settlement Class Members will automatically receive a refund of their purchase price plus interest at the rate of ten percent per annum from the date of purchase.

WHAT ARE THE ATTORNEYS’ FEES?

Plaintiff’s counsel will ask the Court for attorneys’ fees and expenses up to \$32,500. The Court may award less than this amount. Lands’ End has agreed to pay such attorneys’ fees and expenses as may be awarded by the Court up to \$32,500.

WHAT ARE YOUR OPTIONS?

1. You are receiving this notice because you are a Member of the Settlement Class. Accordingly, if you do nothing, you will receive a refund of the purchase price plus interest at the rate of ten percent per annum.
2. You can object to the settlement, or to the application for attorneys’ fees and expenses. Written objections must be filed with the Court and copies mailed to counsel by _____, 2016. Full details on how to object can be found in the attached Settlement Agreement. You can only

object to the settlement if you purchased the Necktie between October 29, 2010 and October 29, 2014 and did not elect to opt out of the Settlement Class, as described below.

3. You can opt out of the settlement. Written request for exclusion must be mailed to counsel postmarked no later than _____, 2016. If you opt out of the settlement, you will no longer be a Settlement Class Member, and you will not be bound by the settlement and will not receive a refund.

HOW DO I GET MORE INFORMATION?

For further details, call (800) 400-6808, write to: Kazerouni Law Group APC, 245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626, or visit www.kazlg.com.

EXHIBIT C

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7 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

8 **ELAINE OXINA;**
9 **INDIVIDUALLY AND ON**
10 **BEHALF OF ALL OTHERS**
11 **SIMILARLY SITUATED,**

12 Plaintiff,

13 v.

14 **LANDS' END, INC.,**

15 Defendant.
16

Case No.: 3:14-cv-02577-MMA-NLS

ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

17
18 On _____, 2016, Plaintiff Elaine Oxina ("Plaintiff") and Defendant
19 Lands' End, Inc. ("Lands' End" or "Defendant") (jointly referred to herein as the
20 "Parties") entered in to a Class Action Settlement Agreement (hereinafter referred
21 to as the "Settlement Agreement" or "SA"), which is subject to review under Fed.
22 R. Civ. P. 23.

23 On _____, 2016, Plaintiff filed a Motion for Preliminary Approval of
24 Class Action Settlement and Certification of Settlement Class (hereinafter referred
25 to as the "Preliminary Approval Motion") in the above-captioned action (the
26 "Action").

27 On _____, 2016, Plaintiffs filed the Settlement Agreement, along
28 with the Plaintiff's Preliminary Approval Motion. The Preliminary Approval

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1 Motion was unopposed by Defendant.

2 On _____, 2016, upon consideration of the Agreement, Preliminary
3 Approval Motion, and the record, the Court entered an Order of Preliminary
4 Approval of Class Action Settlement (hereinafter referred to as the “Preliminary
5 Approval Order”).

6 On _____, 2016, the Plaintiff filed a Motion for Final Approval of
7 Class Action Settlement (hereinafter referred to as the “Final Approval Motion”).
8 Pursuant to Plaintiff’s Final Approval Motion, Plaintiff requests final certification
9 of the settlement class under Fed. R. Civ. P. 23(b)(3) and final approval of the
10 proposed class action Settlement.

11 On _____, 2016, the Court held a Final Approval Hearing pursuant
12 to Fed. R. Civ. P. 23 to determine whether the Action satisfies the applicable
13 prerequisites for class action treatment and whether the proposed settlement is
14 fundamentally fair, reasonable, adequate, and in the best interests of the Class
15 Members and should be approved by the Court.

16 The Court has read and considered the Agreement, Final Approval Motion
17 and the record.

18 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

19 **I. JURISDICTION:** The Court has jurisdiction over the subject matter of the
20 Action and over all settling parties hereto.

