IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LESLIE HEDGES, individually and on behalf of all others similarly situated,	)	Case No. 14-CV-9858
Plaintiff,	)	Hon. Harry D. Leinenweber
v.	)	Hon. Susan E. Cox
EARTH INC., a Massachusetts corporation,	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Pursuant to Fed. R. Civ. P. 23, Plaintiff Leslie Hedges ("Plaintiff"), by her counsel, respectfully submits the following Motion For Preliminary Approval Of Class Action Settlement, and moves for an Order: (1) preliminarily approving the Agreement[1] as being fair, reasonable, and adequate; (2) preliminarily approving the form, manner, and content of the Notice and Claim Form; (3) setting the date and time of the Fairness Hearing for no earlier than 180 days from the date preliminary approval is granted; (4) provisionally certifying the Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only ("Class"); (5) provisionally appointing Plaintiff as representative of the Class; and (6) provisionally appointing Joseph J. Siprut and Siprut PC as Class Counsel.

Plaintiff and Defendant Earth Inc. ("Earth") (collectively, the "Parties") have entered into an Agreement in the above-referenced matter, attached hereto as Exhibit 1. The Agreement—a product of extensive negotiations and a mediation session with a retired federal judge—settles the dispute that arose out of Earth's representations regarding the health benefits of its Exer-Walk shoes.

The relief achieved by the Settlement is an "all-in," non-reversionary common fund in the amount of ***$270,000***—cash (the "Settlement Fund"). Under the terms of the Agreement, the Settlement Fund shall be distributed *pro rata* to each Class Member who submits an Approved Claim Form, after the following amounts are deducted from the Settlement Fund: (i) notice and administration costs; (ii) attorneys' fees; and (iii) an incentive award to Plaintiff. Under no circumstances shall any amount of the Settlement Fund revert back to Earth. If after payment of attorneys' fees, notice and administration expenses, and the incentive award, the remaining

[1] Unless otherwise stated herein, capitalized terms shall have the same meaning as provided in the Parties' Agreement, attached hereto as Exhibit 1.

money in the Settlement Fund is $98,000 and if the number of Class Members submitting Approved Claims is equal to 5% of the approximate 87,452 Class Members,[2] then each Class Member would be entitled to $22.41 ($98,000 divided by 5% of the estimated 87,452 class size). Similarly, if 2% of Class Members submit Approved Claims, each Member would be entitled to a *pro rata* payment of $56.03.

Although both sides believe their respective positions in the action are meritorious, they have concluded that, due to the uncertainties and expense of protracted litigation, it is in the best interest of Plaintiff, the putative settlement Class, and Earth to resolve this action on the terms provided in the proposed Agreement attached hereto.

PROCEDURAL HISTORY

Plaintiff filed her class action complaint ("Complaint") on December 9, 2014 against Earth. (Dkt. No. 1.) On behalf of herself and proposed classes of United States and Illinois residents who purchased Earth's Exer-Walk shoes (the "Product"), Plaintiff alleged that Earth falsely marketed and advertised the Product as providing certain health benefits, thereby giving rise to claims for unjust enrichment, violation of express warranty, and violation of the Illinois Consumer Fraud Act, 815 ILCS 502/2, *et seq.*

On February 2, 2015, Earth filed a Motion To Dismiss Count I of Plaintiff's Complaint under Rule 12(b)(6) on the ground that Plaintiff failed to provide the requisite pre-suit notice before pursuing her warranty claim. (Dkt. No. 17.)

[2] As discussed further below, Earth's data demonstrates that 87,452 pairs of Exer-Walk shoes were sold. While one person may have purchased more than one pair of shoes, which would mean the ratio of class size to sales of shoes is not a one-to-one, the class size cannot be larger than 87,452.

On March 5, 2015, Plaintiff filed her Response In Opposition To Earth's Motion To Dismiss (Dkt. No. 20), and on March 19, 2015, Earth filed its Reply (Dkt. No. 22). On April 21, 2015, this Court denied that motion. (Dkt. No 23.)

After the ruling on Earth's Motion To Dismiss, Class Counsel and Earth began settlement negotiations through telephonic conferences and written correspondence. (*See* Declaration of Joseph J. Siprut (the "Siprut Decl."), attached hereto as Exhibit 2, ¶8.)

On April 22, 2015, the Parties filed an agreed motion for a 90-day extension of time to answer or otherwise respond to Plaintiff's Complaint in order have the necessary time to attend a mediation and explore settlement opportunities. (Dkt. No. 25). On April 29, 2015, this Court granted that motion and set a new status hearing for July 22, 2015. (Dkt. No. 26.)

On June 9, 2015, the Parties engaged in a full-day of mediation in an effort to settle the claims before the Hon. Morton Denlow (Ret.) in the Chicago, Illinois offices of JAMS (Judicial Arbitration and Mediation Services). The mediation session began in the morning and went into the late evening. (Siprut Decl. ¶10.)

Prior to the mediation, the Parties exchanged written statements and documents supporting their respective positions. After nearly eleven hours of arms-length negotiations, the Parties were successful in reaching an agreement on the material terms of a settlement structure. (Siprut Decl. ¶11.)

The Parties then spent several more weeks exchanging drafts of a final, written settlement agreement. (*See* Siprut Decl. ¶12.) After many exchanges of drafts and edits, the Parties were finally able to agree to the form and content of a settlement agreement in September 2015 that has now been fully executed and attached hereto.

ARGUMENT

I. THE PROPOSED SETTLEMENT.

The proposed Settlement provides the following:

A. Certification Of The Proposed Class.

The Plaintiff requests that the Court, for the purposes of settlement, certify the Settlement Class defined as:

> All individuals or entities who, from January 1, 2009 up to the date of preliminary approval of this Settlement, purchased a Product
>
> The following individuals and entities are specifically excluded from the Settlement Class: (i) Earth, its parents, subsidiaries, affiliates, officers, directors, distributors, retailers, and resellers; (ii) any person or entity who purchased the Product for purpose of resale; (iii) the judge to whom this case is assigned and any immediate family members thereof; or (iv) any Person who has submitted a valid request for exclusion.

(Agreement ¶1.29.)

B. Class Relief.

The Settlement establishes the following relief for Class Members:

- **Payments Available to All Class Members.** Class Members shall have until the Claims Deadline to submit an Approved Claim in accordance with the Notice. There can be only one Approved Claim per Class Member. Each Class Member who submits an Approved Claim shall receive a *pro rata* distribution of the Settlement Fund, after Settlement Administration Expenses, Fee Award, and an incentive award to the Class Representative have been deducted.

- **Prospective Relief.** Earth represents that it no longer manufactures or sells the Product, and further warrants that it will refrain from disseminating for advertisements for the Products that were sold by Earth from January 1, 2009 up to the date of the preliminary approval.

- **Undistributed Funds**. To the extent that a check issued to a Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void. Within sixty (60) days of the final date to cash a check, the Settlement Administrator shall take the necessary action for the funds to escheat to the appropriate state government(s).

- **No Reversion.** Under no circumstances shall any amounts of the Settlement Fund revert back to Earth.

The Settlement is thus designed to afford relief to as many Class Members as possible.

C. Class Notice.

Subject to the Court granting Preliminary Approval of the Agreement, the Settlement Administrator will provide the Settlement Class with Notice of the proposed Settlement by the following methods.

- **Publication Notice:** Within ninety (90) the Settlement Administrator shall cause the Published Notice attached hereto as Exhibit C to be published in *Cooking Light* and/or *TV Guide* and/or *Shape* and/or *Bon Appetit* and/or *Runner's World* and/or *Internet Media* in the form of a one quarter-page or third-page advertisement.

- **Direct Notice To Class Members With Available Contact Information.** Direct Notice is contingent on the cooperation of Earth's distributors, retailers, and resellers. Within five (5) business days after Preliminary Approval, Earth shall provide the Settlement Administrator with (1) the identity of Earth's distributors, retailers, and resellers, and (2) a letter encouraging Earth's distributors, retailers, and resellers to cooperate with the Settlement Administrator in acquiring the following information regarding Settlement Class Members for use by the Settlement Administrator in sending Direct Notice via post-card of the Settlement: (i) names; (ii) physical addresses; (iii) e-mail addresses (the "Notice List"). Within ten (10) days after Earth provides the Settlement Administrator with (1) and (2), the Settlement Administrator shall cause letters to be sent to each of Earth's distributors, retailers, and resellers, as identified by Earth. The letters shall state that the recipients have thirty (30) days to respond with the information comprising the Notice List. By the Notice Date, the Settlement Administrator shall, based upon a review of the Notice List, disseminate the Direct Notice in the form of Exhibit D via post-card to each of the Settlement Class Members set forth in the Notice List. Class Members who receive Direct Notice via post-card shall be able to sign and return the prepaid Claim Form in Exhibit D to the Settlement Administrator by the Claims Deadline. Class Members who receive Direct Notice via e-mail shall be able to submit a Claim Form on the Settlement Website.

- **Settlement Websites.** Within twenty-one (21) days following the entry of the Preliminary Approval Order, the Official Notice in the form of Exhibit B shall be provided on a website at **www.EarthExer-WalkShoeSettlement.com**, which shall be administered by the Settlement Administrator. On the Settlement Website, Class Members can download the Claim Form and Official Notice attached as Exhibits A and B, respectively, and submit the Claim Form online. In addition, Class Counsel, at its own expense, will also post the settlement information on its website at

www.EarthWaxer-WalkShoeSettlement.siprut.com. On Class Counsel's website, Class Members can download the Claim Form, Notice and other relevant documents. Class Members, however, cannot submit Claim Forms online at Class Counsel's website.

In order to receive one of the benefits described above and become part of the Class Member payment list, the Class Member must submit a Claim Form (attached as Exhibit A to the Agreement) that is (1) timely, and (2) valid as determined by the Settlement Administrator.

D. Incentive Award To Class Representative.

Subject to Court approval, the Plaintiff-Class Representative will request a service award of $2,000 in recognition of her contributions to the Settlement Class and the risk she incurred in commencing the action, both financial and otherwise. The Court does not need to award or otherwise rule on Plaintiff's incentive award at this time. Class Counsel will file a motion for the incentive award, pursuant to the schedule in the Preliminary Approval Order, and will support the request for the award in detail.

E. Attorneys' Fees And Expenses.

Class Counsel will request total fees and expenses not to exceed one-third of Settlement Fund. The Court does not need to award or otherwise rule on Class Counsel's fees at this time. Class Counsel will file a motion for attorneys' fees separately, pursuant to the schedule in the Preliminary Approval Order, and will support the request for fees in detail.

II. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE PRELIMINARILY APPROVED.

Both judicial and public policies strongly favor the settlement of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). Although the standards to be applied at the preliminary approval stage "are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l*, Case Nos. 05-

cv-5944, 07-cv-2439, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). The factors considered at this stage include: (i) the strength of the plaintiff's case compared to the amount of the settlement; (ii) an assessment of the likely complexity of trial; (iii) the length and expense of the litigation; (iv) the amount of opposition to settlement among affected parties; (v) the opinion of counsel; and (vi) the stage of the proceedings and amount of discovery completed. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 578 (N.D. Ill. 2011) (citing *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006)).

A. Strength Of The Case.

Plaintiff alleges that over the past five years, a wide swath of toning shoe manufacturers have pushed marketing campaigns claiming that their negative-heel shoe products provide various health benefits such as improved posture, strengthened core muscles, reduced joint stress, and increased calories burned. These statements were false. Multiple independent studies published as early as 2004 establish that, at best, there is no evidence to support these representations. And worse, there is evidence that the negative-heel, or "toning shoe," design actually causes injuries.

Since 2010, many of the largest toning shoe manufacturers have been sued in class action lawsuits, including Reebok, New Balance, Skechers, and FitFlop. All of these cases settled on a

class-wide basis.[3] The Federal Trade Commission also initiated direct litigation against Reebok[4] and Skechers[5] on this same basis.

Plaintiff contends that Earth is no different. Since releasing its Product, Earth has consistently represented that the Product will "improve posture," "strengthen core muscles," "reduce joint stress," and "maximiz[e] calorie burn" by simply wearing the product. Moreover, Earth has touted that its Product "helps burn 4x more fat than an ordinary sneaker." (Compl. ¶¶19, 21.) Earth's statements, however, were false, misleading, and deceptive advertisements meant to induce consumers to purchase such Products based on the purported health benefits. Plaintiff also asserts that: (1) "[t]here is as yet no solid independent evidence that proves it is possible to strengthen specific musculature by wearing a particular type of shoe,"; (2) the negative heel shoe is the "latest foray of quick fix fitness gimmicks" and "any change in your footwear or posture will elicit [an initial feeling of increased muscle activity] until your body adapts and realigns itself; and (3) "[a] growing number of doctors are warning that toning shoes don't deliver on their marketing promises and could cause injuries by, among other things, changing a person's gait, or way of walking." (Compl. ¶¶25-26, 29.)

Earth denies liability and contends that it has a number of affirmative defenses that would defeat Plaintiff's claims on both substantive and procedural grounds. For instance, Earth contends that Plaintiff could not withstand a motion for summary judgment because she cannot

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[3] *See supra*, Section II.C.

[4] *See Reebok to Pay $25 Million in Customer Refunds To Settle FTC Charges of Deceptive Advertising of EasyTone and RunTone Shoes*, Federal Trade Commission Press Release, Sept. 28, 2011, https://www.ftc.gov/news-events/press-releases/2011/09/reebok-pay-25-million-customer-refunds-settle-ftc-charges (last visited Oct. 5, 2015).

