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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

19 SHEILA DASHNAW, WILLIAM
20 MEIER, and SHERRYL JONES,
21 individually, and on behalf of all others
22 similarly situated,

23 Plaintiffs,

24 v.

25 NEW BALANCE ATHLETICS, INC.,
26 a corporation; and DOES 1 through 50,
27 inclusive,

28 Defendants.

Case No. 3:17-cv-00159-L-JLB

**AMENDED SETTLEMENT
AGREEMENT**

Magistrate Judge: Hon. Jill L. Burkhardt

Judge: Hon. M. James Lorenz

EXHIBIT A

1 IT IS HEREBY STIPULATED AND AGREED, by, between and among
2 Plaintiffs Sheila Dashnaw, William Meier, and Sherryl Jones (“Plaintiffs”), and
3 Defendant New Balance Athletics, Inc. (“New Balance”), with all terms as defined
4 below, through their duly-authorized counsel, that the above-captioned action, *Sheila*
5 *Dashnaw, et al. v. New Balance Athletics, Inc.*, Case Number 17-CV-00159-L-JLB
6 (S.D. Cal.), and the matters raised therein, are settled, compromised, and dismissed
7 on the merits with prejudice, on the terms and conditions set forth in this Amended
8 Settlement Agreement and the release set forth herein, subject to the approval of the
9 Court.

10 **I. INTRODUCTION**

11 A. There is a purported class action pending in the United States District
12 Court for the Southern District of California against New Balance alleging that New
13 Balance engaged in untrue and deceptive advertising with respect to certain shoes that
14 New Balance labels as “Made in USA.” This action is *Sheila Dashnaw, et al. v. New*
15 *Balance Athletics, Inc.*, Case Number 17-CV-00159-L-JLB (S.D. Cal.) (the
16 “Action”). The Amended Complaint filed in this action (ECF No. 16) alleges that
17 New Balance’s practice of labeling certain of its shoes “Made in USA” constitutes
18 false and deceptive advertising, unfair trade practices, a violation of California’s
19 “Made in the USA” statute, breach of express warranty, and negligent
20 misrepresentation.

21 B. Plaintiffs filed a Complaint in California state court on December 27,
22 2016 and New Balance removed the action to the United States District Court for the
23 Southern District of California on January 26, 2017. Plaintiffs brought this Complaint
24 on behalf of a purported class of California purchasers of New Balance shoes
25 identified as “Made in USA” alleging claims against New Balance under California’s
26 False Advertising Law (“FAL”) (Cal. Bus. & Prof. Code § 17500, et seq.),
27 California’s Consumer Legal Remedies Act (“CLRA”) (Cal. Civ. Code § 1750, et
28 seq.), Cal. Bus. & Prof. Code § 17533.7, California’s Unfair Competition law

1 (“UCL”) (Cal. Bus. & Prof. Code § 17204), and for breach of express warranty,
2 negligent misrepresentation, and unjust enrichment. Plaintiffs sought damages
3 including individual restitution, restitutionary disgorgement, economic, monetary,
4 actual, consequential, and compensatory damages, declaratory and injunctive relief,
5 reasonable attorneys’ fees and costs, statutory pre- and post-judgment interest, and
6 any other relief that the Court may deem just and proper.

7 C. Plaintiffs filed the Action “on behalf of themselves and all others
8 similarly situated” and defined the Class to include: “All persons located within the
9 State of California who purchased any New Balance shoe model labeled or advertised
10 as made in the United States at any time beginning four (4) years prior to the filing of
11 this action on December 27, 2016 and ending at the time this action settles or proceeds
12 to final judgment.” *See* ECF No. 16.

13 D. New Balance filed an Answer to both the Complaint and Plaintiffs’
14 Amended Complaint. *See* ECF Nos. 12, 25. In each of its Answers, New Balance
15 expressly denied and continues to deny any and all wrongdoing alleged in this action,
16 and neither admits nor concedes any actual or potential fault, wrongdoing, or liability
17 in connection with any facts or claims that have been or could have been alleged
18 against it in these actions.

19 E. Class Counsel (also referred to as “Plaintiffs’ Counsel”) have conducted
20 an extensive and thorough examination, investigation, and evaluation of the relevant
21 law, facts and allegations to assess the merits of the claims and potential claims to
22 determine the strength of both defenses and liability sought in the Action.

23 F. New Balance produced to Plaintiffs, through Class Counsel, extensive
24 discovery. Plaintiffs and Class Counsel have thoroughly reviewed the documents. In
25 particular, New Balance produced voluminous documentation to Class Counsel
26 regarding the “Made in USA” Shoes in the following categories: (i) sales and
27 accounting records; (ii) images of products, packaging, labels, and New Balance’s
28 website; (iii) advertisements, marketing, media, and public relations; (iv)

1 manufacturing specifications; and (v) consumer helpdesk communications. In total,
2 New Balance produced over 15,000 pages of documents.

3 G. On February 21, 2018, the Parties participated in a mediation with Eric
4 Green in Boston, Massachusetts. Notwithstanding their disagreements, at the
5 mediation the Parties reached an agreement in principle for the settlement of this
6 matter, subject to obtaining the necessary approval from the Court.