21 A. The Class or Settlement Class Members consist of:

22 All Persons who, at any time from October 29, 2010
23 through October 29, 2014, purchased the “Kids to-be-tied
24 Plaid Necktie” (SKU No. 3668260) (“the Necktie”) in the
25 State of California.

26 **II. SETTLEMENT CLASS MEMBERS:** Pursuant to Fed. R. Civ. P.
27 23(b)(3), the Action is hereby finally certified, for settlement purposes only,
28 as a class action on behalf of the following class members:

1 **III. CLASS REPRESENTATIVE AND CLASS COUNSEL:** Pursuant to Fed.
2 R. Civ. P. 23, the named Plaintiff, Elaine Oxina, is designated as the Class
3 Representative, and Abbas Kazerounian of the Kazerouni Law Group, APC
4 and Joshua B. Swigart of Hyde & Swigart are certified as Class Counsel.

5 **IV. NOTICE AND CLAIMS PROCESS:** Pursuant to the Court's Preliminary
6 Approval Order, the Claims Administrator, _____, has complied with the
7 approved notice process as confirmed in its declaration filed with the Court.
8 The form and method for notifying the Class Members of the Settlement and
9 its terms and conditions was in conformity with this Court's Preliminary
10 Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B)
11 and due process, and constituted the best notice practicable under the
12 circumstances. The Court finds that the notice process was designed to
13 advise the Class Members of their rights. Further, the Court finds that
14 Settlement Fund is approved, and the claim process set forth in the
15 Settlement Agreement was followed and that the process was the best
16 practicable procedure under the circumstances.

17 **V. FINAL CLASS CERTIFICATION:** The Court finds that the Action
18 satisfies the applicable prerequisites for class action treatment under Fed. R.
19 Civ. P. 23, for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Court
20 finds that the Settlement of the Action, on the terms and conditions set forth
21 in the Agreement, is in all respects fundamentally fair, reasonable, adequate,
22 and in the best interests of the Class Members, especially in light of the
23 benefits to the Class Members, the strength of the Plaintiffs' case, the
24 complexity, expense and probable duration of further litigation, the risk and
25 delay inherent in possible appeals, and the risk of collecting any judgment
26 obtained on behalf of the class.

27 //

28 //

1 **VI. SETTLEMENT TERMS:** The Settlement Agreement, which has been filed
2 with the Court and shall be deemed incorporated herein, and the proposed
3 Settlement are finally approved and shall be consummated in accordance
4 with the terms and provisions thereof, except as amended by any order issued
5 by this Court. The material terms of the Settlement Agreement include, but
6 are not limited to, the following:

7 **A.** Lands' End shall pay Settlement Class Members a refund of their
8 purchase price plus interest at the rate of ten percent per annum from the
9 date of purchase.

10 **B.** Lands' End will administer payment to the Settlement Class through its
11 customer service department and all costs and expenses of class notice
12 and administration of claims shall be paid and borne by Lands' End
13 outside of the compensation being offered to Class Members and send a
14 Declaration to Class Counsel of the timing and results of the refund within
15 ten (10) days of issuance.

16 **VII. EXCLUSIONS AND OBJECTIONS:** A total of ____ exclusions were
17 received. Those persons requesting exclusion are named on Exhibit A to this
18 Order. The Court hereby excludes these individuals from the Class and
19 Settlement.

20 **VIII.** The Class Members were given an opportunity to object to the settlement.
21 Only ____ Settlement Class Members filed objections. After consideration
22 of each of the objections, the Court hereby overrules such objections.

23 **IX.** This Order is binding on all Class Members, except those individuals named
24 on **Exhibit A**, who validly and timely excluded themselves from the Class.

25 **X. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT:** The Class
26 Representatives (Plaintiffs named above), Class Members, and their
27 successors and assigns are permanently barred and enjoined from instituting
28 or prosecuting, either individually or as a class, or in any other capacity, any

1 of the Released Claims against any of the Released Persons, as set forth in
2 the Agreement. Pursuant to the Release contained in the Agreement, the
3 Released Claims are compromised, discharged, and dismissed with prejudice
4 by virtue of these proceedings and this order.