[5] *See Skechers Will Pay $40 Million to Settle FTC Charges That It Deceived Consumers with Ads for "Toning Shoes",* Federal Trade Commission Press Release, May 16, 2012, https://www.ftc.gov/news-events/press-releases/2012/05/skechers-will-pay-40-million-settle-ftc-charges-it-deceived (last visited Oct. 5, 2015).

prove that Earth's advertising was false or deceptive. Earth points to studies reported in the Journal of the American Podiatric Medicine Association and studies specifically examining Earth's Product, which found health benefits to wearing Earth's Product and other negative-heeled shoes. Based on these studies, Earth asserts that its Product does in fact provide health benefits, and hence Earth's advertising did not deceive consumers. Earth also contends that Plaintiff would have difficultly certifying a class on a contested basis for a number of reasons including: (1) a nationwide class is not appropriate under choice of law principles; (2) the proposed class definition is too vague and overly broad; (3) not everyone purchased Earth's Product to obtain the claimed health benefits, because the Product has many possible uses; (4) Earth's advertising provided numerous reasons to purchase the Product other than the claims challenged in this lawsuit; and (5) Plaintiff cannot show damages, nor could harm be shown on a class-wide basis without individualized proof for each class member relating to the different retail prices paid by each consumer, and the unique value, if any, each consumer placed on the challenged advertising. Clearly, one of the factors to be considered as to the fairness of a class action settlement is Earth's willingness and ability to mount such a vigorous defense.

"The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014); *Synfuel*, 463 F.3d at 653. In doing so, however, "courts should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *In re AT&T Mobility Wireless Data Services Sales Litig*., 270 F.R.D. 330, 346 (N.D. Ill. 2010) (internal quotations omitted). Moreover, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs." *Id*. (internal

quotations omitted). Rather, an integral part of the Court's strength-versus-merits evaluation "is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985).

As explained above, the Settlement allows Class Members to receive monetary, in-kind, and prospective relief. While Plaintiff believes that her claim for maximum damages under the law is strong, Plaintiff is also aware of the inherent risks and costs of continuing with complex litigation of this nature. If Earth as to prevail on its asserted defenses, Class Members, including Plaintiff, would receive no relief *at all*. Given this possibility, a *pro rata* distribution of the Settlement Fund is a meaningful achievement. Accordingly, the Settlement provides a tangible benefit to all those affected by Earth's alleged fraudulent and deceptive conduct.

B. Risk, Expense, & Complexity Of Case.

Due to the nature of Plaintiff's case, trial will require the collection of evidence and witness testimony from across the country. Both Parties would examine a number of Earth's current and former employees. Earth intends to assert a number of affirmative defenses that it contends bar Plaintiff's claims in whole or in part. Earth would present—and Plaintiff would necessarily attempt to rebut—evidence and testimony on whether the representations regarding the Product's purported health benefits were false. The uncertainty as to whether these affirmative defenses apply in this case creates substantial risk for both sides. Plaintiff and proposed Class Counsel also recognize that the expense, duration, and complexity of protracted litigation would be substantial, and would require further briefing on numerous substantive issues, evidentiary hearings, and further discovery.

C. The Opinion Of Counsel.

"The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23." *Schulte*, 805 F. Supp. 2d at 586-87. Here, Class

Counsel has extensive experience in consumer class actions and complex litigation. (*See* Siprut Decl. ¶14.) Based upon proposed Class Counsel's analysis and the information obtained from Earth, a *pro rata* share of the Class Payment represents a significant recovery for the Settlement Class, especially when weighed against each of Earth's anticipated defenses and the inherent risks of litigation.

Moreover, the settlement-fund-to-net-sales ratio in this Settlement is consistent with (if not better than) other class-wide settlements involving allegedly deceiving advertisements regarding the health benefits of negative-heeled shoes. For example, in *In re Sketchers Toning Shoe Products Liability Litigation*, No. 3:11-md-2308 (W.D. Ky.) a $40 million common fund was created to resolve claims arising out of approximately $850 million in sales of negative-heeled shoes. Thus, the fund-to-net-sales ratio was 4%. Similarly, *Rosales v. FitFlop USA, LLC*, No. 11-cv-0973 (S.D. Cal.) involved a $5.3 million fund to settle claims arising out of approximately $300 million in sales, resulting in a ratio of 1.76%. And even at the high end, the ratio in *In re Reebok EasyTone Litigation*, No. 4:10-cv-11977 (D. Mass.) was 10%.

Here, the Settlement Fund of $270,000 is created to resolve claims arising out of approximately $2,096,463 in sales. Thus the fund-to-net-sales ratio provided by the Settlement is approximately 13%. This demonstrates that this Settlement is more superior to settlements resolving similar claims. Class Counsel believes that the Settlement is beneficial to the Class and meets the class-certification requirements of Rule 23.

D. Extent Of Discovery.

Based upon information exchanged by the Parties, Plaintiff believes she possesses the evidence needed to evaluate the strengths and weaknesses of the case. Earth has provided Plaintiff with information relating to the studies surrounding the health benefits of its Product, the number of units sold, and the sales revenue generated by Earth as a result of those sales. As

such, counsel for each party has sufficient information to assess the strengths, weaknesses, and likely expense of taking this case to trial.

While the Parties have both formally and informally exchanged information critical to evaluating the strength of Plaintiff's contentions (and Earth's defenses), the amount of discovery taken is not a prerequisite to a class action settlement. Courts have noted that, "the label of 'discovery' [either formal or informal] is not what matters. Instead, the pertinent inquiry is what facts and information have been provided." *Schulte*, 805 F. Supp. 2d at 587 (internal citation omitted). *See also In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981) ("It is true that very little formal discovery was conducted and that there is no voluminous record in the case. However, the lack of such does not compel the conclusion that insufficient discovery was conducted.") (emphasis omitted). Here, information more than sufficient to make a reasonable and informed decision has been procured, meaning that there was a reasonable, informed basis to evaluate the Settlement.

E. Presence Of Governmental Participants.

Although there is no governmental entity participating in this matter as of this time, full and complete notice is being provided to all appropriate state and federal authorities. Earth will provide such notice which will include all appropriate information and documents required by the Class Action Fairness Act, 28 U.S.C. § 1715(b).

III. THE SETTLEMENT CLASS SHOULD BE PROVISIONALLY CERTIFIED; THE FORM AND METHOD OF NOTICE TO THE CLASS MEMBERS SHOULD BE APPROVED; AND, A HEARING REGARDING FINAL APPROVAL OF THE SETTLEMENT SHOULD BE SCHEDULED.

A. The Class Should Be Provisionally Certified.

Before preliminary approval of a class action settlement can be granted, the Court must determine that the proposed class is appropriate for certification. *Amchem Prods. Inc. v. Windsor*,

521 U.S. 591, 620 (1997); MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.632. Federal Rule of Civil Procedure 23(a) provides that a class may be certified if (i) the class is so numerous that joinder of all members is impractical, (ii) there are questions of law or fact common to the class, (iii) the claims or defenses of the representative parties are typical of those of the class, and (iv) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Williams v. Chartwell Fin. Serv., Ltd*., 204 F.3d 748, 760 (7th Cir. 2000).

Once the requirements of Rule 23(a) have been met, the proposed class must then satisfy at least one of the three subsections of Rule 23(b). *Amchem*, 521 U.S. at 614. In this case, Plaintiff seeks certification of the Class under Rule 23(b)(3), which requires that (i) the questions of law or fact common to all class members predominate over issues affecting only individual members, and (ii) the maintenance of a class action be superior to other available methods for the fair and efficient adjudication of the controversy. *Id*. at 615; *Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 676 (7th Cir. 2001).

As discussed further below, the proposed Class meets each of the requirements of Rules 23(a) and (b), and therefore, certification is appropriate.[6]

1. Numerosity — Federal Rule Of Civil Procedure 23(a).

Rule 23(a)'s first requirement, numerosity, is satisfied where "the class is so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a)(1). To satisfy this requirement there is no specific number required, nor is a plaintiff required to state the exact number of potential class members. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006). *See also* 3 Alba Conte & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 7.20, 66 (4th ed. 2001). Instead, courts are permitted "to make common-sense assumptions that support a finding

[6] As detailed in the Agreement, Earth does not oppose the request for class certification solely for the purposes of settlement.

of numerosity." *Maxwell v. Arrow Fin. Servs., LLC*, No. 03-cv-1995, 2004 WL 719278, at *2 (N.D. Ill. Mar. 31, 2004). Generally, where the membership of the proposed class is at least 40, joinder is impracticable and the numerosity requirement is met. *Pope v. Harvard Banchares, Inc*., 240 F.R.D. 383, 387 (N.D. Ill. 2006).

In this case, Earth sold approximately 87,452 units of its Product through retailers, distributors, and resellers. It is unknown if the number of sold units to Class Members is a one-to-one ratio. Nevertheless, the only way there could be less than 40 Class Members would be if 39 consumers each purchased 2,242 pairs of Earth's Product—that is just not likely. And while Earth's retailers, distributors, and resellers may have purchased an Earth Product, they are specifically excluded from the Settlement Class. (*See* Agreement ¶1.29.) Accordingly, the Settlement Class satisfies the numerosity requirement. *See* NEWBERG ON CLASS ACTIONS § 3:5, 243-46 (4th ed. 2002) ("Class actions under the amended Rule 23 have frequently involved classes numbering in the hundreds, or thousands . . . In such cases, the impracticability of bringing all class members before the court has been obvious, and the Rule 23(a)(1) requirement has been easily met.").

2. Commonality/Predominance — Federal Rule Of Civil Procedure 23(a)(2) And 23(b)(3).

The commonality element requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Courts recognize that there may be factual differences between class members, but "factual variations among class members' claims" do not themselves "defeat the certification of a class." *Patterson v. Gen. Motors Corp.*, 631 F.2d 476, 481 (7th Cir. 1980), *cert. denied*, 451 U.S. 914 (1980); *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992), *cert. denied*, 506 U.S. 1051 (1993). In fact, the threshold for commonality is not high. *Scholes v. Stone, McGuire, & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992). Rather, commonality exists

if a common nucleus of operative fact exists, even if as to one question of law or fact. *Whitten v. ARS Nat'l Servs. Inc.*, No. 00-cv-6080, 2001 WL 1143238, *3 (N.D. Ill. Sept. 27, 2001) (commonality is often found where "Defendants have engaged in standardized conduct toward the members of the proposed class."). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (stating that "commonality requires that the claims of the class simply "depend upon a common contention . . . of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.").

As alleged in Plaintiff's Complaint, the Class shares common questions of fact and law that predominate over issues affecting only individual members of the Class. Those common factual and legal issues for the Settlement Class include:

a. Whether the representations discussed herein that Defendant made about the product were or are misleading, or likely to deceive;
b. Whether Plaintiff and the Class Members were deceived by Earth's representations;
c. Whether Earth's conduct constitutes violations of the laws asserted herein;
d. Whether Plaintiff and Class Members have been injured and the proper measure of their losses as a result of those injuries;
e. Whether Plaintiff and Class Members are entitled to an award of compensatory/actual damages; and
f. Whether the Plaintiff and Class Members are entitled to injunctive or declaratory relief.

Additionally, Rule 23(b)(3) provides that a class action may be maintained where the questions of law and fact common to members of the proposed class predominate over any questions affecting only individual members. Fed. R. Civ. P. 23(b)(3); *Fletcher v. ZLB Behring LLC*, 245 F.R.D. 328, 331-32 (N.D. Ill. 2006). "Predominance . . . is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 800 (7th Cir. 2013). A class action is the more efficient procedure for determining liability and damages in a case such as this, involving a

defect that may have imposed costs on tens of thousands of consumers yet not a cost to any one of them large enough to justify the expense of an individual suit. *Id.* In this case, common questions predominate for the Settlement Class because Earth's alleged unlawful conduct presents common questions with regard to all members of the proposed Settlement Class. Thus, in the context of the proposed class-wide settlement the predominance requirement is satisfied because liability and damages would have been decided predominantly, if not entirely, based on common evidence of Earth's conduct.

3. Typicality — Federal Rule Of Civil Procedure 23(a)(3).

Rule 23 also requires that a plaintiff's claims be typical of other class members' claims. Fed. R. Civ. P. 23(a)(3). The typicality requirement is closely related to the commonality requirement and is satisfied if the plaintiff's claims arise from "the same event or practice or course of conduct that gives rise to the claims of other class members and . . . are based on the same legal theory." *Radmanovich v. Combined Ins. Co. of Am.*, 216 F.R.D. 424, 432 (N.D. Ill. 2003) (internal quotations omitted). The existence of factual differences will not preclude a finding of typicality. *Id.* "Typicality does not mean identical, and the typicality requirement is liberally construed." *In re Neopharm, Inc. Sec. Litig.*, 225 F.R.D. 563, 566 (N.D. Ill. 2004) (citation omitted).

Here, Plaintiff and the Settlement Class all purchased Earth's Product, thereby entitling Plaintiff and the Class Members to actual damages and equitable relief. Moreover, there are no defenses that pertain to Plaintiff that would not also pertain to the Settlement Class. Accordingly, Plaintiff's claims are typical of the other Class Members' claims.

4. Adequacy Of Representation — Federal Rule Of Civil Procedure 23(a)(4).

The final Rule 23(a) prerequisite requires that a proposed class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy the adequacy requirement, class representatives must establish that: (i) their claims are not in conflict with those of the proposed class; (ii) they have sufficient interests in the outcome of the case; and (iii) they are represented by experienced, competent counsel. *Hinman v. M and M Rental Ctr., Inc.*, 545 F. Supp. 2d 802, 807 (N.D. Ill. 2008). Furthermore, proposed class counsel must be competent and have the resources necessary to sustain the complex litigation necessitated by class claims; it is persuasive evidence that proposed class counsel have been found adequate in prior cases. *Gomez v. Ill. State Bd. of Educ.*, 117 F.R.D. 394, 401 (N.D. Ill. 1987).

Here, Plaintiff's interests are consonant with the interests of the Settlement Class—obtaining relief from Earth for its allegedly false and deceptive marketing of its Product and ensuring that Earth does not continue such conduct in the future. Plaintiff has no interests antagonistic to the interests of the other members of the Settlement Class. (*See* Siprut Decl. ¶15.) Moreover, Plaintiff's counsel are well respected members of the legal community, have regularly engaged in major complex litigation, and have significant experience in consumer class actions involving similar issues, scope, and complexity. (*See id.* ¶14; Siprut PC Firm Resume (attached as Exhibit A to the Siprut Declaration).) Accordingly, Plaintiff and her counsel would adequately represent the proposed Class.

