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7 an individual, and on behalf of all others similarly situated

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11  
12 SONIA HOFMANN, an individual, and  
on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15  
16 DUTCH, LLC, a California Limited  
Liability Company; and DOES 1 through  
17 100, inclusive,

18 Defendant.  
19  
20  
21  
22

CASE NO.: 3:14-cv-02418-GPC-JLB

*Complaint Filed: September 5, 2014*

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION: (1)  
GRANTING PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT; (2)  
SCHEDULING A FAIRNESS AND  
FINAL APPROVAL HEARING;  
AND (3) DIRECTING THAT  
NOTICE BE SENT TO CLASS  
MEMBERS**

Date: January 06, 2017

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on January 06, 2017 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 2D of the United States District Courthouse, 221 West Broadway, Suite 4165, San Diego, California, 92101, before the Honorable Gonzalo P. Curiel, Plaintiff Sonia Hofmann (“Plaintiff”) will, and hereby does, move the Court for an order granting: (1) Preliminary Approval of Class Settlement, (2) Scheduling a Final Approval Hearing, and (3) Directing that Notice Be Sent to Class Members. Said Motion will be based on this notice, the attached points and authorities, the Declaration of John H. Donboli, and the complete files and records in this action.

**Because all parties agreed to the proposed class settlement, this Motion is not being opposed by Defendant Dutch, LL (“Defendant”).**

Dated: October\_14, 2016

Respectfully submitted,

DEL MAR LAW GROUP, LLP

By:/s/ John H. Donboli

John H. Donboli

Camille Joy DeCamp

Attorneys for Sonia Hofmann, an individual, and on behalf of all others similarly situated

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SONIA HOFMANN, an individual, and  
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14

15 DUTCH, LLC, a California Limited  
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17 Defendant.  
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CASE NO.: 3:14-cv-02418-GPC-JLB

*Complaint Filed: September 5, 2014*

**CLASS ACTION**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION: (1)  
GRANTING PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT; (2)  
SCHEDULING A FAIRNESS AND  
FINAL APPROVAL HEARING;  
AND (3) DIRECTING THAT  
NOTICE BE SENT TO CLASS  
MEMBERS**

Date: January 06, 2017

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	NATURE OF THE CASE .....	3
III.	PROCEDURAL HISTORY .....	3
IV.	CLASS DEFINITION .....	5
V.	SIZE OF CLASS.....	5
VI.	DESCRIPTION OF THE PROPOSED SETTLEMENT .....	5
VII.	NOTICE AND ADMINISTRATION OF THE SETTLEMENT .....	7
VIII.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL .....	8
	A.    The Settlement Approval Process.....	8
	B.    The Proposed Settlement is Presumptively Fair and Easily Meets the Requirements for Preliminary Approval.....	10
	1.    The Settlement is this Product of Serious, Informed and Noncollusive Negotiations.....	10
	2.    The Settlement Has No “Obvious Deficiencies” and Falls Well Within the Range for Approval.....	11
	3.    The Settlement Does Not Improperly Grant Preferential Treatment To the Class Representative or Segments Of The Class .....	12
	4.    The Stage Of The Proceedings Are Sufficiently Advanced to Permit Preliminary Approval Of The Settlement .....	13
	C.    The “Clear Sailing” Provision Contained in the Settlement Agreement is Reasonable and Not a Result of Collusion .....	13
IX.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE.....	17
X.	THE SETTLEMENT PROVIDES FOR A MEANINGFUL CHARITABLE CONTRIBUTION.....	17
XI.	CONCLUSION.....	19

## TABLE OF AUTHORITIES

### Cases

<i>Clear Sailing Agreements: A Special Form of Collusion in Class Action Settlements</i> , 77 Tul. L.Rev. 813,815-816 (2003) .....	14
<i>Consumer Privacy Acts</i> , 175 Cal.App.4 <sup>th</sup> , 545 (2009).....	14,15
<i>Garabedian</i> , 118 Cal.App.4 <sup>th</sup> , 125.....	15
<i>Harris v Vector Marketing Corp.</i> (N.D. Cal 2011) 2011 WL 1627973 .....	15
<i>In Re Bluetooth Headset Products Liability Litigation</i> , (9 <sup>th</sup> Cir. 2011) 654 F.3d 935,946.....	14
<i>In Re Microsoft I-IV Cases</i> , 135 Cal.App4 <sup>th</sup> 707,729 (2006) .....	19
<i>In Re Vitamin Cases</i> , 107 Cal.App.4 <sup>th</sup> 820,830 (2007).....	18
<i>In Re Wash. Public, Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379,1392 (D Ariz. 1989). 11	
<i>Kellogg</i> ,697 F.3d 866-867 .....	19
<i>Korea Supply Co. v. Lockheed Martin Corp.</i> , 29 Cal.4 <sup>th</sup> 1134, 1149 (2003) .....	12
<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811, 821 (9 <sup>th</sup> Cir. 2010).....	18
<i>Nachshin</i> , 663 F.3d 1040. ....	19
<i>Officers for Justice v. Civil Serv. Com'n of City and County of S.F.</i> , 688 F.2d 615,625 (9 <sup>th</sup> Cir. 1982). ....	9
<i>Rethinking Damages in Securities Class Actions</i> , 48 Stan.L.Rev. 1487,1534 (1996) . ....	14
<i>Stanger v. China Elec. Motor, Inc.</i> , 812 F.3d 734,739 (9 <sup>th</sup> Cir. 2016) .....	16
<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9 <sup>th</sup> Cir. 1976) .....	8
<i>Weinberger v. Great Northern Nekoosa Corp.</i> , 529 F.2d 943, 950 (9 <sup>th</sup> Cir. 1976).....	15
<i>Young v. Polo Retail</i> , Case No. C-02-4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006); .....	10

### Statutes

Cal. Bus. & Prof. Code §§ 17200 et seq .....	3
Cal. Bus. & Prof. Code §§ 17203 et seq .....	2, 12

1	Cal. Bus. & Prof. Code §§ 17533.7 .....	3,4
2	Cal. Bus. & Prof. Code §§ 17535 .....	2
3	Cal. Civ. Code § 1750, <i>et seq.</i> .....	3,4
4	Federal Rule 23(e).....	1,8
5	Manual for Complex Litigation (Fourth) § 21.311 at 291-92.....	17
6	Manual for Complex Litigation §§ 21.632-.635 (4th ed. 2004) .....	9
7	Manual for Complex Litigation §§ 21.662 (4th ed. 2009).....	14
8	Newberg on Class Actions § 11.24, at 37 .....	14
9	Newberg on Class Actions § 11.41 (2003) .....	8,9,10
10	Newberg on Class Actions § 15:34 at 112.....	14

## 1 **I. INTRODUCTION**

2 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff  
 3 Sonia Hofmann (“Plaintiff”), on behalf of herself and the proposed Settlement  
 4 Class she represents, respectfully moves for entry of an order: (1) preliminarily  
 5 approving the proposed settlement<sup>1</sup> in the above-captioned class action litigation  
 6 with Defendant Dutch, LLC (“Defendant” or “Dutch”); (2) scheduling a Final  
 7 Approval Hearing (sometimes referred to as a “Fairness Hearing”); and (3)  
 8 directing that notice of the proposed settlement be given to Class Members upon  
 9 approval of the form and method for providing class-wide notice. At the Final  
 10 Approval Hearing, the following will be considered: (i) the request for final  
 11 approval of the proposed settlement, and (ii) the entry of the Final Judgment and  
 12 Injunction. Plaintiff also intends to apply to this Court for an award of attorneys’  
 13 fees and reimbursement of expenses to Class Counsel, and an enhancement fee  
 14 award to Plaintiff for her service as the class representative at that time.

15 After more than a full year of hard-fought litigation, and after participating  
 16 in a full-day mediation before the Hon. Robert May (Ret.) of JAMS, the parties  
 17 ultimately reached a settlement on September 11, 2015. The Settlement is believed  
 18 to be a fair, adequate and reasonable. The Settlement permits participating Class  
 19 Members (those who complete and return a claim form) to obtain a free Current-  
 20 Elliott brand tote bag (retail value is approximately \$128.00 each) and a Dutch  
 21 electronic gift card code valued at multiples of \$20.00 corresponding to the number  
 22 of Class Products purchased (up to two without proof of purchase and potentially  
 23 unlimited with proof of purchase), which may only be redeemed at  
 24 [www.CurrentElliott.com](http://www.CurrentElliott.com).

25 The measure of restitution was not arbitrarily determined; rather, it was

26 \_\_\_\_\_  
 27 <sup>1</sup> The Settlement Agreement is attached as Exhibit 1 to the accompanying  
 Declaration of John H. Donboli (“Donboli Decl.”).

discussed and negotiated at length at mediation with the aid of Judge May (Ret.) and is based on calculations of the amount of foreign-made components in Defendant's jeans products (i.e., the "Class Products") in conjunction with a factoring of the risks of potentially receiving no monetary recovery to the Class at time of trial.

All in all, this Settlement is a fair result for the class. The Parties reached a settlement wherein Dutch, LLC agreed to modify its labeling in the following manner:

Factory	Fabric Origin	Trim Origin	Country of Origin Description as of 1/1/2016
USA	USA	USA	Made in USA
USA	USA	IMPORTED < 5% of Wholesale Value	Made in USA
USA	IMPORTED	IMPORTED	Made in USA of imported fabric and materials

In addition, Dutch agreed to a Permanent Injunction as set forth in Exhibit E to the settlement agreement which states:

'Without admitting any liability or wrongdoing whatsoever, pursuant to California Business and Professions Code Sections 17203 and 17535, the Enjoined Parties, and each of them, shall be enjoined and restrained from directly or indirectly doing or performing any and all of the following acts or practices: representing, labeling, advertising, selling, offering for sale, and/or distributing any Products that fail to comply with the California "Made in USA" Statute.'

If Plaintiff would have rejected the Settlement and continued to litigate this action through trial, there would have been a significant risk that no restitution would have been obtained to the Class given the unsettled nature of California law pertaining to how to properly quantify and measure restitution in false advertising cases (such as this case). In view of this risk, the Settlement is undoubtedly fair, just and adequate.

///



1 **II. NATURE OF THE CASE**

2 The Action alleged that Defendant committed unlawful and unfair business  
3 practices by falsely labeling its Jeans (“Jeans”) as “Made in USA” in violation of,  
4 *inter alia*, California’s Unfair Competition Law (“UCL”) (codified at Cal. Bus. &  
5 Prof. Code §§ 17200 *et seq.*) and California’s “Made in USA Statute” (codified at  
6 Cal. Bus. & Prof. Code § 17533.7).

7 Plaintiff alleged that contrary to Defendant’s “Made in USA” claim, the  
8 Jeans were manufactured and/or produced from multiple component parts that  
9 were manufactured outside of the United States in violation of California law  
10 and/or federal law. Specific to the Plaintiff Transaction, Plaintiff alleged that  
11 major subcomponents of Defendant’s Jeans that she purchased were foreign made,  
12 including but not limited to the trim, fabric, and/or zippers. Plaintiff also alleged  
13 that Defendant’s conduct constituted false advertising and was violative of the  
14 California Consumers Legal Remedies Act.

15 Defendant denied and continues to deny Plaintiff’s allegations.

16 **III. PROCEDURAL HISTORY**

17 On or about June 30, 2014, Plaintiff sent a 30-day notice of violation to  
18 Defendant pursuant to the California Consumers Legal Remedies Act (the “CLRA  
19 Letter”).

20 On or about July 28, 2014. Defendant responded to the CLRA Letter by  
21 denying all liability.

22 On or about September 5, 2014, Plaintiff initiated litigation by filing a  
23 putative class action complaint in the San Diego Superior Court, styled as  
24 *Hofmann v. Dutch, LLC*, Case No. 37-2014-00030115-CU-NP-CTL (the “State  
25 Court Action”).

26 The State Court Action originally alleged that Defendant violated various  
27 California laws, including California Business & Professions Code § 17200 *et seq.*;  
28

1 California Business & Professions Code § 17533.7; and the California Consumers  
2 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”) as it relates to  
3 Defendant’s use *in California* of the statement “Made in U.S.A.” on packaging for  
4 its Jeans that contained less than 100% domestic content. These claims extended  
5 to Plaintiff and all other members of the putative California class.

6 On or about October 9, 2014, Defendant removed the State Court Action to  
7 federal court (hereinafter simply referred to as the “Action”) and simultaneously  
8 filed its Answer. [Docket No. 1].

9 On or about November 18, 2014, an Early Neutral Evaluation Conference  
10 was held before the Hon. Magistrate Judge Jill L. Burkhardt. [Docket No. 6].

11 On or about December 17, 2014, Defendant filed a motion for judgment on  
12 the pleadings (“MJOP”) based on principles of federal preemption. [Docket No.  
13 12].

14 On or about January 30, 2015, Plaintiff filed her Opposition to the MJOP,  
15 which took significant time and time and effort to prepare. [Docket No. 17].

16 In addition, Plaintiff filed a Motion to Strike extrinsic evidence set forth in  
17 MJOP. [Docket No. 18].

18 In addition to the law and motion practice detailed above, Plaintiff also  
19 committed a considerable amount of time to propounding extensive written  
20 discovery to Defendant and preparing for mediation in March, which led to  
21 significant guideposts being established towards resolution that were further  
22 negotiated over the following six months. Included in this time was the creation of  
23 a viable damages/restitution model that required obtaining and analyzing detailed  
24 summaries of Defendant’s cost, pricing, sales, and labeling information for its  
25 jeans products (i.e., the “Class Products). This evaluation (done in conjunction  
26 with Plaintiff’s counsel’s consultant/expert, not disclosed to Dutch, LLC) was also  
27 necessary so the Plaintiff’s counsel and Plaintiff could not only properly evaluate  
28

the case for purposes of mediation, but also so Plaintiff could begin preparing and generally outlining Plaintiff's motion for class certification. At the same time, Defendant undertook significant investigation to determine the validity of Plaintiff's claims.

#### **IV. CLASS DEFINITION**

Plaintiff agreed to settle this Action on behalf of a class of similarly situated persons in California who purchased in California or through a website maintained by Dutch, LLC, Defendant's Current-Elliott jeans product that contained any foreign-made component parts that was labeled as "MADE IN USA" or "MADE IN THE USA" (the "Jeans"), from September 5, 2010 to December 31, 2015, for non-commercial use (the "Class Members"). Excluded from the Settlement Class are all persons who are employees, directors, officers, and agents of Defendants or its subsidiaries and affiliated companies, as well as the Court and its immediate family and staff. (Donboli Decl., ¶ 5; Exhibit "1" thereto at ¶¶ A.7, A.28.)

#### **V. SIZE OF CLASS**

In preparing for the mediation which led to the settlement, Dutch provided Plaintiff discovery responses that disclosed the total number of units sold of Class Products, which was 396,652, and net sales, which was \$30,899,951.82. This undoubtedly is a significant sized class under any definition of the phrase.

#### **VI. DESCRIPTION OF THE PROPOSED SETTLEMENT**

The Parties agreed to a proposed settlement that, if approved by this Honorable Court, will result in dismissal of the Action with prejudice and the provision of certain benefits to the members of the Class. Under the terms of the Settlement Agreement, if the settlement is granted final approval status by the Court, Defendant will distribute a Current-Elliott brand tote bag (with a retail value of approximately \$128.00 each) plus electronic gift card codes redeemable on [www.CurrentElliott.com](http://www.CurrentElliott.com) only and loaded with values of multiples of \$20.00

1 corresponding to the number of units of Class Products purchased during the Class  
 2 Period to participating Class Members (those who complete and return a claim  
 3 form or those who elect to submit an online claim form). (Donboli Decl., ¶ 6; Exh.  
 4 1 at ¶¶ D.2, F.3.) Any Class Member who completes a Claim Form to attest to his  
 5 or her purchase of a qualifying Class Product during the Class Period shall receive  
 6 the restitution detailed above. (Donboli Decl., ¶ 6; Exh. 1 at ¶ D.2.)

7 The measure of restitution was not arbitrarily determined; rather, it was  
 8 discussed and negotiated at length at mediation with a highly respected mediator,  
 9 retired Judge Robert May, and after and is based on calculations of the amount of  
 10 foreign-made component parts in the Class Products in conjunction with a  
 11 factoring of the risks of potentially receiving no monetary recovery to the Class at  
 12 time of trial. (Donboli Decl., ¶ 6(a).)