5 **XI.** The Action is hereby dismissed with prejudice in all respects.

6 **XII.** Without affecting the finality of this Final Judgment and Order of Dismissal
7 with Prejudice, the Court hereby retains continuing and exclusive jurisdiction
8 over the Parties and all matters relating to the Action and/or Agreement,
9 including the administration, interpretation, construction, effectuation,
10 enforcement, and consummation of the settlement and this order.

11
12 **IT IS SO ORDERED.**

13
14 Dated: _____, 2016

15 _____
16 Honorable Michael M. Anello

17 United States District Court Judge
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PLAINTIFF'S EXHIBIT 2

Declaration of Steven Peterson

*Elaine Oxina
Individually and On Behalf of
All Others Similarly Situated,*

v.

Lands' End, Inc.

Case No. 3:14-cv-02577-MMA-NLS

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15 *Attorneys for Defendant*
16 *Lands' End, Inc.*

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 ELAINE OXINA, Individually and on
20 Behalf of All Others Similarly Situated,

21 Plaintiff,

22 vs.

23 LANDS' END, INC.,

24 Defendant.

CASE NO. 3:14-cv-02577-MMA-NLS

**DECLARATION OF STEVEN
PETERSON**

Date:

Time:

Courtroom: 3A

District Judge: Michael M. Anello

Complaint Filed: November 19, 2014

Trial Date: None Set

DEMAND FOR JURY TRIAL

DECLARATION OF S. PETERSON

14-cv-02577-MMA-NLS

DECLARATION OF STEVEN PETERSON

1. I am the Compliance Manager for Lands' End Inc. in Dodgeville, Wisconsin. In this capacity, I am responsible for product compliance and safety. I have held this position for approximately 12 years. I have been asked to submit this declaration in support of Plaintiff's submission for preliminary approval.

2. I have reviewed Plaintiff's second amended complaint, as well as the parties' settlement agreement. I understand that on September 1, 2014 Plaintiff Elaine Oxina, a resident of California, purchased a necktie from Lands' End's website (<http://www.landsend.com/shop/kids/>) that was described as a "Made in USA" "Kids To-be-tied Plaid Necktie" (the "Necktie"). (Second Amended Complaint ¶¶ 1, 3, 4, 10, 20, and Ex. A.) Plaintiff further alleges that contrary to the website's "Made in USA" representation, the label attached to the Necktie states that its fabric was made in China. (*Id.* ¶¶ 1, 3, Ex. B.)

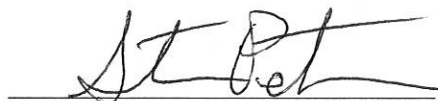
3. All products sold by Lands' End are assigned a stock keeping unit or SKU that allows each product to be tracked for inventory purposes. A SKU also allows the company to easily gather sales information for a particular product. The Necktie purchased by Plaintiff had a SKU of 3668260.

4. I have caused the records of Lands' End to be searched and have identified thirty-eight Neckties with a SKU of 3668260 sold to California residents during the class period.

5. Shortly after this action was commenced in October 2012, I caused the Lands' End website to be changed to reflect that the Necktie was "imported."

The undersigned certifies under penalty of perjury pursuant to the laws of the State of California that the statements set forth herein are true and correct.

Executed on February 12, 2016.



Steven Peterson

DECLARATION OF S. PETERSON

14-cv-02577-MMA-NLS

HYDE & SWIGART

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Counsel for Plaintiff, Elaine Oxina

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

**ELAINE OXINA;
 INDIVIDUALLY AND ON
 BEHALF OF ALL OTHERS
 SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No: **3:14-cv-02577-MMA-NLS**

**DECLARATION OF JOSHUA B.
 SWIGART IN SUPPORT OF
 MOTION FOR PRELIMINARY
 APPROVAL OF CLASS ACTION
 SETTLEMENT**

Date: March 21, 2016

Time: 2:30 p.m.