5. Superiority — Federal Rule of Civil Procedure 23(b)(3).

In addition to satisfying Rule 23(a), a plaintiff seeking certification must satisfy one of the provisions of Rule 23(b). Rule 23(b)(3) provides that matters pertinent to a finding of superiority include: "(A) the interest of members of the class in individually controlling the

prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action." Fed. R. Civ. P. 23(b)(3). When settling a class action, Plaintiff does not have to prove manageability under Rule 23(b)(3) as if the case were being fully litigated because settlement may "eliminate all the thorny issues that the court would have to resolve if the parties fought out the case." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004) (citing *Amchem*, 521 U.S. at 117).

The present class action is superior to other available methods for the fair and efficient adjudication of Plaintiff's and the Settlement Class' claims. The burden and expense of individual prosecution of the litigation necessitated by Earth's actions makes a class action superior to other available methods of resolution. Thus, absent a class action, it would be difficult, if not impossible, for individual members of the Settlement Class to obtain effective relief. *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015) ("[I]n cases involving relatively low-cost goods or services . . . the class device is often essential 'to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.'") (quoting *Amchem*, 521 U.S. at 617).

B. The Form And Method Of Service Of Class Notice Should Be Approved.

"When the parties reach a settlement agreement before a class determination and seek to stipulate that the settlement will have class wide scope, a class notice must be sent to provide absent class members with certain basic information so that they have an opportunity to consider the terms of the settlement." 2 NEWBERG, section 11.30, p. 11-62-11-63. The substance of the notice must describe, in plain language, the nature of the action, the definition of the certified class, and the class claims and defenses at issue. *See* Fed. R. Civ. P. 23(c)(2)(B). The notice must

also explain that class members may enter an appearance through counsel if desired, may request to be excluded from the class, and that a class judgment shall have a binding effect on all class members. *Id*. Additionally, dissemination of the notice must comport with both Rule 23 and due process, which require that a class receive "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The proposed notice plan in this case satisfies Rule 23's notice requirements as well as due process considerations, and provides:

1. A brief summary of the claims alleged in the action;

2. An explanation of the proposed terms of the Settlement, the amount the Class Members are entitled to receive under the Agreement, and the method by which Class Members can claim their benefit under the Settlement;

3. An explanation of the right to opt out of and/or object to the Settlement within given time-frames and subject to certain requirements;

4. An explanation that members of the Settlement Class who do not opt out will be bound by the proposed Settlement and Judgment and will have released their claims;

5. An explanation that members of the Settlement Class who do not opt out will be represented by proposed Class Counsel; and

6. An identification of Class Counsel and a means for making inquiries thereof.

Federal courts authorize service of class notice by a variety of reliable means. In this regard, "[t]here is no statutory or due process requirement that all class members receive actual notice by mail or other means; rather, 'individual notice must be provided to those Class members who are identifiable through reasonable effort.'" *Eisen*, 417 U.S. at 175-76.

In this case, the Settlement provides for publication notice via a one-third or quarter page announcement in *Cooking Light* and/or *TV Guide* and/or *Shape* and/or *Bon Appetit* and/or *Runner's World* and/or *Internet Media*. Further, where Class Members' information can be obtained through Earth's retailers, distributors, or resellers, the Settlement Administrator will send direct post-card and/or e-mail notice. Finally, the Settlement will be posted on www.EarthExer-WalkShoeSettlement.com and on Class Counsel's website at www.EarthExer-WalkShoeSettlement.siprut.com. This notice method is reasonably calculated to reach the Settlement Class by the best means practicable and should be approved.

C. The Court Should Schedule A Hearing For Final Settlement Approval.

Following notice to the Class, a Fairness Hearing is to be held on the proposed Settlement. MANUAL FOR COMPLEX LITIGATION, § 21.633. Accordingly, Plaintiff, by proposed Class Counsel, respectfully requests that the Court schedule a Final Approval Hearing of the Settlement to be held no earlier than 180 days after entry of the Preliminary Approval Order. The Final Approval Hearing should be scheduled now so that the date can be disclosed in the Notice. After receiving final approval, the Parties request that the Court enter a Final Judgment.

CONCLUSION

Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and advantageous to the proposed Class, Plaintiff respectfully requests that the Court enter an Order:

A. Preliminarily approving the Settlement as being fair, reasonable, and adequate;

B. Preliminarily approving the Claim Form and Class Notice attached as Exhibits A-D to the Agreement;

C. Setting the date and time of the Final Approval Hearing to be held no earlier than 180 Days after entry of the Preliminary Approval Order;

D. Provisionally certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;

E. Appointing Plaintiff as Class representative;

F. Appointing Joseph J. Siprut and Siprut PC as Class Counsel; and

G. Such other and further relief the Court deems just and proper.

Dated: October 5, 2015

Respectfully submitted,

By: *s/ Joseph J. Siprut*

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Counsel for Plaintiff
and the Proposed Settlement Class

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **Plaintiff's Motion For Preliminary Approval Of Class Action Settlement** was filed this 5th day of October 2015 via the electronic filing system of the United States District Court for the Northern District of Illinois, which will automatically serve all counsel of record.

s/ Joseph J. Siprut

4852-6663-9398, v. 1

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LESLIE HEDGES, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 14-CV-9858
v.	)	Honorable Harry D. Leinenweber
EARTH INC., a Massachusetts corporation,	)	Magistrate Judge Susan E. Cox
Defendant.	)	

This settlement agreement ("Agreement," "Settlement," or "Settlement Agreement") is entered into by and among the Plaintiff Leslie Hedges ("Plaintiff") and the Settlement Class (as defined herein), on the one hand, and Defendant Earth, Inc. ("Earth" or "Defendant") on the other hand. The Plaintiff, the Settlement Class, and Earth are collectively referred to herein as the "Parties." This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined herein) on the merits with prejudice, upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

RECITALS

A. Plaintiff Leslie Hedges filed this Action on December 9, 2014, against Earth on behalf of herself and a proposed class of all similarly situated individuals who, within the applicable statute of limitations, purchased Earth Exer-Walk shoes. Plaintiff alleged in her Complaint that Earth made false, misleading, and deceptive advertisements regarding the health benefits of its Exer-Walk shoes in order to induce consumers to purchase such products. Plaintiff

asserted claims for breach of express warranty, unjust enrichment, and consumer fraud. (*See generally* Docket No. 1.)[1]

B. On February 2, 2015, Earth filed a motion to dismiss Plaintiff's breach of express warranty claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket No. 16.) On April 21, 2015, this Court denied that motion. (Docket No 24.)

C. After the ruling on the motion to dismiss, Class Counsel and Earth began settlement negotiations through telephonic conferences and written correspondence.

D. On April 22, 2015, the Parties filed an agreed motion for a 90-day extension of time to answer or otherwise respond to Plaintiff's class action complaint in order to have the necessary time to attend a mediation and explore settlement opportunities. (Docket No. 25). On April 29, 2015, this Court granted that motion and set a new status hearing for July 22, 2015. (Docket No. 26.)

E. In an effort to settle the claims, on June 9, 2015, the Parties engaged in a full day of mediation that went into the late evening before the Hon. Morton Denlow (Ret.) in the Chicago, Illinois, offices of JAMS. Prior to the mediation, the Parties exchanged written statements and documents supporting their respective positions. After nearly eleven hours of arms-length negotiations, the Parties were successful in reaching an agreement on the material terms of a settlement structure.

F. At all times, Earth has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened, or attempted to commit any wrongful act or violation of law or duty alleged in the Action. Earth also denies: (i) each and all of the claims and contentions alleged by Plaintiff in the Action; (ii) all charges of wrongdoing

[1] Unless otherwise stated, all references to docket entries relate to Case No.14-cv-9858.

or liability against it or its agents arising out of any conduct, statements, acts or omissions alleged in the Action; and (iii) that Plaintiff or the Settlement Class are entitled to any form of damages based on the conduct alleged in the Action. In addition, Earth maintains that it has meritorious defenses to the claims alleged in the Action and was prepared to vigorously defend all aspects of the Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Earth has concluded that further defense of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial to Earth that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Earth, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

G. Plaintiff and Class Counsel believe that the claims asserted in the Action against Earth have merit and that they would have ultimately been successful in certifying the proposed classes under Federal Rule of Civil Procedure 23 on a contested, adversarial basis and prevailing on the merits at summary judgment or trial. Nonetheless, Plaintiff and Class Counsel recognize and acknowledge that Earth has raised factual and legal defenses in the Action that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulties and delays inherent in such litigation. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, Plaintiff and Class

Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

H. Given the above, and considering all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and Earth, by and through its respective undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 "Action" means the case styled *Hedges v. Earth Inc.*, Case No. 14-cv-09858 pending in the Northern District of Illinois.

1.2 "Approved Claim" means the initial Claim Form submitted by a Settlement Class Member that is: (i) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (ii) fully and truthfully completed and

executed, with all of the information requested in the Claim Form by a Settlement Class Member; (iii) signed by the Settlement Class Member; and (iv) returned via online submission by the Claims Deadline or U.S. Mail post-marked by the Claims Deadline.

1.3 "Claim Form" means the form Settlement Class Members must complete and submit on or before the Claim Deadline, as defined in Paragraph 1.6 below, in order to be eligible for the benefits described herein, which document shall be substantially in the form of Exhibit A hereto. The Claim Form shall require a certification that the claiming Class Member purchased an Earth Exer-Walk shoe, but shall not require a notarization or any other form of verification. Claim Forms will be processed after the Effective Date.

1.4 "Class Counsel" means Joseph J. Siprut and Michael L. Silverman of Siprut PC.

1.5 "Class Representative" means the named Plaintiff in this Action, Leslie Hedges.

1.6 "Claims Deadline" means the date by which all Claims Forms must be postmarked or received to be considered timely and shall be set as a date no later than sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Published Notice, Direct Notice, Official Notice, and Claim Form.

1.7 "Court" means the United States District Court for the Northern District of Illinois, Judge Harry D. Leinenweber, or any judge who shall succeed him as the Judge in this Action, presiding.

1.8 "Defendant" means Earth, Inc.

1.9 "Defendant's Counsel" means: (i) Russell Beck and Stephen Riden of Beck Reed Riden LLP; and (ii) Martin J. Bishop of Reed Smith LLP.

1.10 "Effective Date" means the date immediately upon which the last of the

following events and conditions have occurred or have been met:

(a) This Agreement has been signed by the Plaintiff, Defendant, and Class Counsel;

(b) The Court has entered the Preliminary Approval Order approving this Settlement Agreement, Notice, and Claim Form or with non-substantive revisions in the form tendered to the Court for Preliminary Approval;

(c) The Court has entered an order finally approving this Agreement in its entirety, following notice to the Settlement Class, approving the Claim Form and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered a judgment consistent with the Agreement (the "Judgment"); and

(d) The Judgment has become Final, as defined in Paragraph 1.12 below, or, in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") and that has the consent of the Parties, such Alternative Judgment becomes Final.

1.11 "Fee Award" means the amount of attorneys' fees and reimbursement of expenses awarded by the Court to Class Counsel.

1.12 "Final" means one business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court's Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered

on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.13 "Final Approval Hearing" means the hearing before the Court where the Parties will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and the incentive award to the Class Representative.

1.14 "Notice" means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which shall be in substantially the same form as Exhibit B ("Official Notice" available on the settlement website), Exhibit C ("Published Notice"), and Exhibit D ("Direct Notice") attached hereto, which will notify the Settlement Class of preliminary approval of the Settlement and the scheduling of the Fairness Hearing, among other things, consistent with the requirements of Due Process and Federal Rule of Civil Procedure 23.

1.15 "Notice Date" means the date by which the Notice Plan set forth in Paragraph 4.2 is complete, which shall be a date no later than ninety (90) days after entry of the Preliminary Approval Order.

1.16 "Notice Plan" means the proposed plan developed by the Settlement Administrator of disseminating notice to members of the Settlement Class of the proposed Settlement Agreement and of the Final Approval Hearing. Other than mailing the Official Notice and Claim Form to the last known addresses of Class Members, the publication of the Published Notice, and the creation of the settlement website, no additional direct or publication notice is necessary or required.

1.17 "Objection/Exclusion Deadline" means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement

Class must be postmarked and/or filed with the Court, which shall be designated as a date no later than sixty (60) days after the Notice Date, or such other date as ordered by the Court.

1.18 "Parties" or **"Settling Parties"** means Plaintiff Leslie Hedges and the Settlement Class on the one hand, and Defendant Earth on the other hand.

1.19 "Person" shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. The definition of "Person" is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General's office.

1.20 "Plaintiffs" means Plaintiff Leslie Hedges and the Settlement Class Members who do not request to be excluded from the Settlement Class (whether or not such members submit claims), collectively.

1.21 "Preliminary Approval" means the Court's certification of the Settlement Class for settlement purposes only, preliminary approval of the Settlement Agreement, and approval of the form of the Notice and of the Notice Plan.

1.22 "Preliminary Approval Order" means the proposed order preliminarily approving the Agreement and directing notice thereof to the Settlement Class, to be submitted to the Court in conjunction with Plaintiff's motion for preliminary approval of the Agreement.

1.23 "Product" means the Earth Exer-Walk shoe.

1.24 "Released Claims" means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands,

liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions or failures to act relating to, or any individual or entity on Earth's behalf; allegedly misrepresenting or omitting statements concerning a Product, and any resulting damages arising therefrom that were or could have been alleged or asserted in the Action, including but not limited to violations of a consumer fraud statute, and Released Claims belonging to Plaintiff and her respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters , lenders, and any other representatives of any of these Persons and entities. Nothing herein is intended to release any claims that any governmental agency or governmental actor has against Earth. Notwithstanding the foregoing, "Released Claims" does not include: (i) personal or bodily injury claims; or (ii) class claims that do not relate in any way to the purchase of a Product.

1.25 "Released Parties" means Earth and any and all of its present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, affiliates, subsidiaries, associates, employers, employees, agents, consultants, independent contractors,

insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, distributors, retailers, and resellers and persons, firms, trusts, corporations, officers, directors, other individuals or entities in which Earth has a controlling interest or which is affiliated with any of them, or any other representatives of any of these persons and entities.