13 The settlement also has a charitable contribution component which came  
 14 from a suggestion of Judge May. Dutch is making charitable donations totaling  
 15 \$250,000 over a period of up to five (5) years (beginning with calendar year 2015)  
 16 to particular charities. (SA § D3; Donboli Decl., ¶ 7.) Dutch has been made aware  
 17 of Ninth Circuit legal authority that requires a sufficient nexus between the  
 18 charitable purpose of the charity and the objectives of the underlying statutes (i.e.,  
 19 consumer protection statutes in this Action) but also notes that its consumer  
 20 demographic is mostly women. Dutch made its first charitable donation in the  
 21 amount of \$50,000 to Step Up Women's Network (suwn.org) in 2015. For the  
 22 remaining \$200,000 over the remaining four years, Dutch will donate money to a  
 23 scholarship endowment it will set up at a non-profit university's Consumer Science  
 24 Department, such as that which exists at California State University, Northridge.  
 25 The website for the University's Consumer Science Department's Consumer  
 26 Affairs sub-department is: [http://www.csun.edu/health-human-](http://www.csun.edu/health-human-development/family-consumer-sciences/consumer-affairs)  
 27 [development/family-consumer-sciences/consumer-affairs](http://www.csun.edu/health-human-development/family-consumer-sciences/consumer-affairs). (Donboli Decl., ¶ 7.)  
 28

1 The settlement will be administered by a professional Claims Administrator  
 2 to administer the claims and payment process. Defendant and/or the Claims  
 3 Administrator shall also obtain an appropriate URL specifically to handle the  
 4 Settlement process, such as *currentelliottsettlement.com* (the “Settlement  
 5 Website”). (Donboli Decl., ¶ 8; Exh. 1, at ¶¶ A.29, F.3). The Claims Administrator  
 6 shall report any invalid claims and all such determinations of invalidity to both  
 7 Class Counsel and Defendant’s counsel in a timely manner. (Donboli Decl., ¶ 8;  
 8 Exh. 1, at ¶ F.5.)

9 Class Counsel shall also seek confirmation by this Court, at that time, of a  
 10 single \$5,000.00 payment as an incentive award to Plaintiff Sonia Hofmann for  
 11 serving as the class representative. Class Counsel intends to file and have heard a  
 12 motion for the recovery of attorneys’ fees and costs to be approved by this  
 13 Honorable Court, including all reasonable fees, costs and expenses related to  
 14 Plaintiff’s prosecution of the Action. The parties agreed to a “*not to exceed*”  
 15 amount in the amount of \$175,000.00. Defendant agreed not to oppose these  
 16 requests as long as the requested amounts are at or below the above-stated  
 17 amounts. (Donboli Decl., ¶ 9; Exh. 1, at ¶¶ G.1, G.4.)

## 18 **VII. NOTICE AND ADMINISTRATION OF THE SETTLEMENT**

19 Upon entry of the Preliminary Approval Order, Defendant, in cooperation  
 20 with its professional Claims Administrator, shall take the following actions:

- 21 1. Defendant shall direct the Claims Administrator to mail the Notice to  
 22 any and all members of the Settlement Class to the extent that  
 23 Defendant possesses such information in its corporate records.  
 24 Defendant shall provide this information to the Claims Administrator  
 25 within 20 days of entry of the order granting Preliminary Approval.  
 26 The Claims Administrator shall thereafter be tasked with mailing the  
 27 Postcard Notice (in the form attached to Exhibit F of the Agreement  
 28

of Settlement) to the potential class members.

2. Defendant shall publish the Short Form Notice (in the form attached as Exhibit B to the Agreement of Settlement) at its discretion to reasonably cover the maximum number of consumers of Defendant's jeans products.

3. Defendant shall provide notice of the settlement on its homepage ([www.currentelliott.com](http://www.currentelliott.com)) with a hyperlink that will send consumers directly to the Settlement Website.

(Donboli Decl., ¶¶ 10-14; Exh.1, at ¶¶ E.1 – E.6.)

These methods are designed to meaningfully reach the largest possible number of potential Class Members. All costs associated with providing notice and administering the claims, including the costs associated with preparing, printing and disseminating the Notice, as directed by the Court in the Preliminary Approval Order, shall be paid by Defendant (not to exceed \$90,000). (Donboli Decl. ¶ 14; Exhibit "A" thereto at ¶ F.8.)

**VIII. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL**

**A. The Settlement Approval Process**

The law favors settlements, particularly in class actions and complex cases where substantial resources can be conserved by avoiding the time, costs and rigors of prolonged litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); CONTE & NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (2003) ["By their very nature, because of the uncertainties of outcome, difficulties of proof, length of litigation, class action suits lend themselves readily to compromise."].

Where, as here, the parties propose to resolve the claims of a certified class through settlement, they must obtain the court's approval. Fed. R. Civ. Proc.

23(e)(1)(A). The typical process for approving class action settlements is described in the FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION §§ 21.632-.635 (4th ed. 2004): (1) preliminary approval of the proposed settlement at an informal hearing; (2) dissemination of mailed and/or published notice of the settlement to all affected class members; and (3) A “formal fairness hearing,” or final approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. *Id.* This procedure, commonly employed by federal courts, serves the dual function of safeguarding class members’ procedural due process rights and enabling the court to fulfill its role as the guardian of class members’ interests.

Plaintiff respectfully asks this Court to grant preliminary approval of the proposed Settlement. At this stage, the Court “must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” MANUAL FOR COMPLEX LITIGATION § 21.632. The Court should grant preliminary approval if the settlement has no obvious deficiencies and “falls within the range of possible approval.” NEWBERG ON CLASS ACTIONS § 11.25.

At the next stage of the approval process, the formal fairness hearing, courts consider arguments in favor of and in opposition to the settlement. According to the Ninth Circuit, the fairness hearing should not be turned into a “trial or rehearsal for trial on the merits.” *Officers for Justice v. Civil Serv. Com’n of City and Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). “Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute....” *Id.* Rather, the inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,



1 and that the settlement, taken as a whole, is fair, reasonable, and adequate to all  
2 concerned.” *Id.*

3 **B. The Proposed Settlement is Presumptively Fair and Easily Meets**  
4 **the Requirements for Preliminary Approval**

5 Courts generally employ a multi-prong test to determine whether  
6 preliminary approval is warranted. A proposed class action settlement is  
7 presumptively fair and should be preliminarily approved if the Court finds that: (1)  
8 the negotiations leading to the proposed settlement occurred at arm’s length; (2)  
9 there was sufficient discovery in the litigation for the plaintiff to make an informed  
10 judgment on the merits of the claims; (3) the proponents of the settlement are  
11 experienced in similar litigation; and (4) only a small fraction of the class objected.  
12 *Young v. Polo Retail*, Case No. C-02-4546 VRW, 2006 WL 3050861, at \*5 (N.D.  
13 Cal. Oct. 25, 2006); *see also* NEWBERG ON CLASS ACTIONS § 11.41. The  
14 Settlement easily satisfies these requirements.

15 **1. The Settlement is the Product of Serious, Informed and**  
16 **Noncollusive Negotiations**

17 This settlement is the result of extensive and hard-fought negotiations.  
18 Defendant expressly denied and continues to deny any wrongdoing or legal  
19 liability arising out of the conduct alleged in the Action. Nonetheless, Defendant  
20 concluded that it is desirable that this Action be settled in the manner and upon the  
21 terms and conditions set forth in the Agreement of Settlement in order to avoid the  
22 expense, inconvenience, and burden of further legal proceedings, and the  
23 uncertainties of trial and appeals. Defendant also determined that it is desirable and  
24 beneficial to put to rest the released claims of the Settlement Class.

25 Class Counsel and Defendant’s counsel conducted a thorough investigation  
26 into the facts of the class action, including diligently pursuing an investigation of  
27 the relevant facts. Class Counsel is of the opinion that the settlement with  
28



1 Defendant for the consideration and on the terms set forth in the Agreement of  
 2 Settlement is fair, reasonable, and adequate and is in the best interest of the Class  
 3 in light of all known facts and circumstances, including the risk of significant  
 4 delay, defenses asserted by Defendant, and the potential risk of no monetary  
 5 recovery. (Donboli Decl., ¶ 4.)

6 Here the litigation has been hard-fought with aggressive and capable  
 7 advocacy on both sides. Accordingly, “[t]here is likewise every reason to conclude  
 8 that settlement negotiations were vigorously conducted at arm’s length and without  
 9 any suggestion of undue influence.” *In re Wash. Public Power Supply System Sec.*  
 10 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989). [“Counsels’ opinions warrant great  
 11 weight both because of their considerable familiarity with this litigation and  
 12 because of their extensive experience in similar actions”].

13 **2. The Settlement Has No “Obvious Deficiencies” and Falls**  
 14 **Well Within the Range for Approval**

15 The proposed settlement herein has no “obvious deficiencies” and is well  
 16 within the range of possible approval. All Class members will receive the same  
 17 opportunity to participate in and receive restitution. It is undeniable that the goal  
 18 of this litigation, to seek redress for the Class, has been met. (Donboli Decl., ¶ 15.)

19 There is a substantial risk, given the current legal landscape in terms of  
 20 properly quantifying and measuring damages in cases predicated on violations of  
 21 the California and/or federal “Made in USA” standards (or false advertising cases  
 22 in general), that, if this action was not settled, Plaintiff would have been unable to  
 23 obtain any restitution at time of trial. (Donboli Decl., ¶ 16.)

24 The primary factor that supports resolution at this time, from Plaintiff and  
 25 Class Counsel’s perspective, are the challenges in quantifying and specifically  
 26  
 27  
 28

measuring the amount of restitution to Class Members.<sup>2</sup> Restitution under the UCL is limited to measurable amounts acquired by a defendant from consumers by means of unfair competition. Section 17203 of the unfair competition law expressly authorizes courts to make “such orders ... as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person ... any money or property, real or personal, which may have been acquired by means of such unfair competition.” As the California Supreme Court held in *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1149 (2003) the “object of restitution is to restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest.”

As referenced above, there was a serious risk that Plaintiff would only be able to establish injunctive relief at trial, which would have left Class Members with no monetary relief. In light of the above-referenced risk, expense, and complexity of this case, the parties agreed to resolve this matter as set forth in the Settlement Agreement. (Donboli Decl., ¶ 16.)

### **3. The Settlement Does Not Improperly Grant Preferential Treatment To the Class Representative or Segments Of The Class**

The relief provided in the settlement will benefit all Class Members equally. The settlement does not improperly grant preferential treatment to Plaintiff or segments of the Class in any way. Each qualified Class Member, including Plaintiff, who files a timely claim, shall receive the aforementioned restitution. Plaintiff will receive no more than any other Class Member who submits a timely

<sup>2</sup> This would require Plaintiff to expend over \$100,000 in expert fees, *at a minimum*, to develop a restitution model that *might* be approved by this Court as there is no clear guideline on how to quantify restitution in UCL false advertising cases. (Donboli Decl., ¶ 17.)

claim. In addition, the representative plaintiff will apply to the Court for a modest service award of \$5,000 to the extent permitted by this Court (enhancement fees are at times awarded in the \$50,000 range).

**4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement**

The stage of the proceedings at which this settlement was reached militates in favor of preliminary approval and ultimately, final approval of the settlement. The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel has conducted a thorough investigation into the facts of the class action, including diligently pursuing an investigation of Class Members' claims against Defendant. (Donboli Decl., ¶¶ 3—4.)

Here, Class Counsel obtained sufficient information from Defendant after conducting extensive discovery, including serving extensive written discovery and exchanging detailed sales, pricing, and financial information in advance of mediation. Extensive due diligence performed by the parties confirmed the cost associated with each component part in the Class Products, which was then used to calculate the proper measure of restitution.<sup>3</sup>

**C. The “Clear Sailing” Provision Contained in the Settlement Agreement is Reasonable and Not a Result of Collusion**

As is the case here, it is not uncommon for a class action settlement agreement to include a “clear sailing” provision, in which class counsel agrees to petition for an attorney fee award that will not exceed a fixed amount or a given

<sup>3</sup> Plaintiff retained experienced class action attorneys in this case to represent herself and the Class. (See Donboli Decl., ¶¶ 18-19 for additional details in this regard.)

1 percentage of the common fund, and the defendant agrees not to oppose the fee  
 2 petition. (Newberg on Class Actions, *supra*, § 11:24, p. 37.) In one case,  
 3 *Consumer Privacy Cases*, (2009) 175 Cal.App.4th, 545, objectors to the settlement  
 4 challenged the “clear sailing” provision in the class settlement agreement as  
 5 inherently collusive, but the appellate court rejected the argument, holding that  
 6 “[w]hile it is true that the propriety of ‘clear sailing’ attorney fee agreements has  
 7 been debated in scholarly circles (see Henderson, *Clear Sailing Agreements: A*  
 8 *Special Form of Collusion in Class Action Settlements* (2003) 77 Tul. L.Rev. 813,  
 9 815–816; Herr, *Ann. Manual for Complex Litigation* (4th ed. 2009) §§ 21.662,  
 10 21.71, pp. 522–524, 533–534), commentators have also noted that class action  
 11 ‘settlement agreement[s] typically include[] a “clear sailing” clause. . . .’  
 12 (Alexander, *Rethinking Damages in Securities Class Actions* (1996) 48 Stan.  
 13 L.Rev. 1487, 1534.) In fact, commentators have agreed that such an agreement is  
 14 proper. ‘[A]n agreement by the defendant to pay such sum of reasonable fees as  
 15 may be awarded by the court, and agreeing also not to object to a fee award up to a  
 16 certain sum, is probably still a proper and ethical practice. This practice serves to  
 17 facilitate settlements and avoids a conflict, and yet it gives the defendant a  
 18 predictable measure of exposure of total monetary liability for the judgment and  
 19 fees in a case. To the extent it facilitates completion of settlements, this practice  
 20 should not be discouraged.’” (*Consumer Privacy*, *supra*, 175 Cal.App.4th at p.  
 21 553, quoting Newberg on Class Actions, *supra*, § 15:34, p. 112.)

22 The Ninth Circuit has been somewhat more critical of such provisions,  
 23 finding that “‘the very existence of a clear sailing provision increases the  
 24 likelihood that class counsel will have bargained away something of value to the  
 25 class.’” (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654  
 26 F.3d 935, 946-947, 654 F.3d at p. 948.) That court has held that trial courts have a  
 27 heightened duty to examine such provisions carefully and to “scrutinize closely the  
 28

relationship between attorneys' fees and benefit to the class, being careful to avoid awarding 'unreasonably high' fees simply because they are uncontested.' [Citation.]" (*Ibid.*) A court must still determine the reasonableness of the fee, and must do so whether or not there is an objection presented from the class." (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 559<sup>4</sup>; see *Garabedian, supra*, 118 Cal.App.4th at p. 125 [court retains obligation to award only attorney fees that are reasonable despite agreement of parties that defendant would pay a maximum of \$14,125,000]; *Weinberger v. Great Northern Nekoosa Corp.* (1st Cir. 1991) 925 F.2d 518, 520 [In the case of a "clear sailing" agreement, "rather than merely rubber-stamping the request, the court should scrutinize it to ensure that the fees awarded are fair and reasonable."]; *Harris v. Vector Marketing Corp.* (N.D. Cal. 2011) 2011 WL 1627973 [despite parties' agreement to particular service award for named plaintiff, court would determine whether she was entitled to such an award and the reasonableness of the amount requested].)

In this case, the settlement was reached after a full day of mediation with the highly-respected Hon. Robert A. May (Ret.) of JAMS. The parties, and their counsel, were in separate rooms throughout the entire negotiations. They only came together at the end of the day, once a full settlement was reached, to clarify some minor remaining issues and to draft the material terms of the agreement for inclusion into a signed Letter of Intent. With respect to the attorneys' fees provision, Defendant only agreed not to contest an award up to a certain amount that represented the attorneys' fees to date and anticipated future fees and costs related to the preparing and filing of the motion for preliminary approval, motion for final approval, etc. and for generally stewarding the settlement to final

<sup>4</sup> While in *Consumer Privacy Cases* the parties agreed that class counsel would petition for no more than \$4 million for fees and costs, ultimately the trial court granted an attorney fee and cost award of \$3,018,355. (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 552.)

1 resolution. This is no way guarantees an award of the agreed-upon maximum.

2 Moreover, the agreed-upon maximum award amount is not a  
3 disproportionate distribution of the settlement. The Ninth Circuit routinely  
4 approves a 25% “benchmark” award based on the value of the fund. See *Stanger*  
5 *v. China Elec. Motor, Inc.*, 812 F.3d 734, 739 (9<sup>th</sup> Cir. 2016). In this case, there are  
6 approximately 400,000 class members who can submit a claim for a tote bag with  
7 an approximate retail value of \$128 and potentially an unlimited number of \$20  
8 gift codes. Even assuming only 5% of the class members submit a claim for just  
9 the tote bag, this creates a settlement value of \$2,560,000, at a minimum (which  
10 does not even include the value of the gift codes, injunction, or cy pres award).  
11 The agreed-upon maximum fees award of \$175,000 is just under 7% of that  
12 minimum settlement value. Under the Ninth Circuit 25% “benchmark”, this fee  
13 amount is more than reasonable.

14 In this settlement, the class members are receiving a significant value. Each  
15 class member, who submits a valid claim, will receive a \$20 gift card code for each  
16 Class Product purchased, and a Current-Elliott brand tote bag worth approximately  
17 \$128, retail value. Receiving a no-strings-attached \$128 tote bag (a bag that can be  
18 used by Class Members if they so desire, re-gifted to others, sold, etc.) has great  
19 value especially in a class action landscape mired with coupon only settlements.  
20 Additionally, the class members receive the significant benefit of the injunction  
21 and assurance that Defendant will continue to label its products in compliance with  
22 California law (something that was not happening when the lawsuit was originally  
23 filed). All in all, the value the class members receive under the settlement is  
24 significant. Furthermore, the agreed-upon maximum amount of fees is not  
25 unreasonable. In fact, this Court stated in its April 26, 2016 Order, that \$175,000  
26 does not seem like an unreasonably high fee.