Courtroom: 3A

Judge: Hon. Michael M. Anello

DECLARATION OF JOSHUA B. SWIGART

I, JOSHUA B. SWIGART, declare:

1. I am one of the attorneys for Elaine Oxina (“Plaintiff”) in this action. I am over the age of 18 and am fully competent to make this declaration. If called as a witness, I would competently testify to the matters herein from personal knowledge. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
2. I submit this declaration in support of the Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class in the action against defendant, Lands’ End, Inc. (“Defendant”).
3. In the interest of judicial economy, I incorporate by reference ¶¶ 4-37 of the Declaration of Abbas Kazerounian as if fully stated herein. Said paragraphs detail the litigation history, an explanation of the class, the adequacy of the settlement and risks of continued litigation. I agree with each and every one of these paragraphs.

CLASS COUNSEL’S EXPERIENCE

4. Kazerouni Law Group, APC and Hyde & Swigart seek to be confirmed as class counsel for purposes of this action and proceeding with the settlement.
5. I am an attorney admitted to practice in the State of California and am a partner at Hyde & Swigart (“H&S”), which has been retained to represent Plaintiff in the above-captioned matter. I am over the age of 18 and am fully competent to make this declaration. I was admitted to the State Bar of California in 2003 and have been a member in good standing ever since that time. I am also admitted to the District of Columbia, Washington, and Michigan. I have litigated cases in both state and federal courts in California, Washington, Ohio, Nevada, Colorado, Tennessee, and Texas. I am also admitted in every federal district in California and have handled federal litigation in the federal districts of California; including being admitted to the 9th Circuit Court of Appeals and the





1 U.S. Supreme Court. Since my admission to the California bar in 2003, I have
2 been engaged exclusively in the area of consumer rights litigation, primarily in
3 the area of fair debt collections, the defense of debt collection lawsuits, class
4 action litigation under consumer protection statutes such as the Telephone
5 consumer Protection Act (TCPA), Fair Debt Collection Practices Act
6 (“FDCPA”), and Unfair Business Practice statutes.

7 6. I have been appointed class counsel in several class actions brought pursuant to
8 consumer protection statutes, including California Penal Code § 630, et seq.;
9 and, the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (TCPA).
10 My practice involves significant class action litigation and I am or have been
11 counsel in significant national class actions including, but not limited to, class
12 actions against Bank of America, Chase and Wells Fargo to mention a few.

13 7. I am the managing partner of Hyde & Swigart. I have been appointed lead
14 counsel in numerous federal class actions, resulting in millions of dollars of
15 settlements for my clients. I am currently lead or co-counsel for numerous class
16 action lawsuits currently pending in federal courts across the country, and as a
17 result have paramount knowledge in this area of law.

18 8. As one of the main plaintiff litigators of consumer rights cases in the Central and
19 Southern District of California, I have been requested to and have made regular
20 presentations to community and legal organizations regarding debt collection
21 laws and consumer rights. These organizations include, but are not limited to,
22 the following:

- 23 a. California Western School of Law;
- 24 b. Canyon Springs High School, Moreno Valley, CA 2003-2008; Careers
25 in the legal field.
- 26 c. Guest speaker on national talk radio.
- 27 d. Regular host on 103.7 Free FM on the radio show Know The Law.
28 Topics. Appearances number more than ten shows;

- e. Department of Defense; JAG Office, Naval Station San Diego (2006);
- f. Department of Defense; JAG Office, Naval Station San Diego, (2008);
- g. American Bar Association – Legal Assistance for Military Personnel, Naval Station –North Island (2008);
- h. National Consumer Law Center - E-Discovery issues - San Diego (2009);
- i. National Association of Retail Collection Attorneys - Prosecuting consumer cases -San Francisco (2009);
- j. American Bar Association (2010);
- k. Military Law Committee (MCRD) - Representing military service members in consumer related issues - San Diego (2010).