7 H. Based upon their review, investigation, and evaluation of the facts and
8 law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel, on
9 behalf of the other members of the proposed Class, have agreed to settle the Action
10 pursuant to the provisions of this Agreement, after considering, among other things:
11 (1) the substantial benefits to Plaintiffs and the other Class Members under the terms
12 of this Agreement; (2) the risks, costs and uncertainty of protracted litigation,
13 especially in complex actions such as this, as well as the difficulties and delays
14 inherent in such litigation; and (3) the desirability of consummating this Agreement
15 promptly in order to provide effective relief to Plaintiffs and the other Class Members.

16 I. New Balance expressly denies any wrongdoing alleged in the pleadings
17 and does not admit or concede any actual or potential fault, wrongdoing, or liability
18 in connection with any facts or claims that have been or could have been alleged
19 against it in the Action and/or any other actions. Even though New Balance expressly
20 denies any wrongdoing, New Balance considers it desirable for this case to be settled
21 and dismissed, because this Settlement will finally put Plaintiffs' claims and the
22 underlying matters to rest and will avoid the substantial expense, burdens, and
23 uncertainties associated with the continued litigation of these claims and cases.

24 J. This Amended Settlement Agreement sets forth the operative terms of
25 the Parties' Settlement and supersedes the prior settlement agreement, and
26 amendments and exhibits thereto, previously agreed and entered into by the Parties.

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1 **II. DEFINITIONS**

2 A. As used in this Agreement and the attached exhibits (which are an integral part
3 of this Agreement and are incorporated in their entirety by reference), the following terms
4 have the following meanings, unless this Agreement specifically provides otherwise:

5 1. "Action" means *Sheila Dashnaw, et al. v. New Balance Athletics,*
6 *Inc.*, Case No. 17-CV-00159-L-JLB (S.D. Cal.).

7 2. "Agreement" or "Settlement Agreement" means this Settlement
8 Agreement and the exhibits attached hereto or incorporated herein, including any
9 subsequent amendments and any exhibits to such amendments.

10 3. "Authorized Retailers" means retailers who are specifically
11 authorized by New Balance to sell New Balance shoes and who purchase from New
12 Balance at wholesale including, without limitation, New Balance U.S. Retailers, New
13 Balance Stores, shopnewbalance.com, joesnewbalanceoutlet.com, New Balance
14 Outlets and/or other third party retailers.

15 4. "Attorneys' Fees and Expenses" means such funds as may be
16 awarded by the Court to Class Counsel from New Balance to compensate all Class
17 Counsel for their fees and expenses in connection with the Actions and the Settlement,
18 as described in Section VIII of this Agreement (below).

19 5. "Claim" means the claim of a Class Member or his or her
20 representative submitted on a Claim Form as provided in this Agreement.

21 6. "Claimant" means a Class Member who has submitted a Claim.

22 7. "Claim Form" means the document, in substantially the same form
23 as **Exhibit 1** attached to this Agreement.

24 8. "Claim Period" means the time period in which Class Members
25 must submit a Claim Form for review to the Class Action Settlement Administrator
26 in order to be timely. The Claim Period shall also be the time period within which
27 persons must submit an Exclusion Form in order to be timely. The Claim Period shall
28 run for ninety (90) days from the date of the first dissemination of the Summary

1 Settlement Notice. Although there is no firm deadline to file objections, the Class
2 Notice and Summary Notice will encourage Class Members to file objections by no
3 later than the last day of the Claim Period.

4 9. “Claim Process” means that process for submitting Claims
5 described in this Agreement.

6 10. “Class Action Settlement Administrator,” also referred to as the
7 Notice Administrator, means the third-party agent or administrator agreed to by the
8 Parties and appointed by the Court. The Parties agree that Heffler Claims Group shall
9 be retained to provide class notice and implement the claims and Settlement
10 requirements of this Agreement, subject to the Court’s approval.

11 11. “Class” means all persons who, during the Class Period,
12 purchased any and all “Made in USA” Shoes from New Balance and/or its Authorized
13 Retailers, in California. Excluded from the Class are: (a) New Balance’s Board
14 members or employees, including its attorneys; (b) any persons who purchased “Made
15 in USA” shoes for purposes of resale; (c) distributors or re-sellers of the “Made in
16 USA” Shoes; (d) the judge and magistrate judge presiding over the Action and their
17 immediate families; (e) governmental entities; and (f) persons or entities who or
18 which timely and properly exclude themselves from the Class as provided in this
19 Agreement.

20 12. “Class Member” means a member of the Class.

21 13. “Class Counsel” means: Schneider Wallace Cottrell Konecky
22 Wotkyns LLP and The Wand Law Firm, P.C.

23 14. “Class Notice” means a notice substantially in the form attached
24 hereto as **Exhibit 2**.

25 15. “Class Period” means the period for December 27, 2012 up to the
26 date the Court files a Preliminary Approval Order.

27 16. “Court” means the United States District Court for the Southern
28 District of California.