27 Therefore, based on the utter lack of any evidence suggesting any collusion  
28



1 between the parties (because no such evidence exists), the mere inclusion of a  
 2 “clear sailing” provision in the settlement agreement does not necessary render the  
 3 settlement or the fees award unreasonable.

4 **IX. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

5 The Court has broad discretion in approving a practical notice program. The  
 6 parties have agreed upon procedures by which the Class will be provided with  
 7 notice of the Settlement. The notice is undoubtedly sufficient when, as in this case,  
 8 it informs potential class members about the specific restitution that they could  
 9 expect to receive under the settlement, the procedure for objecting, excluding  
 10 oneself altogether from the settlement, the amount of fees and costs that may be  
 11 awarded by the Court, and the date of the Final Approval Hearing.

12 This notice program was designed to meaningfully reach the largest possible  
 13 number of potential Class Members, including publication and on Defendant’s  
 14 home page of its website. It complies fully with applicable case law that the notice  
 15 given should have a reasonable chance of reaching a substantial percentage of the  
 16 Class Members. The notice program contemplated in this Settlement satisfies the  
 17 requirements of due process, and is the best notice practicable under the  
 18 circumstances and constitutes due and sufficient notice to all persons entitled  
 19 thereto. Therefore, the proposed notice procedures comply fully with applicable  
 20 case law because the notice should have a reasonable chance of reaching a  
 21 substantial percentage of the Class members. See Manual for Complex Litigation  
 22 (Fourth) § 21.311 at 291-92.

23 **X. THE SETTLEMENT PROVIDES FOR A MEANINGFUL**  
 24 **CHARITABLE CONTRIBUTION**

25 In addition to the Current-Elliott brand tote bag (worth approximately  
 26 \$128.00 retail) **and** the electronic gift card code(s) available to Class Members  
 27 who submit timely claim forms, the settlement requires Defendant to make  
 28

1 charitable contributions totaling \$250,000.00, to be paid over five years, to various  
 2 charities. The parties to a class action settlement are lawfully permitted to provide  
 3 for a charitable distribution as part of their settlement as long as the charitable  
 4 contribution bears a nexus to the interests of the Class. *See Lane v. Facebook, Inc.*  
 5 (9<sup>th</sup> Cir. 2012) 696 F.3d 811, 821 *cert. denied* 134 S.Ct. 8 [requiring that a *cy pres*  
 6 distribution bear only “a substantial nexus to the interests of the class members”].  
 7 Dutch made its first charitable donation in the amount of \$50,000 to Step Up  
 8 Women’s Network (suwn.org) in 2015. For the remaining \$200,000 over the  
 9 remaining four years, Dutch will donate money to a scholarship endowment at a  
 10 non-profit university’s Consumer Science Department, such as that which exists at  
 11 California State University, Northridge.

12 In *Facebook*, the U.S. Court of Appeals for the Ninth Circuit upheld a *cy*  
 13 *pres* in a case involving a class of Facebook users who had been subject to the  
 14 website’s Beacon program. As “direct monetary payments to the class” of any  
 15 kind were “infeasible,” the settlement provided for the creation of a new entity,  
 16 the Digital Trust Foundation, that would distribute the settlement funds (after  
 17 payment of attorneys’ fees and the like) “to entities that promote the causes of  
 18 online privacy and security.” *Lane*, 696 F.3d at 821. The court found this  
 19 contained “the requisite nexus between the *cy pres* remedy and the interests  
 20 furthered by the plaintiffs’ lawsuit.” (*Id.* at 822.)<sup>5</sup>

21 The charitable component of this settlement has the requisite nexus. This is  
 22 a consumer protection action brought on behalf of the purchasers of jeans (whose

23 <sup>5</sup> While this settlement has both a significant restitution component and a  
 24 charitable contribution component, a settlement that consists almost entirely of the  
 25 latter has been approved where the class is too large, amorphous and unknown.  
 26 (See, e.g., *In re Vitamin Cases* (2007) 107 Cal.App.4<sup>th</sup> 820, 830 [approving  
 27 settlement of consumer claims that provided funds “to be distributed to charitable,  
 28 governmental and nonprofit organizations” as the class of indirect purchasers of  
 vitamins was unknown but extensive, including conceivably “nearly every  
 consumer in California” during the relevant time period].)



1 customers are predominantly women). For the year 2015, Dutch has made a  
 2 \$50,000 donation to the Step Up Women’s Network. For the remaining \$200,000,  
 3 over the remaining four years, Dutch will donate money to a scholarship  
 4 endowment at a non-profit university’s Consumer Science Department, such as  
 5 that which exists at California State University, Northridge. Dutch makes  
 6 women’s jeans, particularly Current-Elliott jeans. This is consistent with the goal  
 7 of donating to charities focusing on helping and meeting the needs of women in  
 8 our society. Further, making donations to support the study of and to advocate for  
 9 consumer science provides direct benefits to the consumer population as a whole.  
 10 This provision is distinguishable from those disapproved in *Nachshin*, in which the  
 11 charities selected were not in any way related to the settlement class, (*Nachshin*,  
 12 663 F.3d at 1040), and *Kellogg*, in which the *cy pres* beneficiary was also not  
 13 identified. (*Kellogg*, 697 F.3d at 866-67.)

14 An additional goal of a consumer protection action is deterrence or  
 15 disgorgement. A charitable component such as this ensures that a defendant  
 16 “incur[s] a minimum liability” and, thus, “shows significant usefulness in  
 17 effectuating the deterrent and disgorgement purposes of” the underlying cause of  
 18 action. See *In Re Microsoft I-IV Cases* (2006) 135 Cal.App.4<sup>th</sup> 707, 729. This  
 19 additional goal is present in this settlement.

## 20 **XI. CONCLUSION**

21 Counsel for the parties committed substantial amounts of time, energy, and  
 22 resources litigating and ultimately settling this case. After weighing the  
 23 substantial, certain, and immediate benefits of this settlement against the  
 24 uncertainty of trial and appeal, Plaintiff and Class Counsel believe that the  
 25 proposed settlement is fair, reasonable and adequate, and warrants this Court’s  
 26 preliminary approval. Accordingly, Plaintiff respectfully requests that the  
 27 Honorable Court preliminarily approve and sign the proposed Preliminary  
 28

1 Approval Order filed contemporaneously herewith to permit the distribution and  
2 manner of notice. Plaintiff also respectfully requests that the Court schedule a  
3 Final Approval Hearing approximately 120 days from the date this Court signs the  
4 Preliminary Approval Order.

5 Dated: October 14, 2016

Respectfully submitted,

6 DEL MAR LAW GROUP, LLP

7  
8 By: /s/ John H. Donboli

John H. Donboli

9 Camille Joy DeCamp

10 Attorneys for Sonia Hofmann, an  
11 individual, and on behalf of all others  
12 similarly situated  
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6 Attorneys for Plaintiff Sonia Hofmann,  
7 an individual, and on behalf of all others similarly situated

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 SONIA HOFMANN, an individual and on  
behalf of all others similarly situated,

12 Plaintiff,

13 vs.  
14

15 DUTCH, LLC, a California Limited  
Liability Company; and DOES 1 through  
16 100, inclusive,

17 Defendant.  
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CASE NO.: 3:14-cv-02418-GPC-JLB

*Complaint Filed: September 5, 2014*

**CLASS ACTION**

**DECLARATION OF JOHN H.  
DONBOLI IN SUPPORT OF  
MOTION: (1) GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT; (2)  
SCHEDULING A FAIRNESS AND  
FINAL APPROVAL HEARING;  
AND (3) DIRECTING THAT  
NOTICE BE SENT TO CLASS  
MEMBERS**

Date: January 06, 2017

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, John H. Donboli, declare as follows:

2 1. I am counsel of record for Plaintiff Sonia Hofmann and the putative  
3 class in this action (hereinafter the “Settlement Class”). I am a member in good  
4 standing of the State Bar of California and the United States District Courts for the  
5 Northern, Central, Eastern and Southern Districts of California; and of the United  
6 States Court of Appeals for the Ninth Circuit. I have personal knowledge of the  
7 facts set forth herein, and if called as a witness, I could and would testify  
8 competently to the matters set forth below.

9 2. This Declaration is being submitted in support of Plaintiff’s Motion  
10 for Preliminary Approval of Class Settlement. (Attached herewith as Exhibit “1” is  
11 a true and correct copy of a fully executed Settlement Agreement that contains  
12 within it separately marked Exhibits “A” through “F.”)

13 Fairness of Settlement

14 3. *Prior to* the filing of the Complaint, through the start of initial  
15 discovery and through final mediation, our office has undertaken substantial  
16 investigation to determine the scope and nature of Defendant Dutch, LLC’s  
17 (“Defendant” or “Dutch”) alleged unlawful practice of improperly labeling and  
18 selling its Current-Elliott brand jeans products with an unqualified “Made in USA”  
19 label (the “Jeans”) during the relevant four-year statutory time period. The  
20 representation was unlawful because the Jeans contained a foreign-made  
21 component parts in violation of California and/or federal law.

22 4. Our office, and presumably Defendant’s counsel, conducted a  
23 thorough investigation into the facts of the class action, including an extensive  
24 review of relevant documents and data, and have diligently pursued an  
25 investigation of the relevant facts. Our office is of the opinion that the settlement  
26 with Defendant for the consideration and on the terms set forth in the Settlement  
27 Agreement is fair, reasonable, and adequate and is in the best interest of the Class  
28

1 in light of all known facts and circumstances, including the risk of significant  
2 delay, defenses asserted by Defendant, and the potential risk of no monetary  
3 recovery. Our office and Defendant's counsel also agree that the Settlement is fair  
4 and in the best interest of the Settlement Class.

5 Settlement Class

6 5. The Settlement Class is comprised of a class of similarly situated  
7 persons in California who purchased Defendant's Current-Elliott jeans product that  
8 contained any foreign-made component parts that was labeled as "MADE IN  
9 USA" or "MADE IN THE USA" (the "Jeans"), from September 5, 2010 to  
10 December 31, 2015, for non-commercial use (the "Class Members").

11 Description of the Proposed Settlement

12 6. Under the terms of the Settlement Agreement, each eligible Class  
13 Member who returns a valid Claim Form will receive a Current-Elliott brand tote  
14 bag (with an approximate retail value of \$128) and electronic gift card(s) valued at  
15 \$20.00 each to participating Class Members (those who complete and return a  
16 claim form or those who elect to submit an online claim form) for each qualifying  
17 product purchased during the Class Period. (See Settlement Agreement, at Section  
18 D; Exhibit "1" hereto).

19 (a) The measure of restitution was not arbitrarily determined;  
20 rather, it was discussed and negotiated at length at mediation  
21 and after and is based on calculations off of the amount of  
22 foreign-made component parts in Defendant's Jeans (the "Class  
23 Products") in conjunction with a factoring of the risks of  
24 potentially receiving no monetary recovery to the Class at time  
25 of trial.

26 7. The settlement also has a charitable contribution component which  
27 came from a suggestion of Judge May. Dutch is making charitable donations  
28

1 totaling \$250,000 over a period of up to five (5) years (beginning with calendar  
 2 year 2015) to particular charities. Dutch made its first charitable donation in the  
 3 amount of \$50,000 to Step Up Women's Network (suwn.org) in 2015. For the  
 4 remaining \$200,000 over the remaining four years, Dutch will donate money to a  
 5 scholarship endowment it will set up at a non-profit university's Consumer Science  
 6 Department, such as that which exists at California State University, Northridge.  
 7 The website for the University's Consumer Science Department's Consumer  
 8 Affairs sub-department is: [http://www.csun.edu/health-human-](http://www.csun.edu/health-human-development/family-consumer-sciences/consumer-affairs)  
 9 [development/family-consumer-sciences/consumer-affairs](http://www.csun.edu/health-human-development/family-consumer-sciences/consumer-affairs).

10 8. The settlement will be administered by a professional Claims  
 11 Administrator to administer the claims and payment process. Defendants and/or  
 12 the Claims Administrator shall obtain an appropriate URL specifically to handle  
 13 the Settlement process, such as [www.currentelliottsettlement.com](http://www.currentelliottsettlement.com) (the "Settlement  
 14 Website"). The Claims Administrator shall ensure that invalid claims (if any) are  
 15 rejected and that all such determinations of invalidity are reported to Class Counsel  
 16 and Defendant's Counsel within thirty (30) days of any such determination. (See  
 17 Exhibit "1" hereto, at Section F). The Claims Administrator shall report any  
 18 invalid claims and all such determinations of invalidity to both Class Counsel and  
 19 Defendant's counsel in a timely manner.

20 9. Our office intends to file and have heard a motion for the recovery of  
 21 attorneys' fees and costs to be approved by this Honorable Court, including all  
 22 reasonable fees, costs, and expenses related to Plaintiff's prosecution of the Action  
 23 in a *not to exceed* amount of \$175,000.00. We shall also seek confirmation by this  
 24 Court, at that time, of a single \$5,000 payment as an incentive award for Plaintiff  
 25 for serving as Class Representative. (See Exhibit "1" hereto, at Section G.).

#### 26 Notice and Administration of the Settlement

27 10. The Settlement contains a Notice (Long-Form Notice) and Summary  
 28

1 Notice (Short-Form Notice), substantially in the form set forth in Exhibits “A” and  
 2 “B” to the Settlement Agreement that will be distributed to Class once the Court  
 3 enters the Preliminary Approval Order. (See Exhibit “C” to Settlement Agreement  
 4 for copy of proposed Preliminary Approval Order). It also contains a Postcard  
 5 Notice, substantially in the form set forth in Exhibit F to the Settlement  
 6 Agreement. Specifically, upon entry of the Preliminary Approval Order, Defendant,  
 7 in cooperation with its professional Claims Administrator, shall take the following  
 8 actions:

9 11. Publish notice of the settlement on its homepage  
 10 (www.currentelliott.com) on its homepage with a hyperlink that will send  
 11 consumers directly to the Settlement Website.

12 12. In conjunction with the Claims Administrator, distribute the postcard  
 13 Notice form (substantially in the form attached as Exhibit “F” to the Settlement  
 14 Agreement), to the last known addresses Class Members to the extent such  
 15 addresses exist in Dutch’s consumer databases.

16 13. Provide a website address in the Notice and Summary Notice to a  
 17 settlement website to be designed and administered by the Settlement  
 18 Administrator that will contain the settlement documents (including but not limited  
 19 to the Notice and Claim Form), a list of important dates, and any other information  
 20 to which the Parties may agree.

21 14. Defendant will pay up to \$90,000.00 for the costs, fees, and expenses  
 22 of providing notice to the Settlement Class and administering the Settlement in  
 23 accordance with the Settlement Agreement. (See Exhibit “1” hereto, at Section H).

#### 24 The Settlement

25 15. The proposed settlement herein has no “obvious deficiencies” and is  
 26 well within the range of possible approval. All Class members will receive the  
 27 same opportunity to participate in and receive payment. It is undeniable that the  
 28



1 goal of this litigation, to seek redress for the Class, has been met.

2 16. There is a substantial risk, given the current legal landscape in terms  
3 of properly quantifying and measuring damages in cases predicated on false  
4 advertising claims, that, if this action was not settled, Plaintiff would have been  
5 unable to either obtain class certification or prevail at trial; thereby ensuring zero  
6 recovery on behalf of consumers.

7 17. Prosecuting this case through trial would necessarily require Plaintiff  
8 to expend over \$100,000 in expert fees alone, *at a minimum*, to develop a  
9 restitution model that *might* be approved by this Court as there is no clear guideline  
10 on how to quantify restitution in UCL false advertising cases.

11 Experience of Class Counsel

12 18. Del Mar Law Group, LLP, and myself in particular, are competent  
13 counsel to represent the Class. I have had significant class action and litigation  
14 experience. I have been licensed to practice law in all Courts in the State of  
15 California since 1999 and have been actively involved in the representation of both  
16 plaintiffs and defendants in many complex class action and representative plaintiff  
17 cases pending in federal and state courts that have involved hundreds of millions of  
18 dollars in controversy.

19 19. The law firm of Del Mar Law Group, LLP has represented plaintiffs  
20 in consumer class actions since its inception in 2006. Del Mar Law Group, LLP  
21 and its attorneys have extensive experience in consumer protection, false  
22 advertising, and cases involving violations of various California consumer statutes.  
23 Specifically, I have personally supervised all litigation in this matter on behalf of  
24 our firm. Our firm, myself included, have been certified as class counsel in  
25 multiple class action cases, including, but not limited to the following:

- 26 a. *Cleary v. Door to Door Storage, Inc.*, San Diego Superior Court  
27 ("SDSC"), Case No. GIC875359;  
28



- I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14<sup>th</sup> day of October, 2016.