10. I have also lectured at the American Bar Association's National Convention as a leading expert in TCPA litigation (2013 convention in San Francisco) and also lectured on RPA at the American Bar Association's National Webinar in September 2013.
11. I am also a member of the following organizations:
 - a. National Association of Consumer Advocates;
 - b. Federal Bar Association, Southern District of California Chapter;
 - c. San Diego County Bar Association;
 - d. Riverside County Bar Association;
 - e. San Bernardino County Bar Association;
 - f. Enright Inns of Court (2011-2014);
 - g. American Association for Justice;
 - h. Public Justice.
12. In addition I have received extensive training in the area of consumer law. Such trainings include:
 - a. National Consumer Law Conference; Oakland, CA – 2003;



- b. National Consumer Law Conference (FDCPA Mini-Conference);
Kansas City, MO – 2004;
- c. National Consumer Law Conference; Boston, MA – 2004;
- d. Five-day extensive one-on-one training with The Barry Law Office;
San Diego, CA –2005;
- e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;
- f. Four-day extensive one-on-one training with The Barry Law Office;
Minneapolis, MN – 2005;
- g. Four-day National Association of Consumer Advocates Conference;
Minneapolis, MN – 2005;
- h. Four-day National Consumer Law Center Conference; Nashville, TN –
2008;
- i. Three-day National Consumer Law Center Conference; Portland, OR -
2008;
- j. Speaker at a Three-day National Consumer Law Center Conference;
San Diego, CA - 2009;
- k. Speaker at ABA/JAG presentation to military service members and
counsel; MCRD, San Diego CA – 2010;
- l. Speaker at ABA teleconference on defending consumer credit card
debt and related issues; San Diego, CA – 2010;
- m. Three-day National Consumer Law Center Conference; Seattle, WA -
2011;
- n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- o. Two-day National Consumer Law Center Conference on the FDCPA;
Seattle, WA - 2012;
- p. National Consumer Law Center Conference, National Convention;
Baltimore, MD - 2013;

- q. Speaker at ABA National Conference, Business Litigation Section; Trends in Consumer Litigation; San Francisco, CA - 2013;
- r. Speaker at National Consumer Law Center; Nuts and Bolts of TCPA Litigation; San Antonio, TX - 2014;
- s. Speaker at San Diego County Bar Association; Convergence of the FDCPA and Consumer Bankruptcy; San Diego, CA - 2014;
- t. Guest Speaker at California Western School of Law; Consumer Law class - 2014;
- u. 8th Annual Class Action Seminar; San Francisco, CA - 2014;
- v. Attendee at Consumer Attorneys of California – Sept. of 2014; and
- w. Speaker at San Diego County Bar Association – 2014.

HYDE & SWIGART SPECIALIZES IN CONSUMER RIGHTS CLASS ACTIONS

- 13. I have extensive experience prosecuting class actions related to consumer issues. My firm, Hyde & Swigart (“H&S”), in which I am a principal, has litigated over 1,000 individual based consumer cases and have litigated over 300 consumer class actions.
- 14. Some of the cases more significant class actions that I have been involved in, include but are not limited to:
 - a. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W (AJB) (S.D. Cal)(One of the first class action settlements under the TCPA in the nation; Hyde & Swigart served as co-lead counsel; final approval granted in 2009);
 - b. *Adams v. AllianceOne, Inc.*, 08-CV-0248 JAH (S.D. Cal) (Nationwide TCPA class settlement providing class relief of \$40 per claiming class member resulting in over \$2,500,000 paid to claiming class members; final approval granted in 2013);
 - c. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG (POR) (S.D. Cal.) (Co-lead counsel on a national TCPA class



1 settlement providing class recovery in the amount of \$70 for each
 2 claiming class member; final approval granted in 2011);

3 d. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012 DMS (BGS)
 4 (Common fund created in the amount of \$8,262,500 based on the
 5 receipt of unsolicited text messages; final approval granted 2012);