1 17. “Escrow Agent” means Heffler Claims Group.

2 18. “Exclusion Form” means the document that Class Members will
3 submit in order to exclude themselves from the settlement, in substantially the same
4 form as **Exhibit 3** attached to this Agreement.

5 19. “Fairness Hearing” means the hearing at or after which the Court
6 shall make a final decision whether to approve this Agreement as fair, reasonable, and
7 adequate. The Fairness Hearing shall be scheduled on a Monday approximately 150
8 calendar days after the Court enters the Preliminary Approval Order.

9 20. “Final Order and Final Judgment” means the Court’s order
10 approving the Settlement and this Agreement, as described in Section IX.B of this
11 Agreement, which is to be substantially in the forms attached hereto as **Exhibits 4**
12 and **5**, respectively.

13 21. “Final Settlement Date” means the date on which the Final Order
14 and Final Judgment approving this Agreement becomes final. For purposes of this
15 Agreement:

16 a. If no appeal has been taken from the Final Order and
17 Judgment, “Final Settlement Date” means the date on which the time to appeal
18 therefrom has expired; or

19 b. If any appeal has been taken from the Final Order and Final
20 Judgment, “Final Settlement Date” means the date on which all appeals therefrom,
21 including petitions for rehearing or reargument, petitions for rehearing en banc,
22 and petitions for certiorari or any other form of review, have been finally disposed
23 of in a manner that affirms the Final Order and Judgment; or

24 c. If the Parties agree in writing, “Final Settlement Date” can
25 occur on any other agreed date.

26 22. “Made in USA’ Shoes” means New Balance’s shoes that were
27 labeled and marketed as “Made in USA,” and which contained a domestic value of
28 70% or greater, but less than 95%, and were purchased as new by Class Members

1 during the Class Period. These shoes include: 601, M1140, M1290, M1300, M1400,
2 M1540, M1700, M2040, M3040, M498, M574, M585, M587, M770, M990, M991,
3 M995, M996, M997, M9975, M998, MK706, ML1300, ML1978, ML996, ML997,
4 MR1105, MR993, MW812, PM15, PM16, US574, US576, US990, US993, US998,
5 W1140, W1290, W1400, W1540, W3040, W498, W587, W990, W998, WK706,
6 WR993, and WW812.

7 23. “Notice Administrator” means the Court-appointed third-party
8 agent or administrator agreed to by the Parties and appointed by the Court. The Parties
9 agree that Heffler Claims Group shall be retained to implement the notice and related
10 requirements of this Agreement.

11 24. “Parties” means Plaintiffs and New Balance, collectively, as each
12 of those terms is defined in this Agreement.

13 25. “Plaintiffs” (also referred to as “Named Plaintiffs”) means Sheila
14 Dashnaw, William Meier, and Sherryl Jones.

15 26. “Plaintiffs’ Counsel” means counsel for the Plaintiffs in the
16 Action, who are: Jason H. Kim of Schneider Wallace Cottrell Konecky Wotkyns LLP
17 and Aubry Wand of The Wand Law Firm, P.C.

18 27. “Preliminary Approval Order” means the order to be entered by
19 the Court preliminarily approving the Settlement as outlined in Section IX.A. of this
20 Agreement and should be substantially in the form attached hereto as **Exhibit 6**.

21 28. “New Balance” means New Balance Athletics, Inc.

22 29. “New Balance’s Counsel” means Fish & Richardson P.C.

23 30. “Release” means the release and waiver set forth in Section VII of
24 this Agreement and in the Final Order and Final Judgment.

25 31. “Released Parties” means New Balance, its past, present and
26 future parents (including but not limited to New Balance, Inc., and any intermediary
27 and/or ultimate parents), officers, directors, employees, stockholders, agents,
28 attorneys, administrators, successors, suppliers, distributors, reorganized successors,

1 spin-offs, assigns, holding companies, related companies, subsidiaries, affiliates,
2 joint-ventures, partners, members, divisions, predecessors, as well as any Authorized
3 Retailers of “Made in USA” Shoes.

4 32. “Summary Settlement Notice” means a notice substantially in the
5 form attached hereto as **Exhibit 7**.

6 B. Other capitalized terms used in this Agreement but not defined in this
7 Section II shall have the meanings ascribed to them elsewhere in this Agreement.

8 C. The terms “he or she” and “his or her” include “it” or “its” where
9 applicable.

10 **III. SETTLEMENT RELIEF**

11 Settlement relief shall consist of two primary components: (1) a monetary
12 component consisting of restitutionary payments to Class Members who submit valid
13 Claims; and (2) an injunctive relief component through which New Balance agrees to
14 make certain changes to its business practices with respect to its “Made in USA”
15 Shoes.