-7-

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DECLARATION OF JOHN H. DONBOLI IN SUPPORT OF MOTION  
GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

## **EXHIBIT 1**

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 SONIA HOFMANN, an individual and on  
12 behalf of all others similarly situated,

13 Plaintiff,  
14

15 vs.  
16

17 DUTCH, LLC, a California Limited  
18 Liability Company; and DOES 1 through  
19 100, inclusive,  
20

21 Defendants.  
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CASE NO.: 3:14-cv-02418-GPC-JLB

*Complaint Filed: September 5, 2014*

*Trial Date: None Set*

**CLASS ACTION**

**AGREEMENT OF SETTLEMENT**

Judge: Hon. Gonzalo P. Curiel  
Ctm: 2D

1 Subject to Court approval, this Agreement of Settlement (“Settlement  
2 Agreement”), is made as of the 10th day of October 2015, by and between Plaintiff  
3 Sonia Hofmann (“Plaintiff” or “Hofmann”), both individually and on behalf of all  
4 Class Members (as defined below), and Defendant Dutch, LLC (“Dutch” or  
5 “Defendant”).

6 **RECITALS**

7 A. On June 30, 2014, Plaintiff sent a 30-day notice of violation to Dutch  
8 pursuant to the Consumers Legal Remedies Act, California Civil Code sections  
9 1750 *et seq.* (“CLRA”).

10 B. On September 5, 2014, Plaintiff filed a complaint against Dutch in the  
11 Superior Court of California, County of San Diego, captioned *Hofmann v. Dutch,*  
12 *LLC*, Case No. 37-2014-00030115-CU-BT-CTL (the “State Court Action”),  
13 alleging four causes of action predicated on: (1) Violations of California Business  
14 and Professions Code sections 17200 *et seq.* (the California “UCL”); (2) Violation  
15 of California Business and Professions Code section 17533.7 (the California  
16 “Made in USA Statute”); (3) Violation of the California Consumers Legal  
17 Remedies Act (the “CLRA”); and (4) Negligent Misrepresentation.

18 C. On October 9, 2014, the State Court Action was removed to the  
19 United States District Court for the Southern District of California, Case No. 3:14-  
20 cv-02418-GPC-JLB (the “Action.”)

21 D. Plaintiff alleges that Defendant is a manufacturer, distributor and  
22 online retailer of jeans that were labeled as “Made in USA” but contained foreign-  
23 made component parts (the “Jeans”). Specifically, Plaintiff alleges that the Jeans  
24 are made with foreign-made buttons, rivets, zipper assembly, thread, and/or fabric.  
25 Thus, Plaintiff alleges, Defendant falsely marketed and represented to consumers  
26 that its Jeans were “Made in USA,” and concealed the true country of origin of the  
27 components of their Jeans in violation of California law. Plaintiff does not dispute  
28

1 that the Jeans were designed and assembled in the United States.

2 E. After receiving Plaintiff's June 30, 2014 letter but before the Action  
3 was filed, Dutch launched an investigation and evaluation of all existing Dutch  
4 product label and marketing language to address potential concerns regarding the  
5 CLRA or any other applicable law or regulation. To that end and to remove any  
6 argument as to the propriety of Dutch's labels, Dutch will implement new labels  
7 and will ensure its compliance with California Business & Professions Code §  
8 17533.7, the Textile Act and the FTC Act, subject to changes to judicial,  
9 legislative, or executive interpretation or other federal or state laws, and agrees to  
10 include qualifying language as appropriate on its labels.

11 F. Dutch denied and continues to deny all charges of wrongdoing or  
12 liability against it arising out of any of the conduct, statements, acts or omissions  
13 alleged, or that could have been alleged, in the Action. Dutch specifically denies  
14 that it knowingly or intentionally labeled and marketed the Jeans in a manner that  
15 was false or misleading as to their country of origin. As a result, Dutch contends  
16 that it is not and cannot be held liable. Defendant also has denied and continues to  
17 deny, *inter alia*, allegations that Plaintiff, the Settlement Class, or any other  
18 member of the Settlement Class has suffered damage or harm by reason of any  
19 alleged conduct, statement, act or omission of Defendant.

20 G. Counsel for the Parties engaged in mediation in San Diego on March  
21 30, 2015, before JAMS mediator Hon. Robert E. May (Ret.). The Parties engaged  
22 in good faith, arms'-length negotiations and after a full day of mediation, the  
23 Parties reached a settlement in principle that was ultimately memorialized in a non-  
24 binding Letter of Intent signed by Defendant and Plaintiff dated June 4, 2015 (after  
25 many weeks of continued negotiations between the parties). The terms of the  
26 settlement are laid out in greater detail herein.

27 H. Plaintiff's Counsel (hereinafter referred to as "Class Counsel")  
28

1 conducted a thorough examination and investigation of the facts and law relating to  
2 the matters in the Action, including but not limited to examining highly sensitive  
3 trade secret information in documents and written responses provided by  
4 Defendant subject to a Stipulation for a Protective Order entered on March 4, 2015.

5 I. Class Counsel has analyzed and evaluated the merits of all Parties'  
6 contentions and this settlement as it impacts all Parties and the Settlement Class  
7 Members. Class Counsel and Plaintiff believe that they have meritorious claims  
8 against Dutch, but recognize that the settlement provides significant benefits to all  
9 members of the class, eliminates the burden, expense, and uncertainty inherent in  
10 complex litigation, and minimizes significant uncertainties associated with further  
11 litigation. Among the risks of continued litigation are the risks of succeeding in a  
12 motion to certify a class and proving liability or damages on a classwide or  
13 individual basis. Plaintiff and Class Counsel, after taking into account the  
14 foregoing, are satisfied that the terms and conditions of this Agreement are fair,  
15 reasonable, adequate and equitable, and that a settlement of the Action and the  
16 prompt provision of effective relief to the Class are in the best interest of the  
17 Settlement Class Members.

18 J. Dutch, while continuing to deny all allegations of wrongdoing and  
19 disclaiming any liability with respect to any and all claims, considers it desirable to  
20 resolve the Action on the terms stated herein, in order to avoid further expense,  
21 inconvenience, and the distraction and diversion of their personnel and resources,  
22 and to dispose of burdensome litigation. Therefore, Dutch has determined that  
23 settlement of this Action on the terms set forth herein is in its best interest.

24 K. Each of the terms set forth in this Agreement was reached through  
25 contested negotiation, including without limitation discussions that took place in  
26 connection with the mediation. Dutch, Class Counsel, and Plaintiff agreed to  
27 settle, compromise, and dismiss with prejudice the operative complaint and all  
28



1 claims thereunder of the Class Members (as defined below) without costs to any  
 2 party (except as provided herein) on the terms and conditions set forth in this  
 3 Agreement, subject to the approval of the Court.

4 L. This Agreement reflects a compromise between the Parties, and shall  
 5 in no event be construed as or be deemed an admission or concession by any Party  
 6 of the truth of any allegation or the validity of any purported claim or defense  
 7 asserted in any of the pleadings in the Action, or of any fault on the part of  
 8 Defendant, and all such allegations are expressly denied. Nothing in this  
 9 Agreement shall constitute an admission of liability or be used as evidence of  
 10 liability, by or against any Party hereto.

11 M. This Agreement, including its exhibits, embodies all of the terms and  
 12 conditions of the settlement between Dutch and Plaintiff, both individually and on  
 13 behalf of the Settlement Class, subject to the approval of the Court.

#### 14 **TERMS AND CONDITIONS OF SETTLEMENT**

15 **NOW THEREFORE**, it is agreed by the undersigned, on behalf of Plaintiff  
 16 and Dutch, that this Action and all claims of the Plaintiff and all other Class  
 17 Members shall be settled, compromised and dismissed on the merits *with prejudice*  
 18 as to Dutch, without costs to Plaintiff or Dutch (except as provided below), on the  
 19 following terms and conditions.

#### 20 **A. DEFINITIONS**

21 The following terms, as used in this Settlement Agreement and attached  
 22 exhibits, have the meanings set forth below:

23 1. "Attorneys' Fees" means any award of attorneys' fees and costs  
 24 approved by the Court for payment to the Class Counsel.

25 2. "Claim" means a claim made either electronically or by U.S. Mail by  
 26 a person that he or she is a member of the Settlement Class and made a selection of  
 27 one of the considerations set forth in Section D(2) of this Agreement, all in  
 28

1 accordance with the Claim Form and the requirements contained in this  
2 Agreement.

3 3. "Claim Form" means the form attached hereto as Exhibit F.

4 4. "Claims Administrator" means KCC Class Action Services, LLC or  
5 other mutually agreeable administrator, which will be retained to administer the  
6 Notice Program as described in Section E of this Settlement Agreement and the  
7 Claim Program as described in Section F of this Settlement Agreement.

8 5. "Claims Period" means the period of time commencing on the date  
9 the Court enters the Preliminary Approval Order and ending on the ninetieth (90th)  
10 day thereafter.

11 6. "Class Counsel" means John H. Donboli and Del Mar Law Group,  
12 LLP.

13 7. "Class Member(s)" means any member of the Settlement Class who  
14 does not timely exclude himself or herself from the Settlement pursuant to Section  
15 J of this Settlement Agreement.

16 8. "Class Period" means September 5, 2010 through December 31, 2015.

17 9. "Court" means the United States District Court for the Southern  
18 District of California.

19 10. "Defendant's Counsel" mean Mitchell J. Freedman at P.K. Schrieffer,  
20 LLP, and Kenneth Wolf, Arthur Purcell, and Elise Shibles at Sandler, Travis &  
21 Rosenberg, P.A.

22 11. "Effective Date" shall mean the date the Court enters Judgment in this  
23 Action after the Final Approval Order.

24 12. "Final Approval Hearing" means the hearing to consider the final  
25 approval of the Settlement as required by FRCP, Rule 23(e).

26 13. "Final Approval Order" means the final order entered by the Court in  
27 the form attached hereto as Exhibit D, approving this Settlement Agreement as  
28



1 fair, adequate and reasonable and dismissing the Complaint and all allegations,  
2 claims, or causes of action asserted therein against Defendant with prejudice.

3 14. "Judgment" means the judgment entered by the Court in the form  
4 attached hereto as Exhibit E. The Judgment (and the underlying Final Approval  
5 Order) shall be deemed "Final" upon entry of judgment.

6 15. "Notice" means the Notice of Proposed Settlement of Class Action in  
7 the form attached hereto as Exhibit A.

8 16. "Notice Expenses" means the costs reasonably and actually incurred  
9 by the Claims Administrator in connection with providing notice to Settlement  
10 Class Members, and administering Claims pursuant to this Agreement (including,  
11 where appropriate, shipping costs to Settlement Class Members of the Dutch GC  
12 code), as discussed in Sections D-F of this Agreement.

13 17. "Notice Program" means the mechanisms and arrangement for  
14 providing notice as described in Section E of this Settlement Agreement.

15 18. "Parties" means Plaintiffs and Defendant, collectively.

16 19. "Person" means a natural person, individual, corporation, partnership,  
17 association, or any other type of legal entity.

18 20. "Plaintiffs" means representative plaintiff Sonia Hofmann and the  
19 Class Members.

20 21. "Preliminary Approval Order" means the Order issued by the Court in  
21 substantially the same form attached hereto as Exhibit C.

22 22. "Products" or "Dutch Jeans Products" means jeans manufactured,  
23 marketed and/or distributed by Defendant under the brand name Current/Elliott  
24 and with the unqualified designation "MADE IN USA" or "MADE IN THE USA"  
25 on the label.

26 23. "Qualifying Transaction" means a purchase in California of a Dutch  
27 Jeans Product containing foreign-made component parts in reliance on the "MADE  
28

1 IN USA” or “MADE IN THE USA” label, during the Class Period for non-  
2 commercial use.

3 24. “Qualifying Claimant” means a Class Member who submits a timely,  
4 completed, and fully executed Claim Form, indicating that he or she engaged in a  
5 Qualifying Transaction, and whose claim is not rejected by the Claims  
6 Administrator and is not disputed by Defendant under the procedures set forth in  
7 Section F below.

8 25. “Released Claims” means the claims released as described in Section  
9 K of this Settlement Agreement.

10 26. “Released Persons” means and includes Defendant and its past and  
11 present subsidiaries and affiliates, parent companies, divisions, as well as their  
12 distributors, wholesalers, retailers, customers and licensors, including the officers,  
13 directors, trustees, employees, shareholders, agents, insurers, spokespersons, legal  
14 representatives, attorneys, public relations firms, advertising and production  
15 agencies and assigns of all such persons or entities.

16 27. “Settlement” means the terms and conditions of the settlement  
17 embodied by this document.

18 28. “Settlement Class” means, for settlement purposes only, all California  
19 persons who made a Qualifying Transaction. Specifically excluded from the  
20 Settlement Class are: (a) employees, officers, directors, agents, and representatives  
21 of Dutch and its subsidiaries and affiliates; (b) persons who purchased a Dutch jean  
22 bearing a “Made in China” or other non-qualified US label; (c) all mediators,  
23 judges and judicial staff who have presided over the Action; and (d) all Persons  
24 who have opted-out and/or been properly excluded from the Class.

25 29. “Settlement Website” means the website to be created for this  
26 Settlement that will, at the appropriate time, prominently post information  
27 pertaining to the Action and the terms of the Settlement, and which will contain a  
28

1 copy of the Notice, and other relevant documents and electronic and printable  
 2 forms relating to the Settlement, including the Claim Form which can be submitted  
 3 online or printed and mailed. The Claims Administrator shall consult the parties  
 4 on the design and content of the Settlement Website and use an appropriate URL  
 5 such as currentelliottsettlement.com.

6 30. "Short-Form Notice" means the abbreviated form of Notice of  
 7 Proposed Settlement of Class Action in the form attached hereto as Exhibit B.

8 **B. TIMING OF PRELIMINARY APPROVAL**

9 The parties agree to file a motion for preliminary approval of this Settlement  
 10 as soon as practical after the execution of this Settlement Agreement.

11 **C. CONDITIONS OF SETTLEMENT**

12 Counsel for the undersigned agree to recommend approval of this Settlement  
 13 Agreement to the Court and to undertake reasonable efforts, including all steps and  
 14 efforts contemplated by this Settlement Agreement and any other steps and efforts  
 15 that may be necessary or appropriate, by order of the Court or otherwise, to carry  
 16 out the terms of this Settlement.

17 Dutch hereby agrees to comply with California Business & Professions  
 18 Code § 17533.7 (the California "Made in USA" Statute), 15 U.S.C. § 70 *et seq.*  
 19 (the "Textile Act"), and 15 U.S.C. § Section 41 *et seq.* (the "FTC ACT") in  
 20 conjunction with, except as otherwise provided herein, all future sales of its Dutch  
 21 Jeans Products (alternatively simply referred to as "Products" hereafter) and  
 22 permits the entry of the stipulated permanent injunction as fully detailed herein.

23 **D. SETTLEMENT CONSIDERATION FROM DEFENDANT**

24 1. The consideration provided by Dutch in accordance with this  
 25 Settlement Agreement is in full, complete and final settlement of the claims of  
 26 Class Members in the Action as against all Released Persons.

1           2. CurrentElliott Brand Tote Bag. In full and complete settlement of all  
2 claims which have been, might have been, are now or could be asserted in the  
3 Action by Class Members against all Released Persons, Dutch, either directly or  
4 indirectly through the Claims Administrator, will distribute to each Qualifying  
5 Claimant who timely submits a fully executed Claim Form a CurrentElliott brand  
6 tote bag, with a retail value of approximately \$128.

7           3. Dutch Electronic Gift Card Codes. Each Qualifying Claimant who timely  
8 submits a fully executed Claim Form will also receive a \$20 Electronic Gift Card  
9 Code or “GC code” in the event that the Class Members purchased one (1) Product  
10 and a \$40 GC code if the Class Member purchased two (2) Products. In order to  
11 receive a GC code in excess of \$40, the Class Member must establish proper proof  
12 of purchase of such additional Products (with receipts, etc.). Each Class Member  
13 shall receive a unique GC code which will correspond in value to the number of  
14 Products claimed by such Class Member (and substantiated by receipts, as  
15 applicable) multiplied by \$20. GC codes may only be redeemed at  
16 currentelliott.com. Any domestic shipping costs in this regard shall be paid by  
17 Dutch.

18           4. Charitable Donation. Dutch agrees to a charitable contribution in the  
19 amount of \$250,000 as part of this settlement. Dutch is permitted to (but not  
20 required) to make such payments over the course of five (5) years. Beginning in  
21 the calendar year 2015, the minimum yearly distribution shall be \$50,000. For  
22 purposes of this provision, Dutch’s charitable donations made after June 4, 2015  
23 shall be applied towards its 2015 minimum year distribution. Dutch has been  
24 made aware of Ninth Circuit legal authority that requires a sufficient nexus  
25 between the charitable purpose of the charity and the objectives of the underlying  
26 statutes (i.e., consumer protection statutes in this Action). Plaintiff, through Class  
27 Counsel, and Dutch shall meet and confer in good faith to determine the identity of  
28



the appropriate charity or charities and specifically identify such charities (more than one entity is permissible) before applying to the Court for preliminary and/or final approval of the settlement. Dutch made its first charitable donation in the amount of \$50,000 to Step Up Women's Network (suwn.org) in 2015. For the remaining \$200,000 over the remaining four years, Dutch will donate money to a scholarship endowment at a non-profit university's Consumer Science Department, such as that which exists at California State University, Northridge.