6 e. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.)
 7 (Nationwide settlement achieving the then-largest monetary
 8 settlement in the history of the TCPA: \$24.15; final approval granted
 9 in 2012);

10 f. *Franklin v. Wells Fargo, N.A., No. 14-cv-2349-MMA-BGS* (S.D.
 11 Cal.) (preliminarily approved for \$14,550,198);

12 g. *Knell v. FIA Card Services, N.A.*, 12-cv-426 AJB (WVG) (S.D. Cal.)
 13 (California class action settlement under Penal Code 632 et seq., for
 14 claims of invasion of privacy. Settlement resulted in a common fund
 15 in the amount of \$2,750,000; finally approved by Court;

16 h. *Knutson v. Schwan's Home Service, Inc. et al.*, 3:12-cv-00418-AJB-
 17 DHB (S.D. Cal.) (finally approved for \$2,535,280);

18 i. *Zaw v. Nelnet, Inc.*, C 13-5788 RS (N.D. Cal.) (California class action
 19 settlement under Penal Code 632 et seq., for claims of invasion of
 20 privacy. Settlement resulted in a common fund in the amount of
 21 \$1,188,110.00; finally approved on November 14, 2014;

22 j. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D.
 23 Cal.); 13-CV-00843-JAM-AC (the court denying Defendant's motion
 24 to dismiss and to strike class allegations holding that the TCPA
 25 applies to any call made to a cellular telephone with an ATDS);

26 k. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290 IEG
 27 (BLM) (Served as co-lead counsel for a settlement class of borrowers
 28 in connection with residential or automotive loans and violations of

the TCPA in attempts to collect on those accounts; obtained a common settlement fund in the amount of \$17,100,000; final approval granted in 2013);

- l. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284-DMS (BGS) (S.D. Cal.) (finally approved for \$11,973,558);
- m. *In Re: Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, 11-md-2286 MMA (MDD) (S.D. Cal.) (Counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; preliminarily approved for \$15,00,000);
- n. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, 11-md-02295-JAH (BGS) (Counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; still actively involved in the MDL litigation and settlement process);
- o. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.) (nationwide settlement achieving the then-largest monetary settlement in the history of the TCPA: \$24.15; final approval granted in 2012)
- p. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD (S.D. Cal.) (achieving one of the highest class member payouts in a TCPA action of \$1,331.25; final approval granted in 2012);
- q. *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS (S.D. Cal.) (approved as co-lead counsel and worked to obtain a national TCPA class settlement where claiming class members each received payment in the amount of \$70.00; final approval granted in 2013);
- r. *Barani v. Wells Fargo Bank, N.A.*, 12-CV-02999-GPC-KSC (S.D. Cal.) (Class action settlement under the TCPA for the sending of



1 unauthorized text messages to non-account holders in connection to
 2 wire transfers; finally approved for more than \$1,000,000)

3 s. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-
 4 GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion
 5 for summary judgment was denied holding that a single call or text
 6 message with the use of an ATDS may be actionable under the
 7 TCPA).

8 t. *Olney v. Progressive Casualty Insurance Company*, 2014 U.S. Dist.
 9 LEXIS 9146 (S.D. Cal.); 13-CV-2058-GPC-NLS (Defendant's
 10 motion to dismiss or in the alternative to strike the class allegations
 11 was denied finding that debt collection calls were not exempt from
 12 coverage under the TCPA, case pending);

13 u. *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-CV-04010-SI (N.D.
 14 Cal.) (TCPA class action, settled and finally approved for
 15 \$39,975,000);

16 v. *Sherman v. Kaiser Foundation Health Plan, Inc.*, 13-CV-0981-JAH
 17 (JMA) (S.D. Cal.) (Finally approved for \$5,350,000);

18 w. *Hoffman v. Bank of America*, 12-cv-539 JAH (DHB) (S.D. Cal.)
 19 (California class action settlement under Penal Code 632 et seq., for
 20 claims of invasion of privacy. Settlement resulted in a common fund
 21 in the amount of \$2,600,000; finally approved by Court;