16 A. Relief Amount

17 1. The total relief amount shall be \$750,000. Within ten (10)
18 business days of the Preliminary Approval Order, New Balance shall deposit an
19 amount estimated to be sufficient to cover the Administrative Costs in escrow to be
20 held by the Class Action Settlement Administrator, which shall be the “Escrow
21 Agent,” such amount to total \$200,000, which shall be used by the Escrow Agent to
22 pay Administrative Costs. Within ten (10) business days of the Final Settlement Date,
23 New Balance shall deposit an additional amount of \$550,000 to bring the total amount
24 paid by New Balance to \$750,000, which additional amount shall be held in escrow
25 to be held by the Escrow Agent to pay approved claims to Class Members as well as
26 any additional Administrative Costs. Together, these amounts will be known as the
27 “Escrowed Fund(s)”.

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1 2. The Escrowed Funds shall be non-reversionary and shall cover (a)
2 payments to Class Members on a claims-made basis, (b) class representative service
3 awards, and (c) Administrative Costs. However, in the event that the Court does not
4 approve the Settlement, any amount of the Escrowed Funds remaining in escrow at
5 the time that Court makes such a decision shall be returned to New Balance as soon
6 as practicable, and no later than five (5) calendar days.

7 3. “Administrative Costs” shall include, (a) charges and invoices by
8 the Class Action Settlement Administrator and Notice Administrator relating to this
9 Settlement, (b) the costs and expenses associated with disseminating the notice,
10 including but not limited to, the Class Notice and the Summary Settlement Notice, to
11 the Class, (c) the costs and expenses associated with claims administration, and (d)
12 the costs and expenses associated with the timely, valid, and approved Claims
13 submitted by Class Members pursuant to the Claim Process.

14 B. Claim Form Submission and Review

15 1. Class Members may submit a Claim through the Claim Process
16 during the Claim Period and the Class Action Settlement Administrator shall review
17 and process the Claims. As part of the Claim Process, Class Members shall be
18 eligible for the relief provided in this Agreement, provided Class Members complete
19 and timely submit the Claim Form, which shall be included with the Class Notice, to
20 the Class Action Settlement Administrator within the Claim Period.

21 2. Class Members shall not initially be required to submit proof of
22 purchase for a purchase of one pair of qualified “Made in USA” Shoes. Proof of
23 purchase (*e.g.*, a receipt, a credit card record, or other substantial proof) shall be
24 required for each additional purchase of qualified “Made in USA” Shoes claimed by
25 each Class Member (*e.g.*, anywhere between two and five purchases).

26 3. As stated on the Claim Form, in order to be eligible to receive
27 the Claim Amount, Class Members must attest, pursuant to 28 U.S.C. section 1746
28 under penalty of perjury, that the Class Member purchased one or more of the “Made

1 in USA” Shoes in California during the Class Period. The Claim Form shall advise
2 Class Members that the Class Action Settlement Administrator has the right to
3 request verification of the purchase of “Made in USA” Shoes, including, but not
4 limited to, receipt(s) or other documentation demonstrating purchase of any and all
5 of the “Made in USA” Shoes during the Class Period, prior to issuing the Claim
6 Amount to the Class Member. If the Class Member does not timely comply (*e.g.*,
7 within thirty-five (35) days of any request from the Class Action Settlement
8 Administrator) and/or is unable to produce documents to substantiate and/or verify
9 the information on the Claim Form and the Claim is otherwise not approved, the
10 Claim shall be disqualified.

11 4. The Class Action Settlement Administrator has the right to audit
12 any claims, and will use adequate and customary procedures and standards to prevent
13 the payment of fraudulent claims and to pay only valid claims. Such procedures may
14 include: (1) screening for duplicate claims or Settlement Class Members seeking
15 more than the maximum cash payment permitted, and (2) reviewing Claims for
16 evidence of waste, fraud, and abuse.

17 5. The Class Action Settlement Administrator shall employ
18 reasonable procedures to screen Claims for waste, fraud, and abuse. The Class Action
19 Settlement Administrator may request additional information necessary to validate
20 Claims and/or reject a Claim Form where there is evidence of abuse or fraud. The
21 Settlement Administrator may also reject a Claim Form that does not contain all
22 requested information necessary to screen the claim for fraud or abuse. Finally, the
23 Class Action Settlement Administrator’s decision as to whether the Class Member
24 submitted a Valid Claim shall be non-appealable, final, and binding upon the Parties
25 and the Claimants.

26 6. The Class Action Settlement Administrator shall provide periodic
27 updates to Class Counsel and to New Balance and New Balance’s counsel regarding
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1 Claim Form submissions beginning not later than one week after notice is
2 disseminated and continuing on a weekly basis thereafter.

3 7. The Class Action Settlement Administrator shall begin to pay
4 timely, valid, and approved Claims commencing fourteen (14) business days after
5 the close of the Claim Period so long as this period is after the Final Settlement Date,
6 or sooner upon New Balance and Plaintiffs' Counsel's joint direction, but not before
7 the issuance of the Court's Final Order and Final Judgment approving the Settlement.
8 In the event the Final Settlement Date falls after the close of the Claim Period, then
9 the Class Action Settlement Administrator shall begin to pay timely, valid, and
10 approved Claims commencing fourteen (14) business days after the Final Settlement
11 Date. The Class Action Settlement Administrator shall have completed the payment
12 to Class Members who have submitted timely, valid and approved Claims pursuant
13 to the Claim Process no later than one hundred eighty (180) calendar days after either
14 the Final Settlement Date or the close of the Claim Period, whichever is later.