1.26 "Releasing Parties" means Plaintiff, those Settlement Class Members who do not request to be excluded from the Settlement Class (whether or not such members submit claims); to the extent any Settlement Class Member is not an individual, all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, predecessors-in-interest, and all of the aforementioned's present, former, and future officers, directors, employees, shareholders, attorneys, agents, independent contractors; and, to the extent any Settlement Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns of each of them.

1.27 "Settlement Administration Expenses" means the expenses incurred by the Settlement Administrator in providing Notice to and processing Claim Forms submitted by the Settlement Class in relation to this Settlement, as well as any costs incurred in sending the CAFA notices described in Paragraph 4.2(e) below, with such expenses to be paid from the Settlement Fund.

1.28 "Settlement Administrator" means, subject to Court approval, the firm of Kurtzman Carson Consultants LLC ("KCC"), which has been selected by the Parties to oversee

the distribution of Notice as well as the processing and payment of claims to the Settlement Class as set forth in this Settlement Agreement.

1.29 "Settlement Class" means all individuals or entities who, from January 1, 2009 up to the date of entry of the Preliminary Approval Order, purchased a Product. The following individuals and entities are specifically excluded from the Settlement Class: (i) Earth, its parents, subsidiaries, affiliates, officers, directors, distributors, retailers, and resellers; (ii) any person or entity who purchased the Product for purpose of resale; (iii) the judge to whom this case is assigned and any immediate family members thereof; or (iv) any Person who has submitted a valid request for exclusion.

1.30 "Settlement Class Member" or **"Class Member"** means a Person who falls within, and is not excluded from, the definition of the Settlement Class as set forth above.

1.31 "Settlement Fund" means a non-reversionary common fund of $270,000 established by Defendant to pay Class Members who submit Approved Claims as further defined herein. The Settlement Fund shall be distributed *pro rata* to claiming Class Members based on each Approved Claim Form submitted. There can be only one Approved Claim Form per Class Member. From this Settlement Fund, Defendant shall pay all costs associated with the Settlement, including: (i) Approved Claims; (ii) Settlement Administrative Expenses; (iii) the Fee Award; and (iv) an incentive award to the Class Representative. The Settlement Fund represents the maximum amount of Defendant's monetary obligations under this Agreement. Under no circumstances shall any amount of the Settlement Fund revert to Defendant. Within twenty-one (21) days of the Court entering the Preliminary Approval Order, Defendant shall transfer the full amount of the Settlement Fund into an escrow account held by the Settlement Administrator in trust for the benefit of the Settlement Class.

1.32 "Special Master" means an independent person to be agreed upon by the Parties or appointed by the Court to evaluate those Claim Forms submitted by purported members of the Settlement Class the acceptance or rejection of which has been challenged by Defendant, Defendant's representatives or Class Counsel.

1.33 "Unknown Claims" means claims that could have been raised in the Action and that the Plaintiffs or any or all other Persons and entities whose claims are being released, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released, also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiffs acknowledge that they may discover facts in addition to or different from those that they now know or believe to be

true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF.

2.1 Payments.

(a) Payments Available to All Class Members. Class Members shall have until the Claims Deadline to submit an Approved Claim in accordance with the Notice. There can be only one Approved Claim per Class Member. Each Class Member who submits an Approved Claim shall receive a *pro rata* distribution of the Settlement Fund, after Settlement Administration Expenses, Fee Award, and an incentive award to the Class Representative have been deducted.

(b) No Unclaimed Property. In no event will any unclaimed funds constitute abandoned or unclaimed property.

(c) Within sixty (60) days after the Effective Date has occurred, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check and mail them to the claimants via first-class mail, unless challenged pursuant to Paragraph 5.3 below.

(d) All payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void. Within Sixty (60) days of the final date to cash a check, the Settlement Administrator shall take the necessary action for the funds to escheat to the appropriate state government(s).

2.2 Prospective Relief. As part of this settlement, Defendant represents that it no longer manufactures or sells the Product, and further warrants that it will refrain from disseminating advertisements for the Products that were sold by Defendant from January 1, 2009 up to the date of the preliminary approval.

3. RELEASES.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims and Unknown Claims, as against all Released Parties for the Settlement Class.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims and Unknown Claims against the Released Parties, and each of them.

4. NOTICE TO THE CLASS.

4.1. Upon issuance of Preliminary Approval of this Agreement, the Claims Administrator shall cause Notice describing the Final Approval Hearing and the terms of the settlement embodied in this Agreement to be disseminated to the Settlement Class. Such Notice shall comport with due process and be effectuated pursuant to a Notice Plan. All Settlement Administration Expenses shall be paid from the Settlement Fund.

4.2. The Notice Plan shall include:

(a) ***Publication Notice*****.** By the Notice Date, the Settlement Administrator shall cause the Published Notice attached hereto as Exhibit C to be published in one or more of the following media: *Cooking Light, TV Guide, Shape, Bon Appetit, Runner's World,* or *Internet Media*. The Published Notice shall be in the form of a one quarter-page or third-page

advertisement.

(b) ***Direct Notice*****.** Direct Notice is contingent on the cooperation of Earth's distributors, retailers, and resellers. Within five (5) business days after Preliminary Approval, Earth shall provide the Settlement Administrator with (1) the identity of Earth's distributors, retailers, and resellers, and (2) a letter encouraging Earth's distributors, retailers, and resellers to cooperate with the Settlement Administrator in acquiring the following information regarding Settlement Class Members for use by the Settlement Administrator in sending Direct Notice via post-card of the Settlement: (i) names; (ii) physical addresses; (iii) e-mail addresses (the "Notice List"). Within ten (10) days after Earth provides the Settlement Administrator with (1) and (2), the Settlement Administrator shall cause letters to be sent to each of Earth's distributors, retailers, and resellers, as identified by Earth. The letters shall state that the recipients have thirty (30) days to respond with the information comprising the Notice List. By the Notice Date, the Settlement Administrator shall, based upon a review of the Notice List, disseminate the Direct Notice in the form of Exhibit D via post-card to each of the Settlement Class Members set forth in the Notice List. Class Members who receive Direct Notice via post-card shall be able to sign and return the prepaid Claim Form in Exhibit D to the Settlement Administrator by the Claims Deadline. Class Members who receive Direct Notice via e-mail shall be able to submit a Claim Form on the Settlement Website.

(c) ***Settlement Website***. Within twenty-one (21) days following the entry of the Preliminary Approval Order, the Official Notice in the form of Exhibit B shall be provided on a website at **www.EarthExer-WalkShoeSettlement.com**, which shall be administered by the Settlement Administrator. On the Settlement Website, Class Members can download the Claim Form and Official Notice attached as Exhibits A and B, respectively, and submit the Claim Form

online.

(d) ***Class Counsel's Website***. Class Counsel, at its own expense, will also post the settlement information on its website at **www.EarthExer-WalkShoeSettlement.siprut.com**. On Class Counsel's website, Settlement Class Members can view the Official Notice and other relevant documents. Settlement Class Members, however, cannot submit Claim Forms online from Class Counsel's website.

(e) ***CAFA Notice.*** Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendant shall serve upon the Attorneys General of each U.S. State in which there are members of the Class, the Attorney General of the United States, and other required government officials, notice of the proposed settlement, which shall include: (i) a copy of the most recent complaint and all materials filed with the complaint or notice of how to electronically access such materials; (ii) notice of all scheduled judicial hearings in the Action; (iii) all proposed forms of Notice to the Settlement Class; and (iv) a copy of this Agreement. To the extent known, the Defendant shall serve upon the above-referenced government official the names of Class Members who reside in each respective state and the share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such members to the entire Agreement.

4.3. The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the

Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time: (i) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court; (ii) that any objection made by a Settlement Class Member represented by counsel must be filed through the Court's CM/ECF system; and (iii) send copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendant's Counsel.

4.4. Any Settlement Class Member who intends to object must do so on or before the Objection/Exclusion Deadline. To be valid, any objections must be appropriately filed with the Court no later than the Exclusion/Objection Deadline, or alternatively they must be mailed to the Court at the address below and postmarked no later than the Exclusion/Objection Deadline.

Clerk of Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Attention: "*Hedges v. Earth, Inc.*, Case No. 14-cv-09858"

A copy of the objection must also be mailed to KCC at the post office box that KCC will establish to receive requests for exclusion or objections, Claim Forms, and any other communications relating to this Settlement.

4.5. The Settlement Class Member must include in any such objection the name, address, telephone number of the Person objecting and, if represented by counsel, of his or her counsel. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to timely file and serve a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Paragraph, as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval

Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

4.6. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the case, and a statement that he/she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the Persons serving such a request shall be members of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So called "mass" or "class" opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.

5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational,

responsive, cost effective, and timely manner. Settlement Administration Expenses should not exceed $80,000. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Defendant's Counsel, and the Parties and/or their representatives upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to members of the Settlement Class on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel and Class Counsel electronic copies of all original documents and other materials received in connection with the administration of the Settlement Agreement within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed per the terms of the Settlement Agreement;

(b) Receive exclusion forms and other requests from Class Members to exclude themselves from the Settlement Agreement and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any exclusion forms or other requests from Class Members after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and

Defendant's Counsel;

(c) Provide summaries to Class Counsel, Defendant's Counsel, and the Parties and/or their representatives as provided in the contract to be entered into by Defendant with the Settlement Administrator, including without limitation, reports regarding the number of Claim Forms received and the amount of benefits sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

(d) Make available for inspection by Class Counsel, Defendant's Counsel, and the Parties and/or their representatives the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud, and shall reject a Claim Form, or any part of a claim for a payment reflected therein, where the name provided on a Claim Form does not appear on the list of Persons who will receive direct Notice or where there is evidence of abuse or fraud. The Settlement Administrator shall also reject a Claim Form that does not contain all requested information necessary to screen the claim for fraud or abuse.

5.3 Defendant's Counsel, Class Counsel, and the Parties and/or their representatives shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Class Members. The Settlement Administrator shall follow any agreed to decisions of Defendant's Counsel and Class Counsel. To the extent Defendant's Counsel and Class Counsel are not able to agree on the disposition of a challenge, the Special Master shall timely decide such challenge. The Parties agree that the Settlement Administrator shall thereafter follow the decision of the Special Master resulting from any such challenge.

5.4 In the event that any Claim Forms are defective, incomplete, inaccurate, and/or evidence fraud, then the Settlement Administrator may reject those Claim Forms without seeking additional information or providing an opportunity to cure the defect.

5.5 Any Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a Claim Form will not be entitled to receive any cash award or any other benefits pursuant to this Settlement Agreement, but will otherwise be bound together with all Class Members by all of the terms of this Settlement Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

5.6 Class Counsel and Defendant's Counsel each agree to keep all information about the settlement administration process—including without limitation all information received pursuant to Paragraph 5 of this Agreement, such as claims reports, information concerning opt-outs, and the Class List—confidential and may use it only for purposes of effectuating this Agreement. Notwithstanding the foregoing, as required by the Court or to effectuate the intent of this Agreement, the Parties may disclose: Opt-outs, Objections, Claims and other documents needed to enforce the terms and conditions of this Agreement.

6. TERMINATION OF SETTLEMENT.

6.1 Subject to Paragraph 9 below, the Class Representative, on behalf of the Settlement Class, or Defendant, shall have the right to terminate this Settlement Agreement by providing notice ("Termination Notice") to the Defendant or Class Representative, respectively, within ten (10) days, of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement; (ii) the Court's material modification of the Claim Form, Official

Notice, Published Notice, and Direct Notice, attached hereto as Exhibits A through D; (iii) the Court's refusal to grant final approval of this Agreement in any material respect; (iv) the Court's refusal to enter the Final Judgment in this Action in any material respect; (v) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (vi) the date upon which an Alternative Judgment, as defined in Paragraph 1.10 of this Agreement is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. If more than two hundred (200) Class Members request to be excluded from the Settlement Class, Defendant shall have the right to terminate this Settlement Agreement by providing a Termination Notice to the Plaintiff within twenty (20) days of being notified that more than two hundred (200) Class Members requested to be excluded. The party who terminates this Settlement Agreement shall be obligated to pay all Settlement Administration Expenses accrued prior to the date of issuance of the Termination Notice.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Claim Form, Official Notice, and Published Notice for dissemination in accordance with the Notice Plan, substantially in the form of Exhibits A through D hereto.

7.2 At the time of the submission of this Settlement Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given,

the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

7.3 After Notice is given, the Parties shall request and obtain from the Court a Final Judgment. The Final Judgment will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Settlement Agreement, including Exhibits A through D thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, Releasing Parties, and their heirs, executors and administrators, successors and assigns;

(c) find that the Notice and the Notice Plan implemented pursuant to the Settlement Agreement: (i) constitute the best practicable notice under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately

represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including Exhibits A through D to this Agreement) as: (i) shall be consistent in all material respects with the Final Judgment; or (ii) do not limit the rights of Settlement Class Members;

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(j) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.

8.1 At least fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will seek an award of attorneys' fees and costs and an incentive award for Plaintiff in

recognition of their efforts in prosecuting this case and achieving a meaningful benefit for the Class. Subject to Court approval, Class Counsel will request an incentive award for Plaintiff in the amount of $2,000. The award of attorneys' fees for Class Counsel and the incentive award for Plaintiff shall be paid from the Settlement Fund.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 If some or all of the conditions of the Effective Date specified in Paragraph 1.10 are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 9.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to Plaintiff and Defendant. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, any attorneys' fees requested by Class Counsel shall not prevent the Agreement from becoming effective.

9.2 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 1.10, 6.1, or 9.1 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties agree to discuss and conduct, in good faith, confirmatory discovery as

appropriate to determine: (i) the approximate number of units of the Product that Defendant believes it sold to its distributors, retailers, and resellers, collectively; and (ii) Defendant's approximate revenue generated from those sales.