5. Injunctive Relief. Dutch has voluntarily revised its labels, including adding qualifying language as appropriate on its labels, to address the concerns raised in this Action. Dutch provided sample qualifying language for the revised labels to Class Counsel during the March 30, 2015 mediation and again on September 4, 2015. Class Counsel approved the form and content of the language shown to Class Counsel. Dutch has subsequently finalized its labels which are stated below:

Factory	Fabric Origin	Trim Origin	Country of Origin Description as of 1/1/2016
USA	USA	USA	Made in USA
USA	USA	IMPORTED < 5% of Wholesale Value	Made in USA
USA	IMPORTED	IMPORTED	Made in USA of imported fabric and materials

Dutch has affixed revised labels to new products which are consistent with the newly amended California statute, Business & Professions Code Section 17533.7. The parties agree that, for purposes of this Agreement, such updated materials satisfy any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature against Defendant which Plaintiff or Class Members asserted, or could have asserted, in the Action.

The Permanent Injunction will become effective as part of the Judgment on the Effective Date. The Permanent Injunction will be substantially in the form of

1 Exhibit E and include: (i) a meet and confer requirement before Plaintiff or her  
2 counsel may take any action to enforce the Permanent Injunction; (ii) a cure  
3 provision requiring notice to Dutch and an opportunity to resolve any alleged  
4 violation before seeking relief from any other court, tribunal, arbitration panel,  
5 commission, agency or before any governmental and/or administrative body, or  
6 any other adjudicatory body, and (iii) provisions restricting the injunction to  
7 product created and placed on the shelves after the Effective Date.

8 The Parties recognize that Dutch possesses a quantity of Products with the  
9 prior labels and agree that the Permanent Injunction does not apply to such  
10 Products, and that the injunction only applies to product manufactured after the  
11 date of the injunction (i.e., Dutch need not pull old product from the shelves).

12 **E. NOTICE PROGRAM**

13 1. The terms of the Notice to the Settlement Class shall be more fully set  
14 forth after consultation with the Claims Administrator. However, the Class Notice  
15 shall conform to all applicable requirements of California law, the United States  
16 Constitution (including the Due Process Clause), and any other applicable law, and  
17 shall otherwise be in the manner and form agreed upon by the Settling Parties and  
18 approved by the Court.

19 2. The Notice shall be in the form attached hereto as Exhibit A.

20 3. The Claims Administrator will arrange for publication of notice in  
21 publications (either printed or electronic or both) that adequately cover the  
22 consumers of Dutch Jeans Products, as determined by the Class Action Settlement  
23 Administrator in its reasonable judgment.

24 4. To the extent that Dutch has any California end-user identifying  
25 information in its corporate books and records that establish that a particular  
26 consumer is or would be a member of the Class, and to the extent that Dutch has  
27 each consumer's consent to utilize that information to contact the consumer, Dutch  
28

1 will provide such information to the Claims Administrator and direct the Claims  
2 Administrator to mail the Notice to those consumers. All such mailings shall be  
3 mailed within twenty (20) days of the entry of the Preliminary Approval Order.  
4 For any and all Notices returned to the Claims Administrator that have forwarding  
5 addresses provided by the postal service, the Claims Administrator shall re-mail  
6 the Notices to the new addresses, except that the Claims Administrator will have  
7 no obligation to re-mail returned Notices that they receive from the postal service  
8 later than fifty (50) days after entry of the Preliminary Approval Order. Under no  
9 circumstances shall Dutch be required to contact consumers where, to do so, would  
10 arguably violate any state or federal law or any privacy rights of the consumer.

11 5. The Settlement Website shall be active within twenty (20) days after  
12 the Preliminary Approval Order is entered and shall remain active until at least 30  
13 days after the expiration of the Claims Period. Defendant will provide an easily  
14 viewable hyperlink to the Settlement Website on the dropdown menus of the *home*  
15 *page* of its website ([www.currentelliott.com](http://www.currentelliott.com)) for the duration of the Claims Period.  
16 The Settlement Website address will be published in the Notice.

17 6. At least thirty (30) days prior to the Final Approval Hearing, the  
18 Claims Administrator, through their counsel of record, shall either provide to Class  
19 Counsel or cause to be filed with the Court, a declaration or declarations that they  
20 complied with provisions of Section E herein.

21 **F. CLAIM PROGRAM**

22 1. Notice will be provided to members of the Settlement Class by the  
23 method set forth in Section E of this Agreement.

24 2. Every Settlement Class Member shall have the right to submit a claim  
25 for settlement benefits. A claim shall be valid only if submitted on the Claim Form  
26 pursuant to the procedures set forth herein.

27 3. Claim Forms must be submitted: (a) electronically through the  
28



1 Settlement Website no later than the last day of the Claims Period; or (b) in paper  
2 form via first class mail postmarked no later than the last day of the Claims Period.  
3 On the Claim Form, the Settlement Class Member must certify the following under  
4 the penalty of perjury:

5 a. his or her name, residential address in the United States,  
6 email address and/or telephone number;

7 b. the date (during the Class Period) of purchase (the  
8 Claims Administrator shall provide online claimants with a calendar  
9 field and ensure that no Claimant can enter a date prior to the Claims  
10 Period);

11 c. the type of purchase (online or in-store);

12 d. the location of purchase (website or store name,  
13 including city and state);

14 e. the number of Product(s) purchased (a drop-down box  
15 will be provided by the Claims Administrator for online claimants);

16 f. an attestation that if Class Member is including  
17 substantiating receipts, that such receipts are true and correct copies of  
18 the original receipts evidencing a purchase by such Class Member;  
19 and

20 g. an attestation that the Product(s) purchased bore a "Made  
21 in the USA" or equivalent label;

22 This information must be certified under the penalty of perjury with a  
23 signature for Claim Forms submitted in paper form, or with an electronic signature,  
24 in the form of typed initials, for Claim Forms submitted electronically.

25 4. The Claims Administrator will review each Claim Form submitted by  
26 a Class Member to determine whether the Claim Form is valid, and will reject any  
27 invalid claims (if any), within thirty (30) days after the expiration of the Claims  
28

1 Period. The Claims Administrator shall report all such determinations of invalidity  
2 to Class Counsel during weekly updates to Class Counsel. The Claims  
3 Administrator shall process all Claim Forms with the understanding that  
4 substantial compliance is sufficient, and that strict, 100% completion of the Claims  
5 Form by Class Members is not necessary and if the location of purchase, for  
6 example, is not completed, the Claims Form will not be rejected solely for that  
7 reason.

8 5. The Claims Administrator shall evaluate each valid claim to  
9 determine the timeliness and/or validity of each. The Claims Administrator shall  
10 within a reasonable time notify the class members of the appropriate distribution  
11 methods as described in Section D of this Agreement.

12 6. If Defendant disputes a Claim, they must notify the claimant in  
13 writing by mail no later than forty-five (45) days after the expiration of the Claims  
14 Period, stating the reasons for the rejection. The claimant will have fifteen (15)  
15 days after the notice is mailed to present in writing by mail additional information  
16 or evidence in support of his or her Claim. If a claimant timely provides such  
17 additional information or evidence, Defendant will either (i) approve the Claim; or  
18 (ii) advise Class Counsel that Defendant continues to dispute the Claim. The Court  
19 will retain jurisdiction regarding disputed Claims. If Class Counsel and Defendant  
20 cannot agree on the resolution of any disputed Claim, final determination of  
21 disputed Claims will be made by the Court. Class Counsel and Defendant will  
22 exercise best efforts to submit any such disputed Claims to the Court in batches.

23 Any claimant, who is rejected by Defendant pursuant to this Paragraph, shall  
24 not be bound by any judgment entered in connection with this settlement. A list of  
25 persons who constitute rejected claimants shall be filed with the Court by  
26 Defendant's Counsel before the date for the hearing on final approval.

1           7.     Class Members who do not return a Claim Form postmarked on or  
2 before the final day of the Claims Period will remain Class Members and be bound  
3 by this Settlement.

4           8.     The Claims Administrator shall be responsible for, and shall bear the  
5 costs of: (i) establishing the Settlement Website; (ii) providing notice to potential  
6 class members; (iii) processing claims by potential class members; (iv)  
7 determining eligibility of potential Class Members for receipt of proceeds and  
8 shipping by mail; (v) informing Class Members where and how to receive their GC  
9 codes; and (vi) preparing and submitting such documentation and declarations as  
10 are reasonably necessary to obtain judicial approval of the settlement.

11          9.     Dutch shall pay claims administration fees up to \$90,000 as described  
12 in Section D(2) of this Agreement. Dutch shall not be liable for any sum owed to  
13 the administrator in excess of said \$90,000 in administrative fees. Any claims  
14 administration fees in excess of \$90,000 shall be presented to Class Counsel who  
15 reserves the right to either pay or reject expenses above \$90,000. Otherwise the  
16 Administrator is agreeing to perform its services for no more than \$90,000.

17 **G. FEES AND EXPENSES OF CLASS COUNSEL; CLASS**  
18 **REPRESENTATIVE INCENTIVE AWARD**

19          1.     Class Counsel shall file a motion with the Court for an award of  
20 Attorneys' Fees, reimbursement of actual expenses, and an award of a class  
21 representative enhancement fee against Dutch.

22          2.     These papers may include references to highly sensitive trade secret  
23 information such as sales and product information provided to Class Counsel by  
24 Dutch during discovery and/or in support of the parties' settlement efforts and to  
25 the extent that Plaintiffs' counsel reasonably believes information contained in the  
26 chart is necessary to obtain judicial approval, it shall submit a declaration under  
27  
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1 seal detailing generally the information and will submit specific information if, and  
2 only if, directed to do so by the Court.

3 3. Such a motion shall be heard at the Final Approval Hearing (or at any  
4 other time deemed appropriate by the Court).

5 4. Defendant reserves the right to file an opposition to the above-  
6 referenced motion(s). Defendant, however, agrees *not* to oppose a request by  
7 Plaintiffs' counsel of an award of attorneys' fees and expenses not to exceed  
8 \$175,000, and/or an award of an incentive fee to Plaintiff that does not exceed  
9 \$5,000.00. The payment of attorneys' fees, reimbursement of actual expenses, and  
10 an award of a class representative incentive fee (if any) will be paid by Dutch in  
11 addition to the settlement consideration to the Settlement Class. If approved, the  
12 incentive fee will be paid within twenty (20) days of the Effective Date.

13 **H. FINAL APPROVAL HEARING**

14 1. Hearing Date: Pursuant to the Preliminary Approval Order, the Court  
15 will hold a Final Approval Hearing on a date to be set by the Court.

16 2. Briefing Schedule: Any briefs in support of final approval by Class  
17 Counsel or Defendant shall be submitted not less than twenty-one (21) calendar  
18 days before the Final Approval Hearing, unless otherwise agreed by the parties or  
19 ordered by the Court. Class Counsel will file a Memorandum of Points and  
20 Authorities requesting recommendations of final approval of the Settlement by the  
21 Court, including a determination by the Court: (i) that the Settlement be approved  
22 as fair, reasonable and adequate; (ii) that Class Counsel have adequately  
23 represented the interests of the Settlement Class; (iii) that the Settlement Class,  
24 excluding those persons who exercise their right to opt out of participation in the  
25 Settlement, will be certified; and (iv) that the Final Approval Order approving the  
26 Settlement substantially in the form of Exhibit D and the Judgment in substantially  
27 the form of Exhibit E, should be entered. The Final Approval Hearing may be  
28



1 continued from time to time as necessary without further notice to the Settlement  
2 Class.

3 3. Consequences of Non-Approval: If the Court does not grant final  
4 approval of the settlement reflected in this Agreement, any certification of any  
5 Settlement Class will be vacated and the Parties will be returned to their positions  
6 with respect to the Action as if the Agreement had not been entered into. In the  
7 event that Final Approval is not achieved: (a) any Court orders preliminarily or  
8 finally approving the certification of any class contemplated by this Agreement  
9 shall be null, void, and vacated, and shall not be used or cited thereafter by any  
10 person or entity; and (b) the fact of the settlement reflected in this Agreement, shall  
11 not be used or cited thereafter by any person or entity, in any manner whatsoever,  
12 including without limitation any contested proceeding relating to the certification  
13 of any class. However, the failure by the Court to approve the Attorneys' Fee and  
14 expense award and/or class representative award in the amount agreed upon by the  
15 Parties shall not be a material event justifying the option to withdraw from this  
16 Settlement.

17 **I. OBJECTION**

18 1. Any Class Member who has not timely requested exclusion may  
19 appear at the Final Approval Hearing to show cause why the Court should not  
20 approve this Settlement and dismiss the Action with prejudice, and may appear at  
21 the hearing to support or oppose Class Counsel's request or application for  
22 Attorneys' Fees.

23 2. For a Class Member to have objections considered, the Class Member  
24 must file any objections and all papers in support of such objections with the Court  
25 in the time set forth in the Notice, which will be no later than sixty (60) days after  
26 entry of Preliminary Approval Order. All such written objections shall be served  
27 on Class Counsel and Defendant's Counsel. The filing of any objection will not  
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1 extend the time within which a member of the Settlement Class may file a request  
2 for exclusion from the settlement.

3 3. Any objection must include: (1) the Class Member's complete name  
4 and residence or business address (giving the address of any lawyer who represents  
5 the Class Member is not sufficient); (2) a statement that the Class Member falls  
6 within the definition of the Settlement Class, including the approximate date the  
7 Class Member purchased the Product; and (3) each ground for comment or  
8 objection and any supporting papers the Class Member desires the Court to  
9 consider (i.e., a mere statement that "I object" will not be deemed-sufficient).

10 **J. OPT-OUT RIGHTS OF MEMBERS OF THE SETTLEMENT CLASS**

11 1. Any member of the Settlement Class may request exclusion from this  
12 class action settlement by first class mail, personally signed, and stating  
13 unequivocally that he/she wishes to be excluded from this class action settlement.  
14 Any request for exclusion must be mailed to Class Counsel and Defendant's  
15 Counsel, postmarked on or before sixty (60) days after Preliminary Approval  
16 Order, and referring, in the request for exclusion, to the name and number of the  
17 Action, *Hofmann v. Dutch, LLC*, Case no. 3:14-cv-02418-GPC-JLB. Such request  
18 shall state the name, address and phone number of the person requesting exclusion  
19 and that such person elects to be excluded from this litigation. The person  
20 requesting exclusion must sign the request for exclusion personally. No member  
21 of the Settlement Class who chooses to be excluded may submit a Claim Form.  
22 Any member of the Settlement Class who chooses to be excluded and who  
23 provides the requested information will not be bound by any judgment entered in  
24 connection with this Settlement but shall not be entitled to pursue relief against  
25 Dutch in the form of a class action on behalf of him or herself and others. A list of  
26 persons who requested exclusion shall be filed with the Court by Defendant's  
27 Counsel before the date of the Final Approval Hearing.

1           2.     If more than two hundred (200) Class Members request exclusion,  
2 then Defendant shall have the unilateral right, in its sole discretion, to withdraw  
3 from this Settlement Agreement. That unilateral right to withdraw must be  
4 exercised within twenty (20) days of Dutch's receipt of notification that the  
5 number of individuals validly requesting exclusion exceeds two hundred (200).

6 **K.     RELEASES**

7           1.     In addition to the effect of any final judgment entered in accordance  
8 with this Settlement Agreement, upon this Settlement becoming final, Defendant,  
9 and the Released Persons will be released and forever discharged from any and all  
10 actions, claims, demands, rights, suits, and causes of action of any kind or nature  
11 whatsoever against the Released Persons, including damages, costs, expenses,  
12 penalties, and attorneys' fees, whether at law or equity, known or unknown,  
13 foreseen or unforeseen, developed or undeveloped, direct, indirect or  
14 consequential, liquidated or unliquidated, arising under common law, regulatory  
15 law, statutory law, or otherwise, based on federal, state, or local law, statute,  
16 ordinance, regulation, code, contract, common law, or any other source, or any  
17 claim that Plaintiff or Class Members ever had, now have, may have, or hereafter  
18 can, shall or may ever have against the Released Persons in any other court,  
19 tribunal, arbitration panel, commission, agency or before any governmental and/or  
20 administrative body, or any other adjudicatory body, on the basis of, connected  
21 with, arising from or in any way whatsoever relating to actions or omissions in  
22 manufacturing, advertising, marketing, labeling, packaging, promotion, sale and  
23 distribution of the Products, and/or any claims or omissions regarding the  
24 geographic location of any Product and/or any component of any Product was  
25 manufactured, assembled and/or created, from September 5, 2010 to the Effective  
26 Date, including those which have been asserted or which could reasonably have  
27 been asserted by the Class Members against the Defendant in this Action or any  
28



1 other threatened or pending litigation asserting claims of the nature encompassed  
2 by this release, and any claims arising after the date of final approval which could  
3 be asserted based on labels or marketing in existence as of the date of final  
4 approval of the Agreement.

5 Defendant and its parents, subsidiaries and affiliated corporations,  
6 partnerships and businesses, past, present and future, and all of their past, present  
7 and future trustees, directors, officers, shareholders, partners, agents, employees,  
8 representatives, attorneys, insurers, hereby releases Plaintiff Sonia Hofmann and  
9 her counsel from any claims of abuse of process, malicious prosecution, or any  
10 other claims arising out of the institution, prosecution, assertion, or resolution of  
11 this Action, including, but not limited to, claims for attorneys' fees, costs of suit, or  
12 sanctions of any kind.