15 8. Subject to Section III.C.1., below, the relief to be provided to
16 eligible Class Members for each pair of "Made in USA" Shoes purchased by an
17 eligible Class Member, shall be an amount of \$10.00 cash ("Claim Amount"). In the
18 event a Class Member has purchased more than one pair of the "Made in USA"
19 Shoes, that Class Member may submit one Claim for each pair of "Made in USA"
20 Shoes purchased, up to five pairs of "Made in the USA" Shoes. Thus, the maximum
21 Claim Amount each Class Member can recover is \$50.00 cash. In addition, the
22 maximum Claim Amount per "Household" (defined as all persons residing at the
23 same physical address) shall be limited to 10 pairs or \$100.

24 9. The Claim Amount will be paid in the form of a check.

25 C. Adjustments and Remaining Funds

26 1. If the total of the timely, valid and approved Claims submitted by
27 Class Members exceeds the available monetary relief in the Escrowed Fund, minus
28 any fees, payments, and costs set forth in this Agreement, each eligible Class

1 Member's Claim Amount shall be reduced on a *pro rata* basis.

2 2. If there are any funds remaining in the Escrowed Fund after all
3 Claims have been paid or any un-cashed checks made payable to eligible Class
4 Members ("Residual Funds"), the Class Action Settlement Administrator shall
5 equally distribute the remaining Escrowed Funds and/or the Residual Funds to the
6 following non-profit organization(s) in equal amounts: Public Justice Foundation and
7 Consumer Federation of California ("Cy Pres Recipients") and/or other nonprofit
8 organization(s) or foundation(s) that are agreed upon by the Parties and approved by
9 the Court. If Public Justice Foundation or Consumer Federation of California is
10 approved and the other is not, the entire remaining funds shall be distributed to the
11 approved entity. No remaining funds in the Escrowed Fund or Residual Funds will be
12 returned to Defendant. Defendant represents and warrants that any payment of
13 Residual Funds to any charities, non-profit organizations, or governmental entit(ies)
14 shall not reduce any of its donations or contributions to any entity, charity, charitable
15 foundation or trust, and / or non-profit organization.

16 3. Checks issued to Class Members shall remain negotiable for
17 ninety (90) calendar days from the date they are mailed.

18 4. Any payments to the Cy Pres Recipient, whether they be
19 remaining funds in the Escrowed Fund or Residual Funds, shall be issued to the Cy
20 Pres Recipient within one hundred and eighty (180) calendar days of the Final
21 Settlement Date.

22 D. Injunctive Relief

23 New Balance agrees to implement the following changes to its business
24 practices, which will commence within ten (10) business days of the Final Settlement
25 Date:

26 1. Going forward, for all "Made in USA" Shoes produced after the
27 Final Settlement Date, the hangtag affixed to the "Made in USA" Shoes which contain
28 less than 95% U.S. content will no longer include the phrase "Made in the USA" on

1 the front of the tag. On the back, in clear readable font, the hangtag will include the
2 following sentence, or words to similar effect, “New Balance ‘made’ is a premium
3 collection that contains domestic value of 70% or greater” (the “Made Notice”) unless
4 and until a change in either federal or California law obviates the need for such
5 clarification. New Balance may make any and all stylistic changes to the hangtag it
6 desires so long as such changes are in accordance with the principles set forth in this
7 paragraph.

8 2. Going forward, for all “Made in USA” Shoes produced after the
9 Final Settlement Date, shoe boxes for the “Made in USA” Shoes which contain less
10 than 95% U.S. content will not include the phrase “Made in the USA” on the outside
11 top panel of the box. New Balance may indicate that the shoes are made in the United
12 States on the side(s) of the shoe box if, on the end and/or side of the shoe box, in clear
13 readable font, it states the following sentence, or words to similar effect, “New
14 Balance ‘made’ is a premium collection that contains domestic value of 70% or
15 greater” unless and until a change in either federal or California law obviates the need
16 for such clarification. New Balance may make any and all stylistic changes to the
17 shoe box it desires so long as such changes are in accordance with the principles set
18 forth in this paragraph.

19 3. New Balance will implement a compliance and training program
20 for a period of five years from the Final Settlement Date, intended to ensure that
21 moving forward any advertising – including print, television, social media in the
22 United States – include the Made Notice any time the “Made in USA” representation
23 is made with respect to “Made in USA” Shoes which contain less than 95% U.S.
24 content.

25 4. New Balance will implement reasonable policies and practices
26 intended to ensure that the modified hangtag is physically affixed to each display shoe
27 in all California retail stores. New Balance further agrees to implement a compliance
28 training program for employees of its flagship and factory stores in California.

1 5. New Balance sales and marketing associates who work on
2 advertising for the “Made in USA” Shoes shall receive training at least twice during
3 the five years following the effective date of the Settlement Agreement regarding
4 California’s false advertising laws conducted by an attorney. New Balance will also
5 appoint an attorney responsible for ensuring compliance with the above and
6 implement a compliance program for this same five-year period.