10.2 The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant in bad faith or without a reasonable basis.

10.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.5 Whether or not the Effective Date occurs or this Settlement Agreement is

terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against Defendant, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them, as an admission, concession or evidence of, the infirmity or strength of any claims raised in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be

necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(e) is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(f) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.7 The waiver by one party of any breach of this Agreement by any other party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.8 Exhibits A through D to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.9 This Agreement and its Exhibits set forth the entire agreement and understanding

of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own costs.

10.11 Plaintiff represents and warrants that it has not assigned any claim or right or interest therein as against the Released Parties to any other Person or party and that it is fully entitled to release the same.

10.12 Each counsel or other Person executing this Settlement Agreement, Exhibits A through D, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.13 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement all exchange original signed counterparts. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.14 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.15 The Court shall retain jurisdiction with respect to implementation and

enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

10.17 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: 09/28/2015

LESLIE HEDGES, individually and as the Class Representative

By _____
Leslie Hedges

Dated: _____

EARTH, INC.

By _____

Title _____

enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

10.17 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: _____

LESLIE HEDGES, individually and as the Class Representative

By _____
Leslie Hedges

Dated: 9-29-15

EARTH, INC.

By _____

Title PRESIDENT

IT IS SO STIPULATED:

Dated: 9/29/15

SIPRUT PC
Attorneys for Plaintiff Leslie Hedges
and the Settlement Class

By _____
Joseph J. Siprut

EXHIBITS

Exhibit A **Claim Form**

Exhibit B **Official Notice**

Exhibit C **Published Notice**

Exhibit D **Direct Postcard Notice**

4846-6760-0677, v. 4

EXHIBIT A

CLAIM FORM

LESLIE HEDGES V. EARTH, INC., NO. 14-CV-9858 (N.D. ILL.)

TO RECEIVE A PAYMENT UNDER THIS SETTLEMENT AGREEMENT, THIS CLAIM FORM MUST BE SUBMITTED ONLINE BY [CLAIMS DEADLINE] ON WWW.EARTHEXER-WALKSHOESETTLEMENT.COM

IF YOU DO NOT SUBMIT A COMPLETED CLAIM FORM BY THE DATE INDICATED YOU WILL NOT RECEIVE A CASH PAYMENT UNDER THIS SETTLEMENT. THE VALUE OF EACH INDIVIDUAL SETTLEMENT PAYMENT CANNOT BE DETERMINED UNTIL THE CLAIMS DEADLINE HAS PASSED AND ALL CLAIMS HAVE BEEN VERIFIED.

INSTRUCTIONS: You must provide all required information below and sign the claim form and submit online or mail the claim form. Please print or type the following information:

NAME OF PERSON OR ENTITY THAT PURCHASED AN EARTH EXER-WALK SHOE:

Company Name

Contact Name

Last:

First:

Address:

Line 1:

Line 2:

City/St/Zip

Day Time Phone (area code-number):

Telephone: - -

Email Address:

Email:

CERTIFICATION

I certify that the foregoing information is true and correct and that I purchased an Earth Exer-Walk shoe between January 1, 2009 and [Date of Preliminary Approval].

_____ Date: _____

Signature

_____

Print name and title

IT IS YOUR RESPONSIBILITY TO KEEP A CURRENT ADDRESS ON FILE WITH THE CLASS ADMINISTRATOR.

EXHIBIT B

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND FAIRNESS HEARING

IF YOU PURCHASED AN EARTH EXER-WALK SHOE BETWEEN JANUARY 1, 2009 AND [DATE OF PRELIMINARY APPROVAL], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A settlement has been proposed in a class action lawsuit pending in the United States District Court for the Northern District of Illinois entitled *Leslie Hedges, individually and on behalf of all others similarly situated, v. Earth, Inc.*, No. 14-cv-9858 (the "the Action"). In the Action, Plaintiff Hedges, in her individual capacity and in her capacity as a representative of a putative class of similarly-situated persons, alleges that Earth violated law by mislabeling its Exer-Walk shoes with certain health benefits. This Notice explains the nature of the lawsuit, the general terms of the proposed settlement, and your legal rights and obligations.

GENERAL BACKGROUND OF THE ACTION

Plaintiff Hedges (the "Class Representative") filed a class action lawsuit against Earth on behalf of the Class of persons described above. The lawsuit alleges that Earth violated the law by labeling its Exer-Walk shoes with the ability to "improve posture," "strengthen core muscles," "reduce joint stress," and "maximiz[e] calorie burn" by simply wearing the shoe, and seeks civil penalties and attorneys' fees. Earth denies any wrongdoing or liability whatsoever, and no court or other entity has made any judgment or other determination of any liability against Earth.

The Parties have determined that it is in their best interests to settle the Action to avoid the expenses, inconveniences, and interferences with ongoing business operations that are associated with litigation. In addition, the Court has determined that the Action should proceed as a class action, for settlement purposes only, with Plaintiff Hedges as the Class Representative, and has granted preliminary approval of the settlement, subject to a final fairness hearing discussed below.

THE PROPOSED SETTLEMENT

Earth agreed to make a payment to every Class Member who does not opt out of the Settlement and submits a valid Claim Form equal to a pro rata distribution of the Settlement Fund ($270,000) after the following expenses have been deducted from the Fund: (i) notice and administration costs ($80,000); (ii) attorneys' fees and costs ($90,000); and (iii) an incentive award to Plaintiff ($2,000). These expenses are estimated and subject to court approval.

The costs of notice and administration are not exceed $80,000. The Class Representative will request an incentive award of $2,000 for her services as Class Representative and her efforts in bringing the Action. The attorneys for the Class ("Class Counsel") will request attorneys' fees. These amounts are payable from the Fund.

HOW TO RECEIVE YOUR PAYMENT

You must complete a Claim Form. Claim Forms must be postmarked by [**Claims Deadline**] or submitted online at **www.EarthExer-WalkShoeSettlement.com** no later than [**Claims Deadline**]. There can only be one Approved Claim per Class Member.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

If the Court approves the proposed Settlement Agreement, it will enter a judgment in the Action with prejudice as to all Class Members. Plaintiff and all Class Members, and each of their respective successors, assigns, legatees, heirs, and personal representatives release and forever discharges Earth, any and all of its present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, affiliates, subsidiaries, associates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, distributors, retailers, and resellers and persons, firms, trusts, corporations, officers, directors, other individuals or entities in which Earth has a controlling interest or which is affiliated with any of them, or any other representatives of any of these Persons and entities, from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions or failures to act relating to, or any individual or entity on Earth's behalf, allegedly misrepresenting or omitting statements concerning a Product, and any resulting damages arising therefrom that were or could have been alleged or asserted in the Action, including but not limited to violations of a consumer fraud statute. Notwithstanding the foregoing, "Released Claims" do not include: (i) personal or bodily injury claims; or (ii) class claims that do not relate in any way to the purchase of an Earth Exer-Walk shoe.

FAIRNESS HEARING

On [**Date/Time of Final Fairness Hearing**], a hearing will be held on the fairness of the proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed settlement's fairness. The hearing will take place before the Hon. Harry D. Leinenweber in Room 1941 of the Everett McKinley Dirksen United States Courthouse, located at 219 S. Dearborn Street, Chicago, IL 60604.

HOW TO OBJECT TO THE SETTLEMENT

If you do not exclude yourself, you can file an objection, either on your own or through an attorney, explaining why you think the Court should not approve the settlement. The objection must contain the case name and number; your name and address; the number of Earth Exer-Walk shoes you purchased; a statement of your objection; an explanation of the legal and factual basis for the objection; and documentation, if any, to support your objection. The objection may be filed by [**Objection Deadline**] with: (1) the Clerk of the United States District Court, Northern District of Illinois, 219 S. Dearborn, Chicago, IL 60604; and sent to (2) Plaintiff's counsel c/o Siprut PC, 17 N. State Street, Suite 1600, Chicago, IL 60602; and (3) Earth's counsel c/o Russell Beck, Beck Reed Riden LLP, 155 Federal Street, Suite 1302, Boston, IL 02110.

If you file and serve a written objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must also deliver to Class Counsel and Earth's Counsel, and file with the Court, no later than [**Objection Deadline**], a Notice of Intention to Appear.

ADDITIONAL INFORMATION

For more information about the Settlement, including the full text of the Settlement Agreement and Court order approving the settlement, visit **www.EarthExer-WalkShoeSettlement.com.**

4829-3916-1637, v. 1

EXHIBIT C

Hedges v. Earth, Inc.

Case No. 14-cv-09858, U.S. District Court for the Northern District of Illinois

A federal court ordered distribution of notice in connection with a proposed settlement of a Class Action. This is not a solicitation.

ATTENTION ALL PERSONS WHO PURCHASED AN EARTH EXER-WALK SHOE FROM JANUARY 1, 2009 TO [DATE OF APPROVAL]

THE ACTION AND THE SETTLEMENT. This Notice concerns a proposed settlement of a class action lawsuit filed against Earth, Inc. The lawsuit alleges that Earth violated the law by misrepresenting that its Exer-Walk shoes have the ability to "improve posture," "strengthen core muscles," "reduce joint stress," and "maximiz[e] calorie burn" by simply wearing the shoe. Plaintiff believes she has viable claims, both individually and on behalf of a nation-wide class of consumers against Earth and Earth believes it has valid defenses. Earth denies that it did anything wrong. Notwithstanding, Earth and Plaintiff (collectively the "Parties") agreed to settle the matter even though the Court has not held a trial or ruled in favor of either party on any disputed issues.

WHO IS ENTITLED TO TAKE PART IN THE SETTLEMENT. If you purchased a qualifying Earth Exer-Walk product from January 1, 2009 through [Date of preliminary approval], you are a Class Member and a proposed class action settlement ("Settlement") could affect your legal rights. You may be entitled to submit a claim for a cash payment as part of this Settlement. This Notice is only a summary. You can obtain the full class action notice, which explains the Settlement and your rights under it, by visiting **www.EarthExer-WalkShoeSettlement.com**. Without admitting liability, Earth agreed: (i) to make a payment to every Class Member who does not opt out of the Settlement and submits a valid Claim Form equal to a pro rata distribution of the Settlement Fund ($270,000) after the following expenses have been deducted from the Fund: (i) notice and administration costs ($80,000); (ii) attorneys' fees ($90,000); and (iii) an incentive award to Plaintiff ($2,000). These expenses are estimated and subject to court approval.

HOW TO MAKE A CLAIM. If you are a Class Member and wish to receive a Settlement payment, you must fill out and submit a valid Claim Form online by [**Claims Deadline**] at **www.EarthExer-WalkShoeSettlement.com**. You may also call 312-236-0000 to request a paper Claim Form that must be postmarked by [**Claims Deadline**]. All Claim Forms must be submitted online or postmarked by [**Claims Deadline**].

FINAL JUDGMENT AND RELEASE OF ALL CLAIMS. If the Court approves the proposed Settlement, it will enter a final judgment in the action on the merits as to all Class Members who do not request to be excluded from the Class. All Class Members who submit claims, and all Class Members who do not validly and timely request to be excluded from the proposed Settlement, shall be subject to a binding judgment. Such Class Members will be forever barred from bringing their own lawsuits and shall be deemed to have released Earth and its agents from all claims, causes of action or losses of whatever kind or nature that were asserted or could have been asserted in the lawsuit listed in this notice or that arise from that lawsuit.

NOTICE OF SETTLEMENT APPROVAL HEARING. The Honorable Harry D. Leinenweber, of the U.S. District Court for the Northern District of Illinois, will hold a hearing on [**Date of Final Fairness Hearing**], in Room 1941 of the Everett McKinley Dirksen United States Courthouse, located at 219 S. Dearborn Street, Chicago, Illinois 60604, to consider whether to grant final approval to the proposed Settlement and Class Counsel's request for attorneys' fees and costs, incentive award to representative Plaintiff, and certain settlement administration expenses. You have the right to appear at the hearing, although you do not have to. You may comment on, or object to, the terms of the proposed Settlement by [**Objection Deadline**]. The full notice describes how to submit comments or objections.

TO EXCLUDE YOURSELF FROM THE SETTLEMENT. If you do not wish to participate in or be bound by the Settlement, you must exclude yourself as described in the full notice, by **[Exclusion Deadline]**, or you will be barred from prosecuting any legal action against Earth related to the settled claims. If you exclude yourself, you may NOT submit a claim and you will not receive

any compensation under the Settlement. To view the full notice or fill out a Claim Form, please visit **www.EarthExer-WalkShoeSettlement.com**.

PLEASE DO NOT CONTACT THE COURT WITH ANY QUESTIONS.

EXHIBIT D

COURT AUTHORIZED
NOTICE OF CLASS ACTION
AND PROPOSED SETTLEMENT

Our Records Indicate You May Have Purchased an Earth Exer-Walk Shoe

You Could Get Money From A Class Action Settlement If You Return This Claim Form.

[Settlement Administrator's PO BOX]

First Class Mail
US Postage Paid
Permit #

«Barcode»
Postal Service: Please do not mark barcode

Claim #: [XXX] -«ClaimID» «MailRec»

«First1» «Last1»
«CO»
«Addr1» «Addr2»
«City», «ST» «Zip»
«Country»

[XXX]

[XXXXXXX]

In the United States District Court for the Northern District of Illinois

Hedges v. Earth, Inc., Case No. 14-cv-9858

LEGAL NOTICE

You might get a payment from the Class Action Settlement described in this Notice.

If you purchased an Earth Exer-Walk shoe from January 1, 2009 to [Date of Preliminary Approval], you could receive a payment from a class action settlement.

A settlement has been reached in a class action lawsuit claiming that Earth, Inc. allegedly violated the law by misrepresenting that its Exer-Walk shoes have the ability to "improve posture," "strengthen core muscles," "reduce joint stress," and "maximiz[e] calorie burn" by simply wearing the shoe. Earth denies that it did anything wrong, and the Court has not decided who is right.

Who is included? The Court has decided that the Settlement Class all individuals or entities who, from January 1, 2009 up to the date of preliminary approval of this Settlement, purchased an Earth Exer-Walk shoe.

What are the Settlement Terms? A Settlement Fund of $270,000 has been established to pay: valid claims; notice and claims administration ($80,000); attorneys' fees and costs ($90,000); and an incentive award to Plaintiff ($2,000). These amounts are estimated and subject to court approval.