13 2. Each Class Member and Defendant expressly waives the provisions of  
14 Section 1542 of the California Civil Code (and all other like provisions of law) to  
15 the full extent that these provisions may be applicable to the releases in paragraph  
16 K(1). California Civil Code, Section 1542, provides:

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

20 3. Subject to the above, each Class Member or Defendant may hereafter  
21 discover facts other than or different from those which he, she, or it knows or  
22 believes to be true with respect to the claims being released. Nevertheless, each  
23 Class Member and Defendant hereby expressly waive and fully, finally and forever  
24 settle and release, upon this Settlement becoming final, any known or unknown,  
25 contingent or non-contingent claim in any way relating to the subject matter of the  
26 claims being released in paragraph K(1), whether or not concealed or hidden,  
27 without regard to subsequent discovery or existence of such different or additional  
28

1 facts.

2 **L. FORCE AND EFFECT OF SETTLEMENT**

3 1. In the event that this Settlement does not become final in accordance  
 4 with the terms hereof, then this Settlement Agreement will be of no force or effect,  
 5 except that the parties hereto agree that this Settlement Agreement, including its  
 6 exhibits, and any and all negotiations, drafts of settlement documents and  
 7 discussions associated with it, will be without prejudice to the rights of any party,  
 8 will be inadmissible in evidence against any party, and further will not be deemed  
 9 or construed to be an admission or evidence of any violation of any statute or law  
 10 or of any liability or wrongdoing by Defendant, or of the truth of any of the claims  
 11 or allegations contained in any complaint or any other pleading filed in the Action  
 12 or any other action, and evidence thereof will not be discoverable or used directly  
 13 or indirectly in any way, whether in the Action or in any other action or  
 14 proceeding. Plaintiff and Defendant expressly reserve all of their rights and  
 15 preserve all applicable defenses if this Settlement does not become final in  
 16 accordance with the terms of this Settlement Agreement. In the event this  
 17 Settlement is terminated, the Settlement Agreement and all matters leading up to or  
 18 related to the Settlement are confidential settlement communications inadmissible  
 19 under California Evidence Code § § 1119 and 1152(a) and/or any and all other  
 20 applicable federal and/or state laws. The provisions of this paragraph will survive  
 21 and continue to apply to Defendant and each member of the Settlement Class, even  
 22 if the Court does not approve the Settlement, or the Court's approval of this  
 23 Settlement is set aside on appeal, or Defendant withdraws from the Settlement  
 24 Agreement. Notwithstanding the foregoing, this Settlement Agreement may be  
 25 used or admitted into evidence against any party as to whom this Settlement  
 26 Agreement is being enforced.

27 **M. MISCELLANEOUS PROVISIONS**

1           1. This Settlement Agreement will be binding upon and inure to the  
2 benefit of the successors of the parties hereto. Without limiting the generality of  
3 the foregoing, each and every covenant and agreement herein by Plaintiff and  
4 Class Counsel will be binding upon all Class Members.

5           2. This Settlement Agreement contains the entire, complete and  
6 integrated statement of each and every term and provision agreed to by and among  
7 the parties, superseding all previous negotiations and understandings, including,  
8 but not limited to, the June 4, 2015 Letter of Intent and may not be contradicted by  
9 evidence of any prior or contemporaneous agreement. The Parties are not subject  
10 to any condition not provided for herein. This Settlement Agreement may be  
11 amended or modified only by a written instrument signed by Class Counsel and  
12 Defendant's Counsel. Amendments and modifications may be made without  
13 additional notice to the Class Members unless such notice is required by the Court.

14           3. Any inconsistency between this Settlement Agreement and the  
15 exhibits attached hereto will be resolved in favor of the Settlement Agreement.

16           4. The determination of the terms of, and the drafting of, this Agreement  
17 have been by mutual agreement after negotiation, with consideration by and  
18 participation of all Parties hereto and their counsel. None of the parties hereto will  
19 be considered to be the drafter of this Settlement Agreement or any provision  
20 hereof for the purpose of any statute, case law or rule of interpretation or  
21 construction that would or might cause any provision to be construed against the  
22 drafter thereof.

23           5. All terms of this Settlement Agreement and the exhibits hereto will be  
24 governed by and interpreted according to the substantive laws of the State of  
25 California without regard to its choice of law or conflict of laws principles.

26           6. Defendant and each Class Member hereby irrevocably submit to and  
27 agree not to contest the exclusive jurisdiction of the Court and agree that the Court  
28

1 is a proper venue and convenient forum, for purposes of any suit, action,  
2 proceeding or dispute arising out of or relating to this Settlement Agreement and/or  
3 the exhibits hereto.

4       7. Neither this Agreement nor the Settlement, nor the releases given  
5 herein, nor any consideration therefor, nor any act performed or document  
6 executed pursuant to or in furtherance of this Agreement or the settlement: (i) is or  
7 may be deemed to be or may be used as an admission of, or evidence of, the  
8 validity of any released Claim, or defense, or any point of fact or law alleged in the  
9 Action, or of any wrongdoing or liability of Defendant, or of the propriety of  
10 maintaining the Action as a class action; or (ii) is or may be deemed to be or may  
11 be used as an admission, concession, presumption, or inference of any wrongdoing  
12 by the Released Persons in any proceeding in any court, administrative agency, or  
13 other tribunal, except such proceedings as may be necessary to consummate,  
14 interpret, or enforce this Agreement. Further, Defendant may file this Agreement  
15 or the Judgment in any action that may be brought against any Released Person in  
16 order to support a defense or counterclaim based on principles of *res judicata*,  
17 collateral estoppel, release, good faith settlement, judgment bar, or reduction or  
18 any other theory of claim preclusion or issue preclusion or similar defense or  
19 counterclaim. In the event the provisions of this Settlement Agreement are asserted  
20 by Defendant as a defense, in whole or in part, to any claim or cause of action or  
21 otherwise raised as an objection in any suit, action or proceeding by a Class  
22 Member, it is hereby agreed that Defendant will be entitled to a stay of that suit,  
23 action or proceeding until the Court has entered a final judgment no longer subject  
24 to any appeal or review determining any issues relating to the defense or objection  
25 based on such provisions.

26       8. This Agreement shall not be subject to collateral attack by any  
27 Settlement Class Member or any recipient of the notices to the Settlement Class  
28



1 after the Judgment is entered. Such prohibited collateral attacks shall include  
2 claims made before the Final Approval hearing that a Settlement Class Member  
3 failed to receive timely notice of the settlement or failed to submit a timely dispute  
4 letter for any reason.

5 9. This Settlement Agreement may be executed in counterparts.  
6 Facsimile signatures will be considered as valid signatures as of the date hereof,  
7 although the original signature pages will thereafter be appended to this Settlement  
8 Agreement.

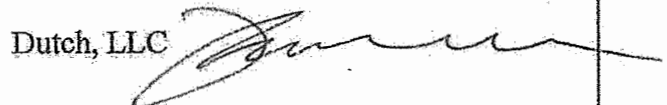
9 IN WITNESS WHEREOF, and intending to be legally bound hereby, the  
10 parties have caused this Settlement Agreement to be executed by their officers or  
11 representatives hereunto duly authorized, effective as of the date first above  
12 mentioned.

13 In so doing, the parties expressly agree to and intend to be legally bound by  
14 this Settlement Agreement.

15 Dated: 10/14/16

16   
Sonia Hofmann, Plaintiff

17  
18  
19 Dated: 10/13/16

Dutch, LLC 

20  
21 By: (Print Name) JENNIFER ADAMS

22 Title: CFO

23  
24  
25  
26 APPROVED AS TO FORM:

1 Dated: 10/13/16

DEL MAR LAW GROUP, LLP

2  
3  
4 By: 

John H. Donboli  
Camille Joy DeCamp  
Attorneys for Plaintiff Sonia Hofmann

5  
6  
7 Dated: 10/13/16

P.K. SCHRIEFFER, LLP

8  
9  
10 By: 

Mitchell J. Freedman  
Attorneys for Dutch, LLC

11  
12  
13 Dated: 10/13/16

SANDLER, TRAVIS & ROSENBERG, P.A.

14  
15  
16 By: 

Arthur K. Purcell, Esq.  
Kenneth N. Wolf, Esq.  
Elise Shibles, Esq.  
Attorneys for Dutch, LLC

**EXHIBIT A**



SONIA HOFMANN, an individual and on behalf  
of all others similarly situated,

Plaintiff,

vs.

DUTCH, LLC, a California Limited Liability  
Company; and DOES 1 through 100, inclusive,

Defendants)

CASE NO.: 3:14-cv-02418-GPC-JLB

**NOTICE OF PROPOSED  
SETTLEMENT OF CLASS ACTION  
CASE**

Judge: Hon. Gonzalo P. Curiel  
Ctvm: 2D

IF YOU PURCHASED A CURRENT/ELLIOTT JEANS PRODUCT WITH AN  
UNQUALIFIED “**MADE IN USA**” LABEL FROM SEPTEMBER 5, 2010 TO DECEMBER  
31, 2015, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON’T  
ACT. PLEASE READ THIS NOTICE CAREFULLY.

1. **Introduction** - This Notice of Proposed Class Action (“Notice”) concerns a proposed settlement (the “Proposed Settlement”) of a lawsuit (the “Action”) against Dutch, LLC (“Dutch”) based on the claim that Dutch misrepresented the country of origin of various Current/Elliott jeans products by claiming that the jeans were “**Made in USA**” when it contained foreign made component parts. The Action is currently pending in the United States District Court for the Southern District of California (the “Court”). The Court has certified the Action to proceed as a class action on behalf of the class described below. The details of the Proposed Settlement are set forth below. Dutch has revised its labeling.

2. **Court Approval** - This Notice was court approved in its entirety by the Agreement of Settlement on file with the Court.

3. **Purpose of Notice** - This Notice is intended (1) to inform you of the Proposed Settlement of the Action, (2) to describe the Proposed Settlement, and (3) to advise you of your rights and your options with respect to the Proposed Settlement.

4. **Description of the Action** - This Action alleges that Defendant violated California law by improperly labeling and selling Dutch products as “Made in USA” when doing so was prohibited by a California false advertising statute that requires that if any foreign-made component is part of a product that is otherwise designed, produced and assembled in the U.S., that product cannot be labelled as “Made In USA.”

5. **Defendant’s Denials** – Defendant denies the allegations of the operative complaints and has asserted a number of defenses to the claims.

6. **Definition of the Class** - The Settlement Class is defined as all persons who made a purchase in California of a Current/Elliott jeans product containing foreign-made component parts that was labeled as “MADE IN USA” or “MADE IN THE USA” (the “Jeans”) during the relevant Class Period, from September 5, 2010 to December 31, 2015, for non-commercial use.

7. **The Proposed Settlement** - The parties have reached a Proposed Settlement of this Action, which the attorneys for the Settlement Class believe is fair, reasonable, adequate and in the best interest of the members of the Settlement Class (“Class Member(s)”). Defendant agreed to the Proposed Settlement, without admitting liability, to avoid the costs and other burdens of continued litigation. The Proposed Settlement provides the following:

- a. **Restitution** to every Class Member who does not opt out of the Settlement and returns a valid Claim Form. Restitution will consist of one Current/Elliott brand tote bag (retail value approximately \$128) **and** a \$20 Electronic Gift Card Code or “GC code” in the event that the Class Members purchased one (1) Product and a \$40 GC code if the Class Member purchased two (2) Products. In order to receive a GC code in excess of \$20, the Class Member must establish proper proof of purchase of such additional Products (with receipts, etc.). Each Class Member shall receive a unique GC code which will correspond in value to the number of Products claimed by such Class Member (and substantiated by receipts, as applicable) multiplied by \$20. GC codes may only be redeemed at currentelliott.com; and
- b. A permanent **injunction** against Dutch; and
- c. A **charitable donation** of \$250,000 over a five (5) year period.

Dutch also agrees to (1) pay a class representative incentive fee (to the extent awarded by the Court) to class representative Sonia Hofmann in an amount not to exceed \$5,000.00, and (2) pay Class Counsel’s attorneys’ fees and costs (to the extent awarded by the Court) in an amount not to exceed \$175,000.00. Defendant agreed not to oppose the request for a class representative incentive award or attorneys’ fees and expenses as long as the requested amounts do not exceed the figures referenced above. Plaintiff will file a motion for recovery of attorneys’ fees and costs and award of class representative enhancement fee with the Court at the appropriate time. This issue shall be determined solely by the Court by way of a written motion.

8. **Releases** - In return for the Settlement described above, Class Members who do not request exclusion from the class agree to release (give up) all claims against Defendant and its past and present subsidiaries and affiliates, parent companies, divisions, as well as their distributors, wholesalers, retailers, customers and licensors, including the officers, directors, trustees, employees, shareholders, agents, insurers, spokespersons, legal representatives, public relations firms, advertising and production agencies and assigns of all such persons or entities arising out or relating to actions or omissions in manufacturing, advertising, marketing, labeling, packaging, promotion, sale and distribution of the Products, and/or any claims or omissions regarding the geographic location any Product and/or any component of any Product was manufactured, assembled and/or created, including those which have been asserted or which

could reasonably have been asserted by the Class Members against the Defendant in this Action (the “Released Claims”).

9. **How to Make a Claim** - Only Class Members who submit an online claim or mail a Claim Form to the address listed below no later than INSERT DATE will be eligible to participate in the settlement. Claim Forms postmarked after INSERT DATE will not be considered. If you received this Notice in the mail, a Claim Form is enclosed. If you received this Notice in any other way or do not have a Claim Form, you may go to [www.currentelliottsettlement.com](http://www.currentelliottsettlement.com) to complete and submit a copy of the Claim Form online, or print out a copy of the Claim Form to complete and mail to:

Current Elliott Class Action  
c/o KCC  
P.O. Box [xxxx]  
\_\_\_\_\_, CA [xxxxx]

10. All valid and timely claims will be honored within sixty (60) days of the expiration of the Claims Period or Effective Date (whichever occurs last). **Request for Exclusion from the Class** - Under California law, if you are a Class Member, you have the right to be excluded from the class. If you wish to be excluded from the class, you must mail a letter so that it is postmarked no later than INSERT DATE to counsel for Plaintiff and the Class and Counsel for Defendant at the addresses listed in paragraph 11 below. The letter must clearly state your full name, current mailing address, phone number, and signature and include the following statement: “I want to be excluded from the plaintiff class in *Hofmann v. Dutch, LLC*, Case No. 3:14-cv-02418-GPC-JLB.”

The request for exclusion must be submitted in your own name and signed by you personally; no individual may request that other persons be excluded from the class. Do not send a letter requesting exclusion if you wish to remain a Class Member or file a claim for monetary payment under the settlement. **If you exclude yourself from the class, you will not be entitled to share in any benefits that the class may obtain.** If you do not exclude yourself, you will not be able to file a separate claim against Defendant based on the events, circumstances and/or practices alleged in the Action.

11. **Objection** - If you do not request exclusion, you may still object to the Proposed Settlement. You may also move to appear in the Action.

If you wish to object, it is suggested that you file a written objection with the Court. The objection should include: (1) your complete name and current residence and business address (giving the address of any lawyer who represents you is not sufficient); (2) a statement that you fall within the definition of the class, including the approximate date (during the Class Period) and place of purchase of the Product(s), the type of Product(s) purchased, that the Product(s) purchased bore a “Made in the USA” label, that your decision to purchase the Product was influenced by the presence of a “Made in the USA” label, and that you would not have purchased the Product(s) at that time had you known that the Product(s) in question was/were not entirely manufactured within the United States of U.S.-made materials; and (3) each ground for comment or objection and any supporting papers you wish the Court to consider (*i.e.*, a mere statement that “I object” is insufficient).



You or your personal attorney may attend the settlement hearing at your expense and state your support or objection orally, but you are not required to do so. If you intend to attend the hearing and orally state your opinion, your written objection should state “**I intend to appear at the hearing.**” Class Members, or their attorneys, may also attend the Final Approval Hearing and assert their objections (if any) with the Court. Written objection (to the extent filed) must be filed with the Court and mailed to Class Counsel no later than **[INSERT DATE]** at the following addresses:

United States District Court, Southern District of California  
Dept. 2D  
333 W. Broadway  
San Diego, CA 92101

Counsel for Plaintiff/Class  
John H. Donboli  
DEL MAR LAW GROUP, LLP  
12250 El Camino Real  
Suite 120  
San Diego, CA 92130  
Tel: 858-793-6244

Counsel for Defendant:  
Mitchell Freedman, Esq.  
P.K. SCHRIEFFER, LLP  
100 N. Barranca Avenue  
Suite 1100  
West Covina, CA 91791  
Tel: (626) 373-2444

If you wish to submit a brief to the Court in support of any objection, such brief must be filed with the Court, and served by mail on counsel for the plaintiff class and counsel for Defendant, at the addresses listed above no later than **[INSERT DATE]**.

12. **Hearing On Proposed Settlement** - The Court will hold a Final Approval Hearing to consider: (a) whether the Proposed Settlement summarized above is fair, reasonable, adequate, and in the best interests of the plaintiff class, and (b) whether Plaintiff and his attorneys have fully, fairly and adequately represented the plaintiff class in the action and in negotiating the Proposed Settlement. The Final Approval Hearing is presently scheduled for **[INSERT DATE & TIME]** in Department 2D of the United States District Court, Southern District of California, 333 W. Broadway, San Diego, CA 92101. The time and date of the approval may be changed by the court order without further notice to the class.