7 6. New Balance agrees that it will maintain its current policy with
8 respect to any “Made in USA” statements on its U.S. ecommerce website.
9 Specifically, (1) all banners saying “Made in USA” or displaying a “Made in USA”
10 Shoe where the “Made in USA” label is showing must have the Made Notice in legible
11 size and font, (2) the “Made in USA” Shoe landing page (*i.e.*, where all of New
12 Balance’s “Made in USA” Shoes are listed), must have the Made Notice listed under
13 the “Made in USA” heading, and (3) all individual product display pages containing
14 a “Made in USA” Shoe must have the Made Notice listed in same size and font as,
15 and in close proximity to, the rest of the product description. New Balance
16 acknowledges that various aspects of its e-commerce website relating to “Made in
17 USA” Shoes were changed after this litigation commenced.

18 7. New Balance has calculated the approximate total monetary costs
19 and expenditures associated with planning and printing materials containing the Made
20 Notice in order to comply with all of the foregoing injunctive relief. New Balance
21 will disclose via a publicly filed declaration in the form of **Exhibit 8** an estimated
22 projection, in the aggregate, of a dollar amount of the estimated costs for compliant
23 Made in USA packaging, hangtags and compliance training for the next five years in
24 support of securing approval of this settlement and/or a fee award.

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1 **IV. NOTICE TO THE CLASS**

2 **A. Duties of the Class Action Settlement Administrator and the Notice**
3 **Administrator**

4 1. The Parties shall jointly recommend and retain Heffler Claims
5 Group to be the Class Action Settlement Administrator and the Notice Administrator
6 to help implement the terms of this Agreement. Following the Court's preliminary
7 approval of this Agreement and the Court's appointment of the proposed Class Action
8 Settlement Administrator and the proposed Notice Administrator, the Notice
9 Administrator shall disseminate notice to the Class as provided for in the Affidavit of
10 the Notice Administrator, substantially in the form attached as **Exhibit 9** to this
11 Agreement, as specified in the Preliminary Approval Order and in this Agreement,
12 and in order to comply with all applicable laws, including, but not limited to, the Due
13 Process Clause of the Constitution.

14 2. The Notice Administrator shall be responsible for, without
15 limitation: (a) e-mailing the Class Notice to all Class Members for which New
16 Balance has e-mail addresses; (b) arranging for the publication of the Summary
17 Settlement Notice in relevant and widely circulated publications in California; (c)
18 handling returned e-mail not delivered to Class Members; (d) arranging for banner
19 advertising to be displayed on highly trafficked websites and social media such as
20 Facebook geo-targeted to California; (e) attempting to obtain updated e-mail address
21 information for any Class Notice returned without a forwarding e-mail address
22 sending notice via U.S. Mail to such Class Members for whom New Balance has such
23 records; (f) responding to requests for Class Notice; (g) receiving and maintaining on
24 behalf of the Court any Class Member correspondence regarding requests for
25 exclusion and objections to the Settlement; (h) forwarding written inquiries to the
26 Parties or their designee for a response, if warranted; (i) establishing a post office box
27 for the receipt of any correspondence; (j) responding to requests from the Parties'
28 Counsel; (k) establishing a web site and toll-free voice response unit with message

1 and live operator capabilities to which Class Members may refer for information
2 about the Actions and the Settlement; and (l) otherwise implementing and/or assisting
3 with the dissemination of the notice of the Settlement as directed by the Court and/or
4 the Parties. The Class Action Settlement Administrator shall be responsible for,
5 without limitation, implementing the terms of the Claim Process and related
6 administrative activities. The Notice Administrator and/or the Class Action
7 Settlement Administrator shall coordinate their activities to minimize costs in
8 effectuating the terms of this Agreement.

9 3. If the Class Action Settlement Administrator and/or the Notice
10 Administrator make a material or fraudulent misrepresentation to, or conceal
11 requested material information from the Parties, then the Party to whom the
12 misrepresentation is made shall, in addition to any other appropriate relief, have the
13 right to demand that the Class Action Settlement Administrator and/or the Notice
14 Administrator, as applicable, immediately be replaced. If the Class Action Settlement
15 Administrator and/or the Notice Administrator fail to perform adequately on behalf
16 of New Balance or the Class, the Parties may agree to remove the Class Action
17 Settlement Administrator and/or the Notice Administrator. The other Party shall not
18 unreasonably withhold consent to remove the Class Action Settlement Administrator
19 and/or the Notice Administrator, but this shall occur only after New Balance and Class
20 Counsel have attempted to resolve any disputes regarding the retention or dismissal
21 of the Class Action Settlement Administrator and/or the Notice Administrator in good
22 faith, and, if they are unable to do so, after the matter has been referred to the Court
23 for resolution.

24 4. The Class Action Settlement Administrator and/or the Notice
25 Administrator may retain one or more persons to assist in the completion of his or her
26 responsibilities.