How can you get a payment? To get a payment, you must sign and return the attached prepaid claim form, or submit your claim online at **www.EarthExer-WalkShoeSettlement.com**, or request a paper claim form by calling 312-236-0000. **All claims must be postmarked or submitted by [Date].** You must fully complete and timely submit a claim to receive money from this settlement. The exact amount that claimants will receive is not known at this time.

Your other options. If you do not want to be legally bound by the settlement, you must exclude yourself by **[Date]**. If you do not exclude yourself, you will release any claims against Earth and will not be able to sue Earth for claims related to your purchase of Exer-Walk shoes. Whether you exclude yourself or not, you will not waive any personal or bodily injury claims, or class claims that do not relate in any way to the purchase of an Exer-Walk shoe. You may object to any aspect of the settlement, but must do so by **[Date]**. The full Notice available on the website explains how to exclude yourself or object. The Court will hold a hearing on **[Date]** to consider whether to approve the settlement and a request for attorneys' fees and an incentive award to the Class Representative. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. For more information, call 312-236-0000, or visit the website at **www.EarthExer-WalkShoeSettlement.com**.

4843-6418-0005, v. 1

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LESLIE HEDGES, individually and on behalf of all others similarly situated,	)	Case No. 14-CV-9858
Plaintiff,	)	Hon. Harry D. Leinenweber
v.	)	Hon. Susan E. Cox
EARTH INC., a Massachusetts corporation,	)	
Defendant.	)	

DECLARATION OF JOSEPH J. SIPRUT

I, Joseph J. Siprut, declare:

1. I am over the age of eighteen and am fully competent to make this declaration. I make this declaration based upon personal knowledge unless otherwise indicated.

2. I am admitted to practice in the State of Illinois and in the United States District Court for the Northern District of Illinois, and other federal district courts. I am one of the attorneys for Plaintiff and the Settlement Class herein. I make this declaration in support of Plaintiff's Motion For Preliminary Approval Of Class Action Settlement. If called as a witness, I would and could testify to the following:

3. I am the managing partner of the law firm of Siprut PC (herein "Siprut PC" or "Class Counsel"). I have personally been involved in the entirety of the prosecution of this class action lawsuit (the "Action").

4. Plaintiff filed its class action complaint ("Complaint") on December 9, 2014, against Earth, Inc. ("Earth"). The case is currently pending before this Court. On behalf of herself and a proposed class of all individuals or entities in the United States who, from January 1, 2009 up to the date of preliminary approval of this Settlement, purchased a Product, Plaintiff

alleged that Earth made false and deceptive representations regarding the health benefits of its Exer-Walk shoe (the "Product"). (*See generally* Docket No. 1.)

5. On February 2, 2015, Earth filed a Motion To Dismiss Count I of Plaintiff's Complaint under Rule 12(b)(6) on the ground that Plaintiff failed to provide the requisite pre-suit notice before pursuing her warranty claim. (Dkt. No. 17.)

6. On March 5, 2015, Plaintiff filed her Response In Opposition (Dkt. No. 20), and, on March 19, 2015, Earth filed its Reply In Support (Dkt. No. 22).

7. On April 21, 2015, this Court denied that motion. (Dkt. No 23.)

8. After the ruling on Earth's Motion To Dismiss, Class Counsel and Earth began settlement negotiations through telephonic conferences and written correspondence.

9. On April 22, 2015, the Parties filed an agreed motion for a 90-day extension of time to answer or otherwise respond to Plaintiff's class action complaint in order have the necessary time to attend a mediation and explore settlement opportunities. (Dkt. No. 25). On April 29, 2015, this Court granted that motion and set a new status hearing for July 22, 2015 (Dkt. No. 26.)

10. On June 9, 2015, the Parties engaged in a full-day of mediation in an effort to settle the claims before the Hon. Morton Denlow (Ret.) in the Chicago, Illinois offices of JAMS (Judicial Arbitration and Mediation Services). The mediation session began in the morning and went into the late evening.

11. Prior to the mediation, the Parties exchanged written statements and documents supporting their respective positions. After nearly eleven hours of arms-length negotiations, the Parties were successful in reaching an agreement on the material terms of a settlement structure.

12. The Parties then spent several more weeks exchanging drafts of a final, written settlement agreement. After many exchanges of drafts and edits, the Parties were finally able to agree to the form and content of a settlement agreement in September 2015 that has now been fully executed and attached hereto.

13. Based on empirical data supplied by Earth during the settlement negotiations, it was established that approximately 87,452 individuals or entities purchased pairs of the Product. The benefit obtained for the Settlement Class is $270,000 from which each Settlement Class Member that submits a valid form will received a pro rata share, after the Settlement Administration Expenses, Fee Award, and Plaintiff's incentive award have been deducted.

14. I have substantial experience in complex business litigation and class actions. My Firm, Siprut PC, substantially concentrates its practice in the prosecution of class actions. My Firm's resume is attached as Exhibit A hereto.

15. Throughout this litigation, my Firm has diligently prosecuted this matter, dedicating substantial resources to the investigation and litigation of the claims at issue, and has successfully negotiated the settlement of this matter to the benefit of the proposed Class. Neither my firm nor the Plaintiff have any interests antagonistic to the interests of the other Class members.

16. Plaintiff and Class Counsel believe that the claims asserted against Earth in this litigation have merit. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against Earth through trial and appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. This litigation involves complex class

issues, which would involve protracted and risky litigation if not settled. Moreover, in the event of any judgment against Earth, an appeal could postpone any recovery for several years.

17. Accordingly, Plaintiff and Class Counsel believe that there is substantial benefit to the Class of receiving a cash award and a prospective relief from Earth.

18. The Settlement Agreement, and the terms thereof, was reached after rigorous advocacy and extensive negotiations, in which I participated directly. Plaintiff and Class Counsel believe that the terms set forth in the Settlement Agreement confer substantial benefits upon the proposed Class, and is a fair, reasonable, and adequate resolution of the Class' claims against Earth. As such, the Settlement is entitled to a good-faith determination and I respectfully submit that this Court should enter the proposed Preliminary Approval Order and, ultimately, the Final Order and Judgment, approving this proposed Settlement in all respects.

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

Executed on October 5, 2015 at Chicago, Illinois.

s/ Joseph J. Siprut

4846-4182-0966, v. 1

EXHIBIT A

SIPRUT PC FIRM RESUME

Siprut PC is a commercial litigation firm based in Chicago, with additional offices in San Diego, Boston, and Colorado Springs. The firm focuses its practice exclusively on complex litigation and pre-litigation counseling, encompassing a wide variety of areas and issues. The firm's primary litigation groups include plaintiffs' class action litigation (with an emphasis on consumer law issues); *qui tam* and whistleblower litigation; intellectual property and patent litigation; and business litigation.

Siprut PC and its attorneys have repeatedly been appointed as lead counsel in federal and state class action lawsuits across the country, and have recovered hundreds of millions of dollars for its clients. The firm has been prominently featured in the mainstream media for its successes and advocacy on behalf of consumers nationwide, and our attorneys are frequently invited to speak at seminars on consumer protection and class action issues.

CLASS ACTION AND CONSUMER LITIGATION

Siprut PC is an established leader in the class action arena. The firm has been recognized for its "high-stakes, high-profile cases against large defendants" (Chicago Daily Law Bulletin, September 2011). As federal courts have further recognized in appointing the firm and its attorneys as lead counsel in some of the most prominent class cases in the country, Siprut PC has "substantial class action experience [and has served] as lead counsel" in myriad class litigation. *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No. MDL 13-cv-9116 (N.D. Ill. July 29, 2014). The firm's recent settlements and leadership appointments include the following:

- *In re Southwest Airlines Voucher Litigation* (Case No. 11-cv-8176, N.D. Ill.): Appointed lead counsel in nationwide class action relating to Southwest's unilateral cancellation of drink vouchers paid for by business select travelers. Settlement valued up to $58 Million granted final approval.

- *In re Energizer Sunscreen Litigation*, (Case No. 13-cv-00131, N.D. Ill.): Appointed lead counsel in nationwide class action relating to defective sunscreen nozzles manufactured by Energizer. Settlement valued up to $200 Million granted final approval.

- *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation* (Case No. MDL 13-cv-9116, N.D. Ill.): Appointed co-lead counsel in consolidated MDL litigation against the NCAA on behalf of current and former collegiate athletes related to concussions and head injuries. Landmark settlement of $75 million submitted for preliminary approval.

- *Illinois Nut & Candy Home of Fantasia Confections, LLC v. Grubhub, Inc., et al.* (Case No. 14-cv-00949, N.D. Ill.): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Grubhub, in violation of the Telephone Consumer Protection Act. Settlement of $2 million granted final approval.

- *Padilla v. DISH Network LLC* (Case No. 12-cv-07350, N.D. Ill.): Appointed lead counsel in nationwide class action relating to statutory violations of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). Landmark settlement providing class-wide injunctive relief – the first class settlement under SHVERA ever – granted final approval.

- *In Re Prescription Pads TCPA Litigation* (Case No. 13-cv-06897, N.D. Ill): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Rx Security, in violation of the Telephone Consumer Protection Act. Settlement of $1 million granted final approval.

- *Lim, et al. v. Vendini* (Case No. 14-cv-561, Cal. Sup Ct.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide. Settlement of $3 million granted final approval.

- *Muir v. W.S. Badger Co.*, (Case No. 14-CH-5935, Cir. Ct. Cook County, Illinois): Appointed lead counsel in nationwide class action relating to recall of defective sunscreen products. Settlement providing class-wide injunctive relief granted final approval.

- *Windows Plus, Incorporated v. Door Control Services, Inc.* (Case No. 13-cv-07072, N.D. Ill): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Door Control, in violation of the Telephone Consumer Protection Act. Settlement valued at $1 million granted final approval.

- *Townsend v. Sterling* (Case No. 13-cv-3903, N.D. Ill): Appointed lead counsel in nationwide class action relating to violations of the Fair Credit Reporting Act in the employment context. Settlement granted final approval.

- *Dr. William P. Gress et al. v. Premier Healthcare Exchange West, Inc.* (Case No. 14-cv-501, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Premier, in violation of the Telephone Consumer Protection Act. Settlement of $756,000 granted preliminary approval.

- *Stephan Zouras LLP v. American Registry LLC* (Case No. 14-cv-943, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Premier, in violation of the Telephone Consumer Protection Act. Settlement of granted preliminary approval.

- *Foos v. Ann, Inc.* (Case No. 11-cv-02794-L-MDD, S.D. Cal.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at $2,323,500 granted final approval.

- *Lamb v. Bitech, Inc.* (Case No. 3:11-cv-05583-EDL, N.D. CA): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-

Beverly Act. Class-wide settlement on behalf of 30,000 California residents granted final approval.

- *Golba v. Dick's Sporting Goods, Inc.* (Case No. 30-2011-00472227, CA Superior Ct.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at $1,150,000 granted final approval.

- *Pietrantonio v. Ann Inc. d/b/a Ann Taylor, Inc.* (Case No. 13-cv-12721-RGS, D. Mass.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued in excess of $2 million received final approval.

- *Christensen v. Sur La Table, Inc.* (Case No. 13-cv-11357-GAO, D. Mass.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.

- *Monteferrante v. The Container Store, Inc.* (Case No. 13-cv-11362-RGS, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.

- *Alberts v. TSA Stores, Inc.* (Case No. MICV2014-01491, Mass. Sup. Ct.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued at $2 million received final approval.

- *Miller v. J. Crew Group, Inc.*, (Case No. 13-cv-11487, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued at $2 million received final approval.

- *Rich, et al. v Lowe's Home Centers Inc.* (Case No. 13-cv-30144-MGM, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.

- *Moyer v. Michaels* (Case No. 14-cv-561, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.

- *Lewert v. P.F. Chang's China Bistro* (Case No. 14-cv-04787, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.

- *Mednick v. Precor Inc.* (Case No. 14-cv-03624, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to false representations in the sale and marketing of Precor treadmills.

- *John McNamara, et al. v. Samsung Telecommunications America, LLC, et al.* (Case No. 14-cv-1676, N.D. Ill.): Appointed co-lead counsel in nationwide class action alleging false representations in connection with the performance of the Samsung 4G phone.

- *Belville et al v. Ford Motor Company* (Case No. 13-cv-06529, W.D. Va.): Appointed to Plaintiffs' Steering Committee in consolidated class litigation against Ford related to sudden acceleration in Ford model vehicles.

- *In re Ventra Card Litigation* (Case No. 13-cv-07294, N.D. Ill.): Appointed co-lead counsel in class litigation related to the Chicago Transit Authority Ventra payment card system.

- *In re Barnes & Noble Pin Pad Litigation* (Case No. 12-cv-8617, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.

- *Goodman v. Casting360, LLC* (Case No. 12-cv-09851, N.D. Ill.): Appointed lead counsel in nationwide class action for violations of the federal Telephone Consumer Protection Act.

- *Kruse, et al. v. Citigroup, Inc.* (Case No. 11-cv-01003-AG-AN, C.D. CA): Appointed lead counsel in a nationwide class action against Citigroup for a massive data breach exposing the personal information of hundreds of thousands of consumers nationwide.

BUSINESS LITIGATION

Siprut PC attorneys have substantial experience with emergency injunctive relief proceedings (representing both plaintiffs and defendants), restrictive covenant litigation, and large commercial contract disputes. Firm partners have contributed to the following matters:

- *NewSub Magazine Servs. LLC v Heartland Direct, Inc.* (Case No. 02-C-4949, N.D. Ill.): Pierced an entity's corporate veil to obtain a seven figure judgment against related corporations and individuals.

- *In re Estate of Edith-Marie Appleton* (Case No. 00-P-103, Cook County, IL): Successfully defended an estate, throughout a three-week jury trial, from a claim brought by Florida State University involving a $2,000,001 alleged charitable pledge.

- *Edison Mission Energy v Mirant Corp* (Case No. 02-CC-0059, Orange County, CA.): Defended and settled $750 million breach of contract case involving the purchase of a foreign power facility.