13. **Hearing On Class Counsel Fees and Class Representative Enhancement Fee** - The Court will/may also hold a hearing on **[INSERT DATE & TIME]** to consider whether to award attorneys’ fees and costs to Class Counsel and whether to award a class representative incentive fee to Plaintiff Sonia Hofmann. The motion shall be heard in Department 2D of the United States District Court, Southern District of California, 333 W. Broadway, San Diego, CA 92101. The time and date of the hearing may be changed by the Court without further notice to the class. At the above-referenced court hearing, Plaintiff shall request that the Court grant: (i) a class representative incentive fee to Plaintiff Sonia Hofmann; (ii) Class Counsel’s attorneys’ fees and reimbursement of expenses. The payment of attorneys’ fees, reimbursement of actual expenses, and an award of a class representative enhancement fee (if any) to Plaintiff Hofmann will be paid by Dutch in addition to the recovery to the Settlement Class.

Any party, including Class Members, who wish to file an objection and/or oppose **Plaintiff’s motion for Class Counsel fees and/or the class representative enhancement fee** are

**encouraged to do so in writing and must do so by [INSERT DATE] by filing with the Court and serving his or her objections as set forth above. In addition, if a Class Member wishes to submit to the Court any brief in support of his or her objections, he or she must file the brief with the Court and serve it on both Class Counsel and counsel for Defendant prior to [INSERT DATE].**

14. **Accessing Court Documents** - The filed documents and orders in this case may be examined and copied during regular business hours at the offices of the Clerk of the Court, United States District Court, Southern District of California, 333 W. Broadway, San Diego, CA 92101. If you wish to obtain additional information about this Notice or the Proposed Settlement, you may examine the Court's file on the case at the address shown above or you may contact Plaintiff's attorneys in writing at the address in paragraph 11 above. **The Court has not ruled in favor of or against the Plaintiff or Defendant on the merits of any of their claims, denials, or defenses in this case.**

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR  
ADVICE.**

## **EXHIBIT B**

**TO ALL CURRENT ELLIOTT JEANS CUSTOMERS**

**NOTICE OF CLASS ACTION LAWSUIT**

**IF YOU PURCHASED A CURRENT/ELLIOTT JEANS PRODUCT WITH AN UNQUALIFIED “MADE IN USA” LABEL FROM SEPTEMBER 5, 2010 TO DECEMBER 31, 2015, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON’T ACT. PLEASE READ THIS NOTICE CAREFULLY.**

1. As part of a pending proposed settlement (the “Proposed Settlement”), the United States District Court certified the *Hofmann v. Dutch, LLC* case as a class action and approved this notice. The lawsuit contends that Dutch, LLC (“Dutch”) misrepresented the country of origin of its Current/Elliott jeans products by claiming that the product was “**Made in USA**” when it contained foreign-made component parts.

2. Dutch has revised its labeling.

3. As part of the Proposed Settlement, if you made a purchase in California of a Current Elliott jeans product labeled with an unqualified “MADE IN USA” or “MADE IN THE USA” label during the relevant Class Period, from September 5, 2010 to December 31, 2015, you may be entitled to receive a Current/Elliott brand tote bag (with an approximate retail value of \$128.00) **and** a \$20 Electronic Gift Card Code or “GC code” in the event that you purchased one (1) Current/Elliott jeans product and a \$40 GC code if you purchased two (2) Current/Elliott jeans products. In order to receive a GC code in excess of \$20, you must establish proper proof of purchase of the additional products (with receipts, etc.). You shall receive a unique GC code which will correspond in value to the number of Current/Elliott jeans products you validly claimed multiplied by \$20. GC codes may only be redeemed at [currentelliott.com](http://currentelliott.com).

4. You have the right to exclude yourself from the class. If you exclude yourself, your claims against Dutch will not be resolved in this lawsuit and you will retain your right to separately pursue your claims at your own cost. You will not be bound by any judgment, rulings or orders in this case. However, if you exclude yourself, you will not receive your GC code.

5. Please go to [www.currentelliottsettlement.com](http://www.currentelliottsettlement.com) for more information about how to submit a claim form to receive the GC codes as detailed above or to exclude yourself, including a more detailed, five-page class notice. You can also call the attorney for Plaintiff and Class Members (John Donboli of Del Mar Law Group, LLP) at 858.793.6244 for additional information.

6. Dutch denies all allegations of wrongdoing and disclaims any liability with respect to any and all claims in the lawsuit. Nothing in the Proposed Settlement shall constitute an admission of liability or be used as evidence of liability, by or against the Plaintiff or Dutch.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION OR ADVICE.**



## **EXHIBIT C**

1  
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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 SONIA HOFMANN, an individual and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14  
15 vs.

16 DUTCH, LLC, a California Limited  
17 Liability Company; and DOES 1 through  
18 100, inclusive,

19 Defendant.  
20  
21  
22  
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CASE NO.: 3:14-cv-02418-GPC-JLB

**CLASS ACTION**

**[PROPOSED] ORDER  
GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND  
APPROVING FORM AND  
MANNER OF SERVICE**

Judge: Hon. Gonzalo P. Curiel  
Crm: 2D

1 WHEREAS, this action is pending before this Court as a putative class  
2 action; and

3 WHEREAS, the parties applied to this Court for an Order preliminarily  
4 approving the settlement of the above-captioned litigation ("Action") in  
5 accordance with the Agreement of Settlement, dated October \_\_\_, 2016, which,  
6 together with the exhibits annexed thereto, sets forth the terms and conditions for a  
7 proposed settlement of the Action, and for dismissal of the Action with prejudice  
8 against Defendant Dutch, LLC ("Dutch") upon the terms and conditions set forth  
9 therein; and the Court having read and considered the Settlement Agreement and  
10 the exhibits annexed thereto;

11 NOW, THEREFORE, it is hereby ORDERED:

12 1. This Preliminary Approval Order incorporates by reference the  
13 definitions in the Agreement of Settlement, and all terms used herein shall have the  
14 same meaning as set forth in the Agreement of Settlement.

15 2. The Court does hereby preliminarily approve the Agreement of  
16 Settlement.

17 3. The Court finds that the requirements of Federal Rule of Civil  
18 Procedure 23(a) and (b)(3) have been satisfied, in that (a) the Settlement Class is so  
19 numerous that joinder of all individual Settlement Class Members is impracticable;  
20 (b) there are questions of law and fact common to the Settlement Class and those  
21 common questions of law and fact predominate over any individual questions; (c)  
22 the claims of the Plaintiff are typical of the claims of the Class; (d) the Plaintiff and  
23 Class Counsel will fairly and adequately represent the interests of the Class; and  
24 (e) a class action is superior to other available methods for the fair and efficient  
25 adjudication of the controversy.

26 4. Accordingly, the Court hereby conditionally certifies the Settlement  
27 Class for settlement purposes only. The Settlement Class is defined as follows:  
28

1           All persons who purchased Current/Elliott brand  
2           jeans in California between September 5, 2010 and  
3           December 31, 2015 that were sold with an unqualified  
4           “Made in USA” or “Made in the USA” label.  
5           Excluded from the Settlement Class are all persons  
6           who are employees, directors, officers, and agents of  
7           Defendants or its subsidiaries and affiliated  
8           companies, as well as the Court and its immediate  
9           family and staff.

10           5.     Having considered the relevant factors set forth in Rule 23, the Court  
11           has made a preliminary determination that Plaintiff Sonia Hofmann and Class  
12           Counsel are adequate representatives of the Settlement Class and hereby appoints  
13           them as such solely for purposes of settlement.

14           6.     **Preliminary Approval of Settlement.** The Parties have agreed to  
15           settle the Action upon the terms and conditions set forth in the Agreement, which  
16           has been filed with and reviewed by the Court.

17           7.     The Court preliminarily finds: (a) that Plaintiff in the Action, by and  
18           through her counsel, investigated the facts and law relating to the matters alleged  
19           in the complaint and evaluated the risks associated with continued litigation, trial,  
20           and/or appeal; (b) that the Settlement was reached as a result of arm’s-length  
21           negotiations between counsel for Plaintiff and counsel for Defendant and a  
22           mediation session with a respected mediator, the Honorable Robert E. May (Ret.);  
23           (c) that the proponents of the settlement, counsel for the parties, are experienced in  
24           similar litigation; and (d) that the Settlement confers substantial benefits upon the  
25           Settlement Class, particularly in light of the damages that Plaintiff and Class  
26           Counsel believe are potentially recoverable or provable at trial, without the costs,  
27           uncertainties, delays, and other risks associated with continued litigation, trial,  
28           and/or appeal.

          8.     Accordingly, the Court preliminarily approves the Agreement and the

1 terms and conditions of the Settlement as fair, reasonable, and adequate pursuant to  
2 Federal Rule of Civil Procedure 23(e), subject to further consideration at the  
3 Fairness Hearing (as described below).

4       9.     **Fairness Hearing.** Pursuant to Rule 23(e), a hearing (the “Fairness  
5 Hearing”) will be held before this Court at Courtroom 2D (2<sup>nd</sup> Floor - Schwartz),  
6 Suite 2190, 221 West Broadway, San Diego, CA 92101 on \_\_\_\_\_, 2016,  
7 at \_\_\_\_ a.m./p.m., to determine: (a) whether the proposed settlement of the Action  
8 on the terms and conditions provided for the in the Settlement Agreement are fair,  
9 reasonable and adequate, and (b) whether a final approval order and judgment  
10 should be entered herein. The Court may adjourn or continue the Final Approval  
11 Hearing without further notice to the Settlement Class.

12       10.    The parties may further modify the Agreement prior to the Fairness  
13 Hearing so long as such modifications do not materially change the terms of the  
14 Settlement provided thereunder. The Court may approve the Agreement with such  
15 modifications as may be agreed to by the parties, if appropriate, without further  
16 notice to the Settlement Class.

17       11.    After the Fairness Hearing, the Court may enter a Final Order and  
18 Judgment in accordance with the Agreement that will adjudicate the rights of the  
19 Settlement Class Members (as defined in the Agreement) with respect to the claims  
20 being settled.

21       12.    **Approval of Form of Notice.** The Court hereby approves, as to form  
22 and content, the forms of notice annexed as Exhibits A, B, and F to Settlement  
23 Agreement and the Notice Program set forth in paragraphs E.1 to E.6 of the  
24 Settlement. The Court finds that the Notice and Short-Form Notice meet the  
25 requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e), and due  
26 process, and are the best forms of notice practicable under the circumstances, and  
27 shall constitute due and sufficient notice to all persons entitled thereto.

28



1           13. **Approval of Notice Procedures.** The Court hereby approves the  
2 procedures set forth in the Settlement Agreement, and described below, for  
3 providing notice to the proposed Settlement Class. The Court finds that the  
4 procedures are fair, reasonable, and adequate; the best notice practicable under the  
5 circumstances; consistent with due process; and shall constitute due and sufficient  
6 notice to all persons entitled thereto.

7           14. Within twenty (20) days of the date of this Order, the Court hereby  
8 directs Defendant to distribute the Notice as set forth in paragraphs E.1 to E.6 of  
9 the Settlement. Defendant shall pay the costs of claims administration, including  
10 the costs associated with preparing, printing and disseminating to the Settlement  
11 Class the Notices as set forth in paragraphs E.1 to E.6 of the Settlement Agreement  
12 in amount not to exceed \$90,000.00.

13           15. At least thirty (30) days prior to the Fairness Hearing, Defendant,  
14 through its counsel of record, shall cause to be filed with the Court a sworn  
15 affidavit evidencing compliance with the provisions of Settlement Agreement as it  
16 relates to providing Notice.

17           16. Pending resolution of these settlement proceedings, no other action  
18 now pending or hereinafter filed arising out of all or any part of the subject matter  
19 of the Action shall be maintained as a class action and, except as provided by  
20 further order of the Court, for good cause shown, all persons are hereby enjoined,  
21 during the pendency of these settlement proceedings, from filing or prosecuting  
22 purported class actions against Defendant with respect to any of the Released  
23 Claims as defined in the Settlement Agreement.

24           17. Upon the Effective Date, as defined in the Settlement Agreement, all  
25 members of the Settlement Class who have not opted out of the settlement shall be  
26 enjoined and barred from asserting any of the Released Claims against Defendant  
27 and the Released Parties, and each Class Member shall be deemed to release any  
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1 and all such Released Claims as against Dutch and the Released Parties, as these  
2 terms are defined in the Settlement Agreement.

3 18. Any Class Member may enter an appearance through counsel of such  
4 member's own choosing and at such member's own expense or may appear  
5 individually and show cause, if he or she has any facts or arguments to present, as  
6 to: (a) why the proposed settlement of the Action as set forth in the Settlement  
7 Agreement should or should not be approved as fair, reasonable, and adequate; and  
8 (b) why the final approval order and judgment should or should not be entered on  
9 the proposed Settlement Agreement. However, no Class Member or any other  
10 person shall be heard or entitled to contest the approval of the terms and conditions  
11 of the proposed settlement, or, if approved, the Final Approval Order and  
12 Judgment to be entered thereon approving the same or the fees and expenses to be  
13 awarded, unless on or before \_\_\_\_\_, 2016, that person has filed with  
14 the Court and served (by hand delivery or by First Class regular U.S. mail) written  
15 objections complying with the specifications in the Notice. Service of any  
16 objections shall be made to Class Counsel, Attn: John H. Donboli, DEL MAR  
17 LAW GROUP, LLP, 12250 El Camino Real, Suite 120, San Diego, CA 92130, and  
18 Dutch's Counsel: Mitchell J. Freedman, P.K. SCHRIEFFER, LLP, 100 N.  
19 Barranca Avenue, Suite 1100, West Covina California 91791. In addition, if a  
20 Class Member wishes to submit to the Court any brief in support of his or her  
21 objection, he or she must file the brief with the Court and serve it on both Class  
22 Counsel and counsel for Defendant prior to \_\_\_\_\_, 2016.

23 19. Any Class Member who does not make their objection in the manner  
24 provided for in this Preliminary Approval Order shall be deemed to have waived  
25 such objection and shall forever be foreclosed from making any objection to or  
26 appeal of the fairness, reasonableness or adequacy of the proposed settlement, and  
27 to the award of fees and expenses to Class Counsel and other costs, all as set forth  
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1 in the Settlement Agreement and Preliminary Order.

2       20. Any member of the Settlement Class may choose to exclude himself  
3 or herself from the settlement. Any such person who chooses to be excluded from  
4 the settlement will not be entitled to any recovery and will not be bound by the  
5 Settlement Agreement or have any right to object, appear or comment thereon.  
6 Any such person who chooses to request exclusion may do so by submitting a  
7 written statement requesting exclusion from the class on or before  
8 \_\_\_\_\_, 2016. Such written request for exclusion must contain the  
9 name, address, and telephone number of the person requesting exclusion, reference  
10 the name and number of this litigation (*Hofmann v. Dutch, LLC*, United States  
11 District Court, Case No. 3:14-cv-02418-GPC-JLB), be signed personally by the  
12 person requesting exclusion, and be mailed to Class Counsel and counsel for  
13 Defendant and postmarked on or before \_\_\_\_\_, 2016.

14       21. Neither the Settlement Agreement, nor any of its terms or provisions,  
15 nor any of the negotiations or proceedings connected with it, shall be construed in  
16 this or any lawsuit as an admission or concession by Defendant of the truth of any  
17 of the allegations of the Action, or of any liability, fault, or wrongdoing of any  
18 kind, or by the named Plaintiff Hofmann or any other member of the Settlement  
19 Class of the merit of any defense or lack of merit of any claim.

20       22. The Court reserves the right to continue or adjourn the date of the  
21 Fairness Hearing without further notice to the Settlement Class, and retains  
22 jurisdiction to consider all further applications arising out of or connected with the  
23 proposed settlement.

24       23. Class Counsel and Defense Counsel are hereby authorized to use all  
25 reasonable procedures in connection with approval and administration of the  
26 settlement that are not materially inconsistent with this Preliminary Approval  
27 Order or the Agreement, including making, without further approval of the Court,  
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1 minor changes to the form or content of the Notice, Summary Notice, and other  
2 exhibits that they jointly agree are reasonable or necessary to effectuate the  
3 Settlement and the purposes of this Preliminary Approval Order.