27 5. Not later than fourteen (14) calendar days before the date of the
28 Fairness Hearing, the Notice Administrator shall provide the Parties with a declaration

1 that contains: (a) a list of those persons who have opted out or excluded themselves
2 from the Settlement; (b) a list of the Class Members who have submitted valid and
3 timely Claim Forms; and (c) the details outlining the scope, methods and results of
4 the notice program.

5 6. The Notice Administrator shall promptly after receipt provide
6 copies of any requests for exclusion, objections, and/or related correspondence to
7 Class Counsel and New Balance's Counsel.

8 B. Class Notice

9 1. Dissemination of the E-Mailed Class Notice:

10 a. No later than one (1) business day after the entry of the
11 Preliminary Approval Order, New Balance shall provide
12 the Notice Administrator with the e-mail address and
13 mailing address of each reasonably identifiable Class
14 Member, subject to the existence of such information and
15 its current possession, if at all, by New Balance.

16 b. No later than fourteen (14) calendar days after entry of the
17 Preliminary Approval Order, and subject to the
18 requirements of the Preliminary Approval Order and the
19 Settlement Agreement, the Notice Administrator shall send
20 the Class Notice by Electronic Mail (“E-Mail”) to each
21 reasonably identifiable Class Member’s last known E-Mail
22 address, and shall otherwise comply with Fed. R. Civ. P. 23
23 and any other applicable statute, law, or rule, including but
24 not limited to, the Due Process Clause of the United States
25 Constitution.

26 c. No later than twenty-one (21) calendar days after entry of
27 the Preliminary Approval Order, the Notice Administrator
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shall send the Summary Settlement Notice by First Class U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as undeliverable, subject to the existence of such information as provided by New Balance pursuant to Section IV.B.1.a of this Agreement.

- d. No later than thirty-five (35) calendar days after entry of the Preliminary Approval Order, the Notice Administrator shall: (i) re-mail any Summary Settlement Notices returned by the United States Postal Service with a forwarding address that are received by the Notice Administrator; (ii) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Summary Settlement Notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail copies of the Summary Settlement Notice to the better addresses so found.

2. Content of the Class Notice: The Claim Form and the Class Notice shall be in a form substantially similar to the document attached to this Agreement as **Exhibits 1 and 2**, respectively, and shall advise Class Members of the following:

- a. General Terms: The Class Notice shall contain a plain and concise description of the nature of the Action, the history of the litigation of the claims, the preliminary certification of the Class, and the proposed Settlement, how the proposed Settlement would provide relief to the Class and Class Members, what claims are released under the proposed Settlement and other relevant terms and

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- conditions.
- b. Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to opt out of the Settlement. The Class Notice shall provide the deadlines and procedures for exercising this right.
 - c. Objection to Settlement: The Class Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the procedures for exercising these rights.
 - d. Fees and Expenses: The Class Notice shall inform Class Members about the amounts being sought by Plaintiffs’ Counsel as Attorneys’ Fees and Expenses and individual service awards to the Plaintiffs, and shall explain that New Balance will pay the fees and expenses awarded to Plaintiffs’ Counsel in addition to amounts being made available for relief to Class Members and without reducing such relief amounts.
 - e. Claim Form: The Class Notice shall include the Claim Form, which shall inform the Class Member that he or she must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain relief pursuant to this Agreement.
 - f. Exclusion Form: The Class Notice shall include the Exclusion Form, which shall inform the Class Member that he or she must fully complete and timely return the Exclusion Form within the Claim Period to be excluded from the settlement.

1 3. The Summary Settlement Notice: The Notice Administrator shall
2 publish the Summary Settlement Notice no later than fourteen (14) calendar days after
3 entry of the Preliminary Approval Order, and shall substantially complete it no later
4 than seventy-four (74) calendar days after entry of the Preliminary Approval Order as
5 described in the Affidavit of the Notice Administrator, and in such additional
6 newspapers, magazines, and/or other media outlets in California as shall be agreed
7 upon by the Parties.

8 4. Internet Website: No later than ten (10) calendar days after the
9 entry of the Preliminary Approval Order, and prior to the dissemination of the Class
10 Notice pursuant to Section IV.B.1 to Section IV.C, the Notice Administrator shall
11 establish an Internet website that will inform Class Members of the terms of this
12 Agreement, their rights, dates and deadlines and related information. The website
13 shall include, in .pdf format, materials agreed upon by the Parties and/or required by
14 the Court. Additionally, geo-located Banner ads on the Internet and Social Media
15 shall direct Class Members to the website.

16 5. Toll-Free Telephone Number: No later than ten (10) calendar
17 days after the entry of the Preliminary Approval Order, and prior to the dissemination
18 of the Class Notice pursuant to Section IV.B.1 to Section IV.C, the Notice
19 Administrator shall establish a toll-free telephone number that will provide
20 Settlement-related information to Class Members.

21 C. Duties of New Balance

22 Within ten (10) calendar days of the filing of the Motion for Preliminary
23 Approval and any renewed Motion for Preliminary Approval, New Balance shall
24 serve upon the appropriate State and Federal officials a notice of the proposed
25 settlement in accordance with 28 U.S.C. § 1715(b), and shall otherwise comply with
26 Fed. R. Civ. P. 23 and any other applicable statute, law, or rule.