- *Johnson v. Sample & Cross Capital Mgmt.* (Case No. 07-L-929, Lake County, Ill): Secured dismissal with prejudice of counts brought against a hedge fund by eleven investors in three separate actions, including claims for violation of the Illinois Securities Law Act, violation of the Illinois Consumer Fraud Act, breach of fiduciary duty , and negligence.

- *American Insurance v. Ingram* (Cook Co., Ill.): Obtained preliminary and permanent injunctions against former employee who opened competing business and used previous employer's confidential information.

- *Veal v. James and 7-Eleven* (Cook Co., Ill.): Obtained judgment following bench trial in favor of employee accused of wrongful conduct.

- *Des Plaines Office Equipment Co. v. Nicolin et al.* (Cook Co. Ill.): Represented hiring company and former employee in lawsuit brought by prior employer to enjoin employee from working. Successfully opposed motions for TRO, preliminary and permanent injunctions.

- *In re Confidential Arbitration* (JAMS Chicago, IL): Following week-long trial before retired federal judge, successfully defended breach of fiduciary duty and shareholder dilution claims in excess of $7 million. Claims arose from issuance of capital call and allocation of distributions and management fees.

- *In re Confidential Arbitration* (AAA St. Louis, MO): Following trial before a three-member arbitration panel, recently obtained a $1.7 million award, including recovery of all attorneys' fees and costs. Claims arose from purchase of multiple nursing home facilities.

- *Delaware Superior Court and Illinois Chancery Court Litigation.* Defended industrial equipment company in case brought by hedge fund investor concerning hedge fund's investment in $75 million secured lending loan facility. Claims involved financing and dissolution of business issues.

- *Real estate arbitration* (AAA Minneapolis, MN). Obtained $100,000 award, including all attorneys' fees and costs, on behalf of commercial real estate buyer in breach of contract action with seller.

- *Trilegiant v. Sitel Corporation* (S.D.N.Y.). Represented Trilegiant in breach of contract action seeking $34 million in liquidated damages from vendor.

- *Confidential purchase price adjustment arbitration* (AAA Chicago). Represented plastics manufacturer in arbitration. The Panel found in Client's favor on claims for breach of asset purchase agreement entered into as part of reverse spin-off

transaction and public offering. In addition, the Panel denied the Opposing Party's counterclaim for breach of a related real estate sublease and awarded judgment to Client on its counterclaim concerning the same sublease.

- *Advertising Arbitration* (AAA Chicago). Arbitrated dispute on behalf of professional sports team relating to advertising sales and contracts; obtained favorable result.

- *Confidential arbitration for aviation company* (ICC Chicago). Represented aviation manufacturer in contract dispute arising from purchase of company. Following evidentiary hearings, obtained arbitration award in favor of client.

- *Lakeshore Drive Entertainment v. Prestige Films et al.* (Cook Co. Ill): Obtained dismissal of claims brought by movie production company over distribution rights.

ANTITRUST, UNFAIR COMPETITION, AND RICO LITIGATION

Siprut PC attorneys have substantial experience handling antitrust and unfair competition litigation, including RICO claims, against some of the largest corporations in the world. Representative litigation includes:

- *Woolsey v. JP Morgan Chase & Co.* (S.D. Cal.). Representing putative class alleging JP Morgan Chase manipulated the price for electricity within the California electricity market through a series of deceptive bidding strategies, resulting in higher prices to consumers.

- *In re Sulfuric Acid* (N.D. Ill.) Represented sulfuric acid manufacturer in putative nationwide class action pending in federal court in Chicago and indirect purchaser class action pending in California state court. Plaintiff alleged industry-wide scheme to constrain the supply and inflate the price of sulfuric acid. After eight years of litigation, obtained summary judgment on all direct purchaser claims, which was subsequently affirmed by the Seventh Circuit.

- *In re Credit Swaps Default Litigation* (N.D. Ill.). Represented financial services company in putative class action alleging defendants conspired to restrict competition in the market for credit default swaps by monopolizing the sell-side of the CDS market and thereby maintaining anti-competitively wide bid-ask spreads.

- *Rasterex Holdings v Research in Motion, et al* (Fulton Co., Georgia). Represented RIM and co-defendants in trade secret dispute. Plaintiff alleged RIM misappropriated trade secrets and incorporated them into RIM's Blackberry handheld device. Following summary judgment motions, obtained settlement on eve of trial.

- *Safelite Glass Corp.* (E.D. Tex.). Obtained summary judgment on behalf of all defendants, and then won affirmance by U.S. Court of Appeals for the Fifth Circuit, defeating all claims in *Stewart Glass & Mirror, Inc. v. USA GLAS Corp.*, a suit by

Texas plaintiffs against national corporate competitors asserting conspiracy and monopolization in violation of federal antitrust laws.

CIVIL RIGHTS AND CONSTITUTIONAL CLAIMS

Siprut PC attorneys have handled landmark, high-impact civil rights and constitutional claims against municipalities, state and government entities, and corporate employers. Representative litigation includes:

- *Doe II and Doe III , Does IV-VIII* (N.D. Ill.): Representing female victims of sexual assault for claims of civil rights and equal protection violations against The City of Harvey. We allege that Harvey has a custom, policy and practice of failing to adequately investigate claims by female rape victims, including in some instances failing to submit or process sexual assault evidence or rape kits.

- *Green v. Village of Winnetka* (Cook Co. Ill.): Representing putative class of Winnetka property owners who allege Village is violating the Illinois constitution by charging utility fees to fund a $42 million stormwater project that includes an eight mile tunnel to Lake Michigan.

- *People Who Care v. Rockford Board of Education* (Case No. 89-cv-20168, N.D. Ill.) Represented African American and Hispanic students in desegregation and educational equity class action lawsuit against one of the largest school districts in Illinois. Proved liability across most areas of school operations, including special education, school building conditions, transportation, and student assignment. Secured multi-year, comprehensive court-ordered remedies. Represented plaintiffs throughout 10 years of remedies implementation.

- *Johnson v. Board of Education of Champaign Unit School District* (Case No. 00-cv-1349, C.D. Ill.) Represented African American and Hispanic students in race discrimination and desegregation class action lawsuit. Secured comprehensive settlement affecting many areas of school district operations, including climate and discipline, upper level courses, student assignment, special education, and gifted programs. Represented plaintiff class throughout seven years of settlement monitoring.

- *McFadden v. Board. of Education School District U-46* (Case No. 05-cv-0760, N.D. Ill.) Represented minority students in educational equity suit against second largest school district in Illinois. Defendant found liable for intentionally segregating Hispanic students into separate gifted program.

- *Ramirez v. Ceisel Masonry* (N.D. Ill.): Represented Hispanic laborers who alleged they were being discriminated against on the job because of their race. Obtained favorable settlement on behalf of all plaintiffs.

WHISTLEBLOWER AND FALSE CLAIMS ACT LITIGATION

Siprut PC attorneys have led litigation resulting in settlements in excess of $100 million, and we are actively prosecuting numerous False Claims Act lawsuits:

- *U.S. ex rel. Robinson v. Northrop-Grumman Corp.* (Case No. 89-cv-6111, N.D. Ill.) Qui tam action brought against Northrop-Grumman for fraud in connection with the B-1 bomber, the B-2 "Stealth" bomber, and the F-15 fighter. Sixteen years after the case was filed, it was settled prior to trial for a total recovery of $135 million.

- *U.S. ex rel. McGee v. IBM, Corp., et al.* (Case No. 11-cv-3482, N.D. Ill.) Currently pending, the case concerns a bid-rigging conspiracy in connection with a $50 million Homeland Security Project in Cook County. Successfully defeated IBM's motion to dismiss in its entirety.

- *U.S. ex rel. Solomon v. Lockheed Martin Corp.* (Case No. 3:12-DV-4495-D, N.D. Tx.) Currently pending, the case seeks more than $100 million in damages for fraud in connection with the F-35 Joint Strike Fighter, the most expensive weapons program ever.

- Currently under seal is a qui tam action for the submission of false claims by a facility performing Magnetic Resonance Imaging in violation of Medicare's Multiple Procedures Payment Reduction Policy.

- Currently under investigation is a potential Medicare *qui tam* action against a pharmaceutical manufacturer and its distributors for overcharging the government hundreds-of-millions of dollars through falsely reporting the Average Wholesale Price of its drugs.

- Currently under investigation is a potential Medicare/Medicaid *qui tam* action concerning fraud in connection with the efforts of a manufacturer of a defective medical implant device to obtain FDA approval of a the implant. Potential damages valued in excess of $100 million.

- Currently under investigation is a potential *qui tam* action in connection with hundreds-of-millions of dollars in false claims relating to mortgage foreclosures

PATENT LITIGATION

Siprut PC and its attorneys have successfully represented public companies, mid-size businesses, small companies, and individuals in their patent disputes all over the United States and the world – from Chicago to San Francisco, from Russia to Cyprus. We have litigated cases in a variety of technological fields, including the life sciences (DNA amplification, screening, and sequencing), computer science (cloud computing, optical character recognition, and genome sequencing), and orthopedic fields (dental and hip implants). Siprut PC has recovered millions of dollars for our clients against some of the largest and most aggressive companies in the country.

ATTORNEYS

JOSEPH SIPRUT is the founder and managing partner of Siprut PC. He was named a "Super Lawyer" in Illinois for Class Action Litigation, and holds an *AV Preeminent* rating by Martindale Hubble, the highest possible peer review rating. He has been called a "fearless game-changer in class actions" by the Chicago Daily Law Bulletin. Mr. Siprut was previously named one of the Top 40 attorneys in Illinois under the age of 40, and was also named one of the "Top 40 Under 40" in the country by the National Trial Lawyers Association. ALM Legal Leaders named Mr. Siprut one of "Chicago's Top Rated Lawyers of 2014." Mr. Siprut was also selected for membership in the Multi-Million Dollar Advocates forum, one of the most prestigious groups of trial lawyers in the United States. Membership is limited to attorneys who have won million and multi-million dollar verdicts and settlements, and fewer than 1% of U.S. lawyers are members.

Mr. Siprut has appeared in dozens of publications and television and radio broadcasts worldwide, including CBS Radio, NPR, ESPN, Bloomberg Law, Law360, the Chicago Tribune, and more. He has been deemed by the media as the "Friend of the Frequent Fliers" for his successful litigation crusades against the airline industry on behalf of airline customers, as well as a "Leading Sports Reformer" for his advocacy to combat the problem of concussions and head injuries in college sports.

Mr. Siprut frequently speaks at national class action and consumer litigation seminars. He has substantial first-chair trial experience, and previously served as an Adjunct Professor at Northwestern University School of Law in the Trial Advocacy program. He is also a frequent author and speaker, having published over 25 articles in the nation's leading law reviews and legal journals on topics including the right of privacy, copyright litigation, and contract doctrine, as well as litigation strategy and tactics. He was appointed as a member of the Illinois ARDC Hearing Board, and is also a member of the Advisory Board for the Fair Contracts Project, an initiative focused on counteracting the implications of fine print in standard form consumer contracts.

Mr. Siprut is a graduate of Northwestern University School of Law, where he served as the Managing Editor of the Northwestern Law Review and was selected to represent Northwestern in national competition as a member of its National Moot Court team. He was also awarded the Institute for Humane Studies Fellowship, a national fellowship competition for law and graduate study.

Prior to founding Siprut PC, Mr. Siprut spent his career practicing at some of the top corporate litigation firms in the country. Mr. Siprut has been recognized by the Law in Public Service Committee of the ABA for his dedication to pro bono work. He is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois (including its Trial Bar), the Seventh Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. For over five years, Mr. Siprut served as an arbitrator in the Cook County Arbitration Program.

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TODD MCLAWHORN is a partner at Siprut PC. He has over twenty years of commercial litigation trial experience, most of that with three of the country's largest law firms. He has tried cases and appeared before courts in a variety of jurisdictions, literally spanning the country from coast to coast. Mr. McLawhorn has significant experience with complex business litigation, including matters involving contracts, consumer fraud allegations, shareholder disputes and valuations, commercial real estate, trade secret issues, deceptive trade practices claims, antitrust issues, and merger and acquisition issues. He has represented assorted clients in a wide array of industries, including those in the financial services, banking, health care, computer hardware and software, membership services, manufacturing and professional sports fields. In addition, Mr. McLawhorn has devoted a substantial portion of his practice to class action litigation, particularly with respect to antitrust and consumer fraud claims.

Mr. McLawhorn recently received an AV Preeminent Rating, the highest possible rating, in the Martindale-Hubbell Peer Review Ratings Program. Mr. McLawhorn was previously recognized by The Chicago Law Bulletin and The Chicago Lawyer as one of the Top 40 lawyers under 40 in Illinois. He has contributed to several publications, most recently as a Contributor to the World Banks Group Doing Business 2015, and to various bar association publications. He has also provided significant pro bono representation, including assisting individuals who flee their home countries and seek political asylum in the United States, and helping individuals involved in the Illinois Chancery Court's Foreclosure Mediation Program, in an effort to help homeowners who are in foreclosure retain their homes.

In addition to being admitted to practice in New York and Illinois, Mr. McLawhorn is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, Federal Circuit, Fifth Circuit, and Eleventh Circuit, as well as the United States District Courts for the Northern District of Illinois (Trial Bar), Southern District of Illinois, Central District of Illinois, Southern District of New York, Eastern District of Michigan, Eastern District of Wisconsin, and Western District of Wisconsin. He is also a member of the American Bar Association, and is part of the Antitrust, Business Law, and Litigation Sections. As part of the Litigation Section, he is also a member of the Class Action and Derivatives Suit Committee, the Commercial and Business Litigation Committee, and the Intellectual Property Committee. Closer to home, Mr. McLawhorn is a longtime member of the Chicago Bar Association and the Illinois State Bar Association. In connection with the Chicago Bar Association, he is a member of the Antitrust, Class Action, and Consumer Law Committees.