4 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_

\_\_\_\_\_ HONORABLE GONZALO P. CURIEL  
UNITED STATES DISTRICT JUDGE

## **EXHIBIT D**

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SONIA HOFMANN, an individual and on  
12 behalf of all others similarly situated,

13 Plaintiff,  
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15 vs.

16 DUTCH, LLC, a California Limited  
17 Liability Company; and DOES 1 through  
18 100, inclusive,

19 Defendant)  
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CASE NO.: 3:14-cv-02418-GPC-JLB

**CLASS ACTION**

**[PROPOSED] ORDER  
GRANTING FINAL APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

Judge: Hon. Gonzalo P. Curiel  
Ctm: 2D

1 WHEREAS this matter, having been brought before the Court on  
2 \_\_\_\_\_, 2016, pursuant to the Court's Order Granting Preliminary  
3 Approval of the Class Action Settlement, to determine whether the Agreement of  
4 Settlement, dated October \_\_\_\_, 2016 (the "Settlement Agreement"), between  
5 named Plaintiff Sonia Hofmann on behalf of herself individually and all members  
6 of the Class, and Defendant Dutch, LLC ("Dutch"), is fair and reasonable and  
7 should be approved as in the best interest of the Class Members; and

8 WHEREAS notice of the proposed settlement having been given to  
9 members of the Class as directed by this Court's Order Granting Preliminary  
10 Approval of the Class Action Settlement, and proof of notice having been filed  
11 with the Court; and

12 WHEREAS the Court has received and reviewed the Agreement of  
13 Settlement and its exhibits; and

14 WHEREAS all persons present or represented at the hearing, who were  
15 entitled to be heard pursuant to the Class Notice, having been given an opportunity  
16 to be heard; and counsel for the parties having appeared in support of the  
17 settlement; and Class Counsel having represented to the Court that in their opinion  
18 the settlement is fair and reasonable and in the best interests of the Class Members;  
19 and

20 WHEREAS the Court having considered all documents filed in support of  
21 the settlement, and fully considered all matters raised, all exhibits and affidavits  
22 filed, and all evidence received at the hearing, all other papers and documents  
23 comprising the record herein, and all oral arguments presented to the Court;

24 IT IS HEREBY ORDERED as follows:

25 1. For all purposes of this Order Granting Final Approval of Class  
26 Action Settlement ("Order"), the Court adopts all defined terms as set forth in the  
27 Agreement of Settlement, which is incorporated herein by this reference.

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1           2.     For purposes of this Order, "Class" shall mean all persons who made  
2 a purchase in California of a Product in reliance on the "MADE IN USA" or  
3 "MADE IN THE USA" label, from September 5, 2010, 2010 to December 31,  
4 2015, for non-commercial use.

5           3.     For purposes of this Order, "Class Member(s)" shall mean all persons  
6 who made a purchase in California of a Product who did not timely exercise his or  
7 her right to opt out of participation in the settlement.

8           4.     The Court finds that it has jurisdiction over the subject matter of the  
9 Action, and over all parties to the Action, including all Class Members.

10          5.     The Court approves the settlement of the litigation set forth in the  
11 Agreement of Settlement as being fair, just, reasonable and adequate to the Class  
12 Members.

13          6.     Any and all objections to the settlement and Agreement of Settlement  
14 are overruled as being without merit.

15          7.     This Action may be maintained as a class action for settlement  
16 purposes.

17          8.     The Court certifies this litigation as a class action for settlement  
18 purposes only, and certifies the class as comprised of all Class Members.

19          9.     The Court finds that the requirements of Federal Rule of Civil  
20 Procedure 23(a) and (b)(3) have been satisfied, in that (a) the Settlement Class is so  
21 numerous that joinder of all individual Settlement Class Members is impracticable;  
22 (b) there are questions of law and fact common to the Settlement Class and those  
23 common questions of law and fact predominate over any individual questions; (c)  
24 the claims of the Plaintiff are typical of the claims of the Class; (d) the Plaintiff and  
25 Class Counsel will fairly and adequately represent the interests of the Class; and  
26 (e) a class action is superior to other available methods for the fair and efficient  
27 adjudication of the controversy.

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1           10. The Notice provided to the members of the Class pursuant to the  
2 Order Granting Preliminary Approval of Class Action Settlement constitutes full  
3 and adequate notice and is in full compliance with the requirements of California  
4 law and due process of law.

5           11. The settlement shall be implemented and consummated in accordance  
6 with the definitions and terms of the Agreement of Settlement.

7           12. Neither the Agreement of Settlement, nor any of its terms or  
8 provisions, nor any of the negotiations or proceedings connected with it shall be  
9 construed as an admission or concession by Dutch of the truth of any of the  
10 allegations in the Action, or of any liability, fault or wrongdoing of any kind.

11           13. Plaintiff and all Class Members, on behalf of themselves and any of  
12 their respective agents, successors, heirs, assigns, and other persons and entities  
13 referenced in the Agreement of Settlement, for good and sufficient consideration,  
14 the receipt of which is hereby acknowledged, shall be deemed to have released and  
15 forever discharged the Released Persons from any and all Released Claims, as  
16 defined in the Settlement Agreement.

17           14. Plaintiff and all Class Members are permanently barred and enjoined  
18 from asserting, commencing, prosecuting, or continuing the Released Claims, or  
19 any of them, against the Released Persons.

20           15. The Court hereby reserves jurisdiction over the Action and Settlement  
21 to enforce the terms of the judgment.

22           16. This Order is final for purposes of appeal and may be appealed, and  
23 the Clerk is hereby directed to enter judgment thereon. If this Order does not  
24 become "Final" in accordance with the terms of the Settlement Agreement  
25 (because the Judgment is set aside, in whole or in material part after being timely  
26 appealed), then this Order, and all other orders entered in connection with this  
27 Settlement (including without limitation, the Order Granting Preliminary Approval  
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1 of Class Action Settlement) shall be rendered *void ab initio*, and vacated in  
2 accordance with the terms of the Settlement Agreement.

3 **IT IS SO ORDERED.**

4  
5 Dated: \_\_\_\_\_

6 HONORABLE GONZALO P. CURIEL  
7 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT E**

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SONIA HOFMANN, an individual and on  
12 behalf of all others similarly situated,

13 Plaintiff,  
14

15 vs.  
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17 DUTCH, LLC, a California Limited  
18 Liability Company; and DOES 1 through  
19 100, inclusive,

20 Defendants  
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CASE NO. 3:14-CV-02418-GPC-JLB

**CLASS ACTION**

**FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

Judge: Hon. Gonzalo P. Curiel  
Ctm: 2D

1 Plaintiff Sonia Hofmann, individually and on behalf of all members of the  
2 class, and Defendant Dutch, LLC (“Dutch”), through their respective attorneys of  
3 record, having stipulated to the entry of this Final Judgment and Permanent  
4 Injunction (the “Judgment”) without the taking of proof, without trial or  
5 adjudication of any fact or law herein, without the judgment constituting evidence  
6 of or an admission by Defendant regarding any issue of fact or law alleged in the  
7 operative complaints herein, and without Defendant admitting any liability, and  
8 good cause appearing therefore:

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

10 This action is brought under California law, and this Court has jurisdiction  
11 over the allegations and subject matter of the operative complaint in the above-  
12 captioned matter on file herein.

13 This Court has personal jurisdiction over the parties to this action, including  
14 the Class Members (as defined below).

15 This Judgment has been reviewed by this Court, and this Court finds that it  
16 has been entered into in good faith and to be in all respects suitable and equitable.

17 The injunctive provisions of this Judgment are applicable to Dutch only, as  
18 well as its past and present parent companies, affiliates, subsidiaries, divisions;  
19 their successors and the assigns of all or substantially all of the assets of their  
20 business; their directors, officers, employees, agents, managers, members, and  
21 principals (collectively, the “Enjoined Parties”).

22 The members of the class are all persons who made a purchase in California  
23 of a Current/Elliott jeans product that was sold with an unqualified “MADE IN  
24 USA” or “MADE IN THE USA” label (the “Products”), from September 5, 2010  
25 to December 31, 2015, for non-commercial use and who did not timely exercise his  
26 or her right to opt out of participation in the settlement (the “Class Members”).  
27  
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1        Permanent Injunction. Without admitting any liability or wrongdoing  
2 whatsoever, pursuant to California Business and Professions Code Sections 17203  
3 and 17535, the Enjoined Parties, and each of them, shall be enjoined and restrained  
4 from directly or indirectly doing or performing any and all of the following acts or  
5 practices: representing, labeling, advertising, selling, offering for sale, and/or  
6 distributing any Products that fail to comply with the California “Made in USA”  
7 Statute.

8        Payment to Class Members. Without admitting any liability or wrongdoing  
9 whatsoever, Dutch shall distribute to each Class Member who timely submitted a  
10 properly completed, signed claim form that is not rejected by the Claims  
11 Administrator, a Current/Elliott brand tote bag and an electronic gift card code  
12 loaded with an appropriate number (as determined by the Claims Administrator) of  
13 multiples of \$20.

14        Charitable Donation. Dutch agrees to a charitable donation of \$250,000 to be  
15 paid over a period of five (5) years to mutually agreeable charities with a sufficient  
16 nexus to California.

17        This Court retains jurisdiction for the purpose of enabling any party to this  
18 Judgment to apply to this Court at any time for such further orders and directions  
19 as may be necessary or appropriate for the construction or carrying out of this  
20 Judgment, for the modification of any of the provisions hereof, for the enforcement  
21 of compliance herewith, and for the punishment of violations hereof.

22        The parties agree to negotiate in good faith to try to resolve any disputes that  
23 may arise relating to this Judgment. The parties further agree that Plaintiff and/or  
24 Class Members shall give Defendant thirty (30) days’ notice and an additional  
25 reasonable opportunity to resolve any alleged violation before filing an application  
26 or other pleading seeking any relief for any purported violation of this Judgment  
27 from any other court, tribunal, arbitration panel, commission, agency or before any  
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1 governmental and/or administrative body, or any other adjudicatory body.  
2 Plaintiff and/or Class Members further agree that they will not take any action to  
3 enforce the Permanent Injunction without first meeting and conferring with  
4 Defendant and/or its counsel.

5 The Permanent Injunction shall apply only to Products manufactured after  
6 the Effective Date.

7 Nothing in this Judgment shall be deemed to permit or authorize any  
8 violation of the laws, rules, or regulations of California or otherwise be construed  
9 to relieve Defendant of any duty to comply with any applicable laws, rules, or  
10 regulations of California.

11 This Judgment is a final resolution and disposition of all those matters,  
12 claims, and causes of action alleged in the operative complaints herein. This  
13 Judgment shall have a *res judicata* effect that bars Plaintiff and all Class Members  
14 from bringing and asserting any and all actions, claims, demands, rights, suits, and  
15 causes of action of any kind or nature whatsoever against Defendant and its past  
16 and present subsidiaries and affiliates, parent companies, divisions, as well as their  
17 distributors, wholesalers, retailers, customers and licensors, including the officers,  
18 directors, trustees, employees, shareholders, agents, insurers, spokespersons, legal  
19 representatives, public relations firms, advertising and production agencies and  
20 assigns (the "Released Persons"), including damages, costs, expenses, penalties,  
21 and attorneys' fees, whether at law or equity, known or unknown, foreseen or  
22 unforeseen, developed or undeveloped, direct, indirect or consequential, liquidated  
23 or unliquidated, arising under common law, regulatory law, statutory law, or  
24 otherwise, based on federal, state, or local law, statute, ordinance, regulation, code,  
25 contract, common law, or any other source, or any claim that Plaintiff or Class  
26 Members ever had, now have, may have, or hereafter can, shall or may ever have  
27 against the Released Persons in any other court, tribunal, arbitration panel,  
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1 commission, agency or before any governmental and/or administrative body, or  
2 any other adjudicatory body, on the basis of, connected with, arising from or in any  
3 way whatsoever relating to actions or omissions in manufacturing, advertising,  
4 marketing, labeling, packaging, promotion, sale and distribution of the Products,  
5 and/or any claims or omissions regarding the geographic location any Product  
6 and/or any component of any Product was manufactured, assembled and/or  
7 created, from September 5, 2010 to the Effective Date, and any claims arising after  
8 the date of final approval which could be asserted based on labels or marketing in  
9 existence as of the date of final approval of the Agreement.

10 This Judgment shall take effect immediately upon entry thereof, without  
11 further notice to Defendants.

12 The Court finds an attorneys' fees award of \$ \_\_\_\_\_ to be  
13 fair and reasonable and awards same to Class Counsel.

14 The Court also awards Class Counsel the amount of \$ \_\_\_\_\_  
15 as reimbursement of expenses.

16 The Court further awards Plaintiff Hofmann an incentive award of \$5,000,  
17 which the Court finds to be fair and reasonable.

18 The attorneys' fees award, reimbursement of expenses, and the Plaintiff  
19 incentive award shall be paid within twenty (20) days of the Effective Date.

20 The Clerk shall enter this Judgment forthwith.

21 **IT IS SO ORDERED.**

22  
23  
24 Dated: \_\_\_\_\_

HONORABLE GONZALO P. CURIEL  
UNITED STATES DISTRICT JUDGE

**EXHIBIT F**

**RETURN COMPLETED FORM TO:**

Dutch, LLC *et al.*, Class Action

c/o KCC

P.O. Box xxxxx

\_\_\_\_\_, CA \_\_\_\_\_

[File at: [www.currentelliottsettlement.com](http://www.currentelliottsettlement.com)]

**PROOF OF CLAIM**

To make a Claim, you must fully complete this Claim Form so that it is postmarked no later than **[INSERT DATE]**. A complete description of the class qualifications and claim benefits is provided in the Notice of Proposed Settlement of Class Action ([www.currentelliottsettlement.com](http://www.currentelliottsettlement.com)). The completed Claim Form must be returned to the following address: Current Elliott Class Action Settlement, c/o KCC, P.O. Box \_\_\_\_\_, \_\_\_\_\_, CA \_\_\_\_\_, prior to **[INSERT DATE]** to take part in the settlement.

**Information about the Class Member:**

Name:

U.S. Address:

Email Address:

Telephone Number:

**Information about the Current Elliott Jeans You Purchased:**

1. I would like a Current/Elliott brand tote bag: \_\_\_\_\_ Yes \_\_\_\_\_ No.
2. Number of Jeans Purchased (Please select from the attached list or drop down for internet claims): \_\_\_\_\_ If you are making a claim of more than one (1) pair of jeans, please include true and correct copies of the original receipts for such purchases.
3. Type of Purchase (Online or In-Store): \_\_\_\_\_
4. Location of Purchase (Website or Store Name, Including City and State): \_\_\_\_\_
5. Approximate Date of Purchase (mm/yyyy): \_\_\_\_\_ / \_\_\_\_\_

**Declaration**

THE WILLFUL SUBMISSION OF A FALSE CLAIM CONSTITUTES THE CRIME OF PERJURY AND IS PUNISHABLE BY CALIFORNIA LAW.

I certify under penalty of perjury that I purchased the above-listed Current/Elliott product(s) in California which bore an unqualified "Made in USA" or "Made in the USA" label on the product(s) and/or products' tags and that any receipts attached to this claim are true and correct copies. The above information is true and correct to the best of my knowledge. I also understand that by submitting this Proof of Claim, I am releasing all Released Claims, as detailed in the "Notice of Proposed Settlement of Class Action Case."

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Print Name: \_\_\_\_\_

**Please do not forget to sign this claim form.  
If you do not sign it, your claim will not be processed and will be denied.  
One Claim Form per Class Member.**

<b>UNITED STATES DISTRICT COURT</b> <b>SOUTHERN DISTRICT OF CALIFORNIA</b>	COURT USE ONLY
<u>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):</u> John H. Donboli (SBN: 205218) Camille Joy DeCamp (SBN: 236212      Tel: (858) 793-6244 DEL MAR LAW GROUP, LLP      Fax (858) 793-6005 12250 El Camino Real, Suite 120 San Diego, California 92130	
<u>SHORT CASE TITLE</u> HOFMANN v. DUTCH, LLC, et al.	DEPT:
<u>ATTORNEYS FOR PLAINTIFF</u> SONIA HOFMANN and all others similarly situated	Case No. 3:14-cv-02418-GPC-JLB

### PROOF OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, and that I am not a party to the subject cause. My business address is 12250 El Camino Real, Suite 120, San Diego, California 92130.

On October 14, 2016, I served the following document(s):

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION: (1) GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT; (2) SCHEDULING A FAIRNESS AND FINAL APPROVAL HEARING; AND (3) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION: (1) GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT; (2) SCHEDULING A FAIRNESS AND FINAL APPROVAL HEARING; AND (3) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS; AND**
3. **DECLARATION OF JOHN H. DONBOLI IN SUPPORT OF MOTION: (1) GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT; (2) SCHEDULING A FAIRNESS AND FINAL APPROVAL HEARING; AND (3) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS;**

on the interested parties as follows:

Paul K. Schrieffer, Esq.  
Mitchell Freedman, Esq.  
P.K. SCHRIEFFER, LLP  
100 N. Barranca Ave., Ste. 1100  
West Covina, CA 91791  
Tel: (626) 373-2444  
Fax: (626) 974-8403

Kenneth Wolf, Esq.  
Arthur Purcell, Esq.  
SANDLER, TRAVIS & ROSENBERG, P.A.  
551 Fifth Ave., Ste. 1100  
New York, NY 10176  
Tel: (212) 549-0137  
Fax: (212) 883-0068

*Attorneys for Defendants:*  
*Dutch, LLC*

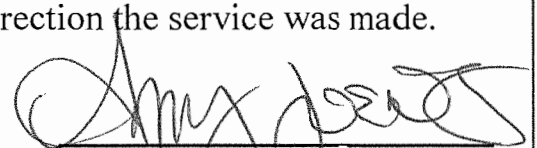
*Attorneys for Defendants:*  
*Dutch, LLC*

( X ) **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be serve by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

( ) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

I declare under penalty of perjury under the laws of the United States of America that are foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 14, 2016 \_\_\_\_\_

  
Amy Joens