22 x. *Couser v. Comenity Bank, No.* (S.D. Cal.) (finally approved TCPA
 23 class action with common fund of \$8,475,000);

24 y. *Lemieux v. EZ Lube, Inc.*, 12-cv-1791 BAS (JLB) (S.D. Cal.) (Class
 25 settlement finally approved and Kazerouni Law Group, APC
 26 appointed as class counsel); and,
 27
 28

- z. *Newman v. Americredit Financial Services, Inc.*, 11-cv-3041 DMS (BLM) (S.D. Cal.) (TCPA Class settlement in the amount of \$8,500,000.00 preliminarily approved on November 26, 2014).
- aa. *Martin v. Wells Fargo Bank, N.A.*, 12-CV-06030-SI (N.D. Cal.);
- bb. *Heinrichs v. Wells Fargo Bank, N.A.*, 13-CV-05434-WHA (N.D. Cal.);
- cc. *Newman v. ER Solutions, Inc.*, 11-CV-0592 H (BGS);
- dd. *Ridley v. Union Bank, N.A.*, 11-CV-1773 DMS (NLS) (S.D. Cal.);
- ee. *Ryabyshchuk v. Citibank (South Dakota) N.A.*, et al, 11-CV-1236-IEG (WVG);
- ff. *Olney v. Job.com, Inc. et al.*, No. 12-cv-01724-LJO-SKO (E.D. Cal.);
- gg. *Lemieux v. EZ Lube, Inc. et al.*, 12-cv-01791-BAS-JLB (S.D. Cal.) (finally approved for \$479,364);
- hh. *Rose v. Bank of Am. Corp.*, No. 11-cv-02390-EJD (N.D. Cal.) (finally approved for \$32,000,000);
- ii. *Abdeljalil v GE Capital Retail Bank*, 12-cv-02078-JAH-MDD (S.D. Cal.) (Class Certification granted);
- jj. *Gehrich v. Chase Bank, N.A.*, 12-cv-5510 (N.D. Cal.) (finally approved for \$34,000,000); and,
- kk. *Mount v. Wells Fargo Bank, N.A.*, BC395959 (Sup. Ct. Los Angeles) (finally approved for \$5,600,000).

**HYDE & SWIGART'S OTHER CONSUMER
RELATED EXPERIENCE AND RESULTS**

15. Hyde & Swigart has extensive experience in other consumer related issues. A brief summary of a non-inclusive list of notable published decisions are as follows:

- ll. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008); (Allowing the original plaintiff who lacked standing in a class action to conduct

pre-certification discovery of the identities of potential plaintiffs with standing);

mm. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel on a class action involving privacy rights under Cal. Penal Code § 632 et seq. Appeals court reversing the trial courts granting of Defendant's motion for summary judgment after case was certified);

nn. *Engelen v. Erin Capital Management, LLC*, et al., No. 12-55039 (9th Cir. 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)(Reversing the lower court's granting of summary judgment to the defendant debt collector on the basis of the bona fide error defense and remanding for further proceedings);

oo. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S. Dist. LEXIS 63501 (S.D. Cal.)(Co-lead counsel on a class settlement involving the Fair Debt Collection Practices Act);

pp. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)(Summary judgment was granted sua sponte in favor of a debtor where debt collector violated the Fair Debt Collection Practices Act, when its employees failed to disclose the debt collector's identity and the nature of its business in the messages left on the debtor's answering machine). This case has now been followed in at least four different districts throughout the country.

qq. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D. Cal. 2005)(Numerous omissions from a letter sent by a debt collector to members of a homeowners association, and a statement requiring any dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the FDCPA and Cal. Civ. Code §1788.17. The FDCPA required strict compliance; actual confusion on debtors' part was not required);