Mr. McLawhorn received his law degree, with honors, from the University of North Carolina at Chapel Hill. At the University of North Carolina, he was on both Law Review and the Holderness Moot Court Bench. Prior to attending law school, Mr. McLawhorn graduated from East Carolina University, magna cum laude, in three years with a Bachelor of Arts in Psychology. In 2011 Mr. McLawhorn was elected to the District 101 Board of Education, and serves on the Building, Finance, and Legislative Committees. He is a former President and Board Member of the Village Club of Western Springs, a social and service organization. He is also actively involved in coaching and supporting his children's sports teams, and has served on various boards in connection with those activities.

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RICHARD L. MILLER II is a partner at Siprut PC. Richard was previously in-house counsel at a private equity firm, and before that, a partner at Novack and Macey LLP, where he specialized in commercial litigation. While there, Richard advised clients and litigated disputes involving real estate, insurance coverage, creditors' rights, products liability, licenses, trademark, employment contract and corporate veil piercing claims, among others.

Richard is an Adjunct Professor at Northwestern University School of Law where he has served as a Trial Advocacy instructor since 2005 and Advanced Trial Advocacy instructor since 2013. He has been an American Arbitration Association arbitrator since 2010 and, prior to that, was an arbitrator for the Cook County Mandatory Arbitration Program for two years.

Richard served as a prosecutor for Champaign County, Illinois for two years. He litigated approximately 50 jury trials, as well as innumerable bench trials. He prosecuted four murder cases, two of which went to trial, resulting in sentences of 45 and 55 years.

Richard was named one of the "40 Illinois Attorneys Under 40 To Watch" by the Law Bulletin Publishing Company, publishers of the Chicago Lawyer and Chicago Daily Law Bulletin. Chicago Magazine has repeatedly recognized Richard as a "Super Lawyer," "Rising Star" and one of the Top Young Commercial Litigation Attorneys in Illinois.

Richard has published articles appearing in the Illinois Bar Journal on Expert Testimony, Emergency Temporary Restraining Orders, The Wage Payment Act, and Spoliation Claims. He has also served as an author for the Illinois Institute of Continuing Legal Education (IICLE) for many years, authoring guides for practitioners on: Pleading Under the Federal Rules, Federal Motion Practice, Preparing for Trial, and Preserving the Record During Trial. Richard has lectured at webinars for ICLE on Motion Practice, Negotiating Settlements and Cross Examinations.

Richard is a member of the Illinois State Bar Association, the American Bar Association, the Chicago Bar Association and the University Club of Chicago. He currently serves as the President of the University of Illinois Law Alumni Board.

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BRUCE HOWARD is a partner at Siprut PC. He was named National Trial Lawyer of the Year Finalist by the Trial Lawyers for Public Justice, and was named a "Super Lawyer" in Illinois for Class Action Litigation, Securities Litigation, and ERISA Class Action Litigation. He was also named as a one of the Top Attorneys in Illinois by Chicago Magazine.

Mr. Howard has over thirty years of commercial litigation trial experience. Mr. Howard has significant experience with complex business litigation, including matters involving antitrust issues, shareholder fraud and corporate derivative class action claims, ERISA class actions claims, mass tort issues, trademark matters, deceptive trade practices issues, insurance defense matters, actions under the Racketeer Influenced and Corrupt Organizations Act, issues arising under the Anticybersquatting Consumer Protection Act, and whistle blower actions under the False Claims Act. He was also appointed as a Special Assistant Attorney General for the State of Illinois for purposes of prosecuting eminent domain matters. In addition to having devoted a

substantial portion of his career to antitrust and securities fraud matters, for the last twenty years, Mr. Howard has devoted a substantial portion of his practice to whistle blower actions for Medicare, Medicaid, Homeland Security, and defense contractor fraud.

Mr. Howard's notable cases include: *Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.*, an antitrust action in which he was involved in several Seventh Circuit appeals and litigation work-up, resulting in a $77 million jury verdict; *Morse v. Abbott Laboratories, Inc.*, a securities fraud class action which resulted in a $15.3 million jury verdict; *In re Chicago Flood Litigation*, in which he had a prominent role in the work-up of the case, which settled for more than $25 million; *Tyco International, Inc.*, a consolidated securities fraud class action that was jointly settled as part of a $3.2 billion global settlement – the third largest class action recovery ever; *Robinson v. Northrop Corporation,* a whistle blower action which, after 16 years of litigation, settled prior to trial for $134 million – the largest recovery in a False Claims Act case in this region at the time.

Mr. Howard received his law degree from Washington & Lee University School of Law.

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MATTHEW WAWRZYN is a partner at Siprut PC. He is a trial attorney with experience in many areas of law over 15 years. He has been lead counsel in various patent-infringement matters, both defending public companies and representing plaintiff companies of all sizes. Mr. Wawrzyn has also successfully defended businesses against allegations of fraud, breach of contract, white-collar crime, and has represented companies in accounting and insolvency cases in federal court and as part of federal regulatory proceedings.

In the last two years, Mr. Wawrzyn has acted as lead counsel on behalf of various inventors who seek to protect their patent portfolios from infringement by some of the largest companies in the world. Many of these cases were asserted against Fortune 100 companies and have since concluded favorably out of court.

Mr. Wawrzyn has argued before the Federal Circuit and five times before the Seventh Circuit Court of Appeals, and has drafted a petition for writ of certiorari on which the Supreme Court of the United States ordered a response. Mr. Wawrzyn began his career at Winston & Strawn in Chicago. His practice was largely devoted to representing major creditors in various large bankruptcy cases, including United Air Lines and Kmart. Mr. Wawrzyn also focused on white-collar crime and securities enforcement, including internal investigations and the defense of a large corporation in an investigation by the Securities Exchange Commission.

Mr. Wawrzyn subsequently joined Kirkland & Ellis in Chicago, where he continued to represent debtors in possession in large Chapter 11 cases at contested confirmation and Rule 9019 hearings. He also managed bankruptcy litigation on behalf of a private equity firm. In addition, Mr. Wawrzyn continued to devote his time to white-collar crime, securities enforcement, and general commercial litigation. Notably, Mr. Wawrzyn defended a "Big Four" accounting firm in one of the first investigations conducted by the Public Company Accounting Oversight Board, or PCAOB.

In early 2010, Mr. Wawrzyn founded a Chicago-based litigation boutique. Some of that firm's notable representations included the defense of the Russian software developer ABBYY against patent-infringement allegations of its chief competitor and the defense of the life sciences firm Illumina, again, against patent-infringement allegations of a chief competitor. The ABBYY case involved "optical character recognition" methods, and the Illumina case involved DNA amplification and sequencing techniques. Mr. Wawrzyn's litigation boutique merged with Siprut PC in 2015.

Mr. Wawrzyn graduated summa cum laude from DePaul University College of Law, where he was elected Order of the Coif and was a member of the DePaul Law Review. While at DePaul, Mr. Wawrzyn won 7 "CALI" awards for achieving the top grade in his class. He also published the following: Note, Constitutional Principles at Loggerheads with Community Action, 50 DePaul L. Rev. 371 (Fall 2000). Mr. Wawrzyn was named an Illinois "Super Lawyer -- Rising Star" in 2013 and again in 2014.

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KATHLEEN MANGOLD-SPOTO is Of Counsel at Siprut PC. She has over twenty years of class action litigation experience, primarily in the areas of consumer fraud, civil rights, and educational equity. She formerly was a partner at Futterman & Howard, Chtd., a premier civil rights, securities, and consumer fraud firm in Chicago. She has extensive experience as lead writer on trial and appellate briefs in complex federal cases, including on briefs to the United States Courts of Appeals for the Seventh and Second Circuits. She has been a conference presenter and college and law school guest lecturer on the topics of civil rights litigation under 42 U.S.C. Section 1983, education law, constitutional law, and the 50th Anniversary of *Brown v. Board of Education*.

Kathleen worked for six years as an elbow law clerk for federal judges in the Northern District of Illinois and the District of New Hampshire. She has many years' experience teaching legal writing and civil procedure at law schools in the Midwest and New England and has presented at regional, national, and international legal writing conferences. She recently served as a volunteer legal editor for the *Clearinghouse Review*, a publication of the Sargent Shriver National Center on Poverty Law. She is the author of *Third Party Challenges to Desegregation Remedies*, Ch.17, Civil Rights Litigation and Attorney Fees Annual Handbook, Vol. 15 (Dec. 1999), West Publishing.

Kathleen is a graduate of Loyola University Chicago School of Law, where she was a member of the Loyola Law Review. She received her undergraduate degree from the University of Illinois at Urbana-Champaign in English and Psychology.

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MICHAEL L. SILVERMAN is an attorney at Siprut PC. His practice is focused on complex and commercial litigation, with an emphasis on class action litigation involving antitrust, consumer protection, and contract law. Mr. Silverman has extensive experience in electronic discovery matters including electronic document preservation, spoliation, production, and

computer forensics. His efforts have assisted in the recovery of hundreds of millions of dollars for the class members he has represented.

Mr. Silverman received his Bachelors of Business Administration from the University of Wisconsin-Madison School of Business, where he concentrated his studies in Finance, Investments, and Banking. Mr. Silverman graduated *Cum Laude* from DePaul University College of Law, receiving his Juris Doctor degree in 2008. While in law school, Mr. Silverman served as an Editor for the Journal of Contemporary Moral Issues as well as a Legal Writing Teaching Assistant for first-year law students. He is admitted to the Illinois State Bar and United States District Court, Northern District of Illinois.

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JOHN MARRESSE is an attorney at Siprut PC. His practice focuses on complex commercial and class action litigation. Mr. Marrese has handled all phases of pre-trial litigation, including drafting and arguing dispositive and evidentiary motions, taking and defending depositions, developing and executing written discovery, and preparing fact and expert witnesses for deposition and trial. He has also assisted in several trials resulting in favorable verdicts and settlements for his clients.

Mr. Marrese graduated *cum laude* from The Ohio State University College of Law, where he was elected Chief Managing Editor of the Ohio State Journal of Criminal Law and as a member of the International Law Moot Court Team. Mr. Marrese achieved the top grade in his class in both Trial Practice and Appellate Advocacy, and clerked for the United States Attorney's Office for the Southern District of Ohio. He received his B.A. from Emory University in Atlanta.

Mr. Marrese is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, and the United States District Court for the Eastern District of Wisconsin.

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STEPHEN JARVIS is an attorney at Siprut PC. Mr. Jarvis has actively participated in over 20 patent litigations pending around the United States, including arguing and drafting an array of substantive motions and briefs in federal court. Mr. Jarvis has taken and defended depositions, including particularly expert witnesses.

Mr. Jarvis graduated summa cum laude from DePaul University College of Law, where he was elected Order of the Coif and was a member of the DePaul Law Review. While at DePaul, Mr. Jarvis won 4 "CALI" awards for achieving the top grade in his class. Mr. Jarvis also won the Scandaglia & Ryan Excellence in IP Legal Writing Award, and he published a Comment in the DePaul Law Review.

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GREGG BARBAKOFF is an attorney at Siprut PC. His practice encompasses a wide spectrum of litigation with an emphasis on commercial litigation and consumer class actions. Gregg serves on the Board of Directors for the American Constitution Society, a progressive legal organization dedicated to the core Constitutional values of civil liberties, open access to justice, and the rule of law.

Gregg is a graduate of the Chicago-Kent College of Law, where he served as an editor of the Seventh Circuit Review, in which he was also published. During law school, he was selected as a Member of the Chicago-Kent Moot Court Honor Society, where he won the award for Best Overall Oralist at the Appellate Lawyers Association Moot Court Competition. Gregg was selected for the Class of 1976 Honors Scholarship while attending Chicago-Kent. Gregg graduated from Chicago-Kent *magna cum laude*, and was recently inducted into the Order of the Coif. Gregg is admitted to practice in Illinois and in the United States District Court for the Northern District of Illinois.

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ISMAEL SALAM is an attorney at Siprut PC. His practice is focused principally on class action litigation, with an emphasis on consumer protection, data privacy and technology issues, and litigation under the Telephone Consumer Protection Act. Ismael is a graduate of Loyola University Chicago School of Law, where he served as Managing Editor of the Public Interest Law Reporter, in which he is also published. He also served as a junior member of the Loyola Law Journal, the law school's main publication. During law school, he was selected as a Student Fellow for Loyola's Institute for Consumer Antitrust Studies, where he drafted papers on price-fixing. He was also awarded the CALI for the highest grade in his Law and Economics course.

Prior to Siprut PC, Ismael interned with the U.S. Army Judicial Advocate General's Corps at Fort Carson, Colorado, U.S. Attorney's Office for the Northern District of Illinois, U.S. Court of Appeals for the Seventh Circuit, and U.S. District Court for the Northern District of Illinois.

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MICHAEL OBERNESSER is Of Counsel to Siprut PC. Michael graduated magna cum laude from Xavier University in Cincinnati, Ohio with a Bachelor's Degree in Philosophy in 1998. After graduation, Michael went on to receive his Juris Doctor at the Northwestern University School of Law in Chicago, Illinois in 2001. While attending Northwestern, Michael was a member of the Bluhm Legal Clinic, where he represented clients accused of a wide variety of criminal offenses, including drug and gun possession, assault and battery, and murder. After graduation, Michael went to work for some of the largest law firms in the nation, including Morgan, Lewis & Bockius LLP, and Howrey LLC, where he litigated complex matters on behalf of his clients.

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TODD C. ATKINS is Of Counsel at Siprut PC, and heads the Firm's California office. His litigation practice encompasses class actions, real estate and securities matters – representing

both brokers and plaintiffs. Todd is also a trained and experienced mediator, and received his certification from the National Conflict Resolution Center.

Todd is a graduate of the University of San Diego, School of Law. He is admitted to practice in California, the District of Columbia, and the United States District Court for the Southern District of California, and is also a licensed real estate broker

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ALEXANDER SHAPOVAL is Of Counsel at Siprut PC, and heads the Firm's Boston office. His practice encompasses all manner of civil litigation, including class actions and personal injury litigation. Alexander is an experienced trial lawyer, with substantial first-chair jury trial experience.

Alexander is a graduate of the Massachusetts School of Law. He is admitted to practice in Massachusetts and the United States District Court for the District of Massachusetts.

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