- rr. *Forsberg v. Fid. Nat'l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D. Cal. 2004)(Plaintiff alleged sufficient facts to support his claim that a collection company, in its initial communication, did not comply with the statutory requirements for notice of validation of debts under the FDCPA);
- ss. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005) (Court struck Defendant's counter claim of the underlying debt in a fair debt action based on lack of subject matter jurisdiction);
- tt. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D. Cal. 2007)(Court striking down Defendant's arbitration agreement as both procedurally and substantively unconscionable);
- uu. *Yang v. DTS Financial Group*, 07-CV-1731-JLS (WMc) (Holding that for profit debt settlement companies are covered under the FDCPA and can be construed as "debt collectors" under 15 U.S.C. § 1692a(6));
- vv. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575; (Holding that a forum selection clause causing a California consumer to litigate its claims seems contrary to the policies advanced by certain consumer protection statutes).
- ww. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and statutory damages in the amount of \$92,000 in a default judgment based on violations of the State and Federal collection statutes);
- xx. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a debtors claim based on the FDCPA stemming from the filing of a false police report was not subject to the litigation privilege under Cal. Civ. Code § 47(b));
- yy. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D. Cal.) (Recognizing that the Service Members Civil Relief Act

1 applies to California National Guard Members and that the debt
2 collection attorney's false declaration the court violates the FDCPA);
3 *zz. Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS
4 98742 (S.D. Cal. 2013)(Holding that failing to properly list and
5 disclose the identify of the original creditor in a state collection
6 pleading is a violation of the Fair Debt Collection Practices Act under
7 15 U.S.C. § 1692e)).

8 16. Therefore, my experience in litigating class actions and my years in practice
9 are sufficient to justify my firm's appointment as class counsel in this case.
10

11 I declare under penalty of perjury under the laws of California and the United
12 States of America that the foregoing is true and correct, and that this declaration
13 was executed on February 12, 2016.
14

15 By: s/ Joshua B. Swigart
16 Joshua B. Swigart
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Attorneys for Plaintiff,
Elaine Oxina

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ELAINE OXINA;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 3:14-cv-02577-MMA-NLS
CLASS ACTION

**DECLARATION OF PLAINTIFF
ELAINE OXINA IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: March 21, 2016

TIME: 2:30 p.m.

CRTRM: 3A

JUDGE: Hon. Michael M. Anello

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DECLARATION OF ELAINE OXINA

I, ELAINE OXINA, declare as follows:

1. I, Elaine Oxina, am the named Plaintiff and Class Representative in this action on behalf of all other similarly situated consumers.
2. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. If called upon as a witness, I would competently testify to the matters herein from personal knowledge.
3. I have participated in the litigation of this action since the case's inception and have demonstrated my desire to pursue this action. I have maintained regular contact with my counsel and have made myself available and accessible to them throughout this action.
4. I have hired counsel experienced in class action litigation.
5. I have discussed the terms of the Settlement with my counsel and understand those terms. I have read the Settlement Agreement that is being filed together with Plaintiff's Motion for Preliminary Approval of Class Action Settlement; and authorized my counsel to execute the Settlement Agreement.
6. I do not believe that I have any interests that may conflict with other unnamed members of the Class in this action.
7. I support the preliminary approval of this Settlement and believe the proposed Settlement is fair and reasonable to all members of the Class.

I declare under penalty of perjury of the laws of California and the United States that the foregoing is true and correct, and that this declaration was executed in San Diego, CA on February 10, 2016.



ELAINE OXINA

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kazerouni Law Group, APC, 245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626. February 12, 2016, I served the within document(s):

- **NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF ABBAS KAZEROUNIAN IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **EXHIBIT 1 (CLASS SETTLEMENT AGREEMENT AND RELEASE);**
- **EXHIBIT 2 (DECLARATION OF STEVEN PETERSON);**
- **DECLARATION OF JOSHUA B. SWIGART IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF PLAINTIFF ELAINE OXINA IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**

☒ CM/ECF - by transmitting electronically the document(s) listed above to the electronic case filing system on this date before 11:59 p.m. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record who are registered with the Court's CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 12, 2016, at Costa Mesa, California.

/s/ Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.