27 **V. REQUESTS FOR EXCLUSION**

28 A. Any Class Member who wishes to be excluded from the Class must

1 submit an Exclusion Form to the Notice Administrator via mail at the address provided
2 in the Class Notice, postmarked no later than the final day of the Claim Period or via
3 the settlement website no later than the final day of the Claim Period, or as the Court
4 otherwise may direct. The Notice Administrator shall forward copies of any written
5 requests for exclusion to Class Counsel and New Balance's Counsel. A list reflecting
6 all valid requests for exclusion shall be filed with the Court by the Parties no later than
7 forty-two (42) calendar days before the Fairness Hearing.

8 B. Any potential Class Member who does not submit a timely Exclusion
9 Form as provided in the preceding Section V.A shall be bound by all subsequent
10 proceedings, orders, and judgments, including, but not limited to, the Release, in the
11 Action, even if he or she has litigation pending or subsequently initiates litigation
12 against New Balance relating to the claims and transactions released in the Action.

13 **VI. OBJECTIONS TO SETTLEMENT**

14 A. Any Class Member who has not submitted a timely Exclusion Form
15 and who wishes to object to the fairness, reasonableness, or adequacy of this
16 Agreement or the proposed Settlement, or to the award of Attorneys' Fees and
17 Expenses, or the individual awards to Plaintiffs, or any other aspect of the
18 Settlement, may file with the Court and submit to the Notice Administrator via mail
19 at the address provided in the Class Notice, postmarked no later than the final day
20 of the Claim Period, or via the settlement website no later than the final day of the
21 Claim Period, or as the Court otherwise may direct, a written statement of the
22 objection(s), as well as the specific reason(s), if any, for each objection, including
23 any legal support the Class Member wishes to bring to the Court's attention, any
24 evidence or other information the Class Member wishes to introduce in support of
25 the objections, a statement of whether the Class Member intends to appear and argue
26 at the Fairness Hearing, and list the Class Member's purchase(s) of the "Made in
27 USA" Shoes. Class Members may do so either on their own or through an attorney
28 retained at their own expense. Any objection must include proof of purchase for the

1 “Made in USA” Shoes, either submitted with the written statement or provided to
2 the Court and the Notice Administrator for inspection at the time of an oral
3 objection at the Fairness Hearing. Acceptable proof of purchase includes a cash
4 register receipt, a credit card receipt or a credit card statement that sufficiently
5 indicates the purchase of the “Made in USA” Shoes. Class Members are encouraged
6 but not required, to submit written objections by no later than the last date of the
7 Claim Period. The Parties shall request that the Court allow any interested party to
8 file a reply to any objection. The Notice will inform Class Members that to facilitate
9 consideration by the Court, they are encouraged to submit objections or an intent to
10 appear the Fairness Hearing by no later than the last date of the Claim Period.

11 B. Any Class Member may appear at the Fairness Hearing, either in
12 person or through personal counsel hired at the Class Member's expense, to object to
13 the fairness, reasonableness, or adequacy of this Agreement or the proposed
14 Settlement, or to the award of Attorneys' Fees and Expenses or awards to the
15 individual Plaintiffs. Class Members or their attorneys who intend to make an
16 appearance at the Fairness Hearing are encouraged, but not required, to deliver a
17 notice of intention to appear to the Notice Administrator, and file said notice with
18 the Court, no later than the final day of the Claim Period.

19 C. Any Class Member who fails to comply with the provisions of Sections
20 VI.A and VI.B above shall waive and forfeit any and all rights he or she may have
21 to appear separately and/or to object, and shall be bound by all the terms of this
22 Agreement and by all proceedings, orders and judgments, including, but not limited
23 to, the Release, in the Action.

24 D. Any Class Member who objects to the Settlement shall be entitled to all
25 of the benefits of the Settlement if this Agreement and the terms contained therein
26 are approved, as long as the objecting Class Member complies with all requirements
27 of this Agreement applicable to Class Members, including the timely submission of
28 Claim Forms and other requirements discussed herein.

1 **VII. RELEASE AND WAIVER**

2 A. The Parties agree to the following release and waiver, which shall take
3 effect upon entry of the Final Order and Final Judgment.

4 B. “Released Claims”:

5 In consideration of the Settlement benefits described in this Agreement,
6 Plaintiffs and the other members of the Class, on behalf of themselves,
7 their heirs, guardians, assigns, executors, administrators, predecessors,
8 and/or successors, will fully, finally and forever release, relinquish,
9 acquit, and discharge the Released Parties from – and shall not now or
10 hereafter institute, maintain or assert on their own behalf, on behalf of
11 the Class, or on behalf of any other person or entity – the claims asserted
12 in any of the Complaints in this action and/or any claim based on the
13 same factual predicate as any of the claims asserted in any of the
14 Complaints in this action. For the avoidance of doubt, the Parties intend
15 this class release to extend to the furthest extent allowed by *Hesse v.*
16 *Sprint Corporation*, 598 F.3d 581 (9th Cir. 2010). Released Claims do
17 not include any claims that cannot be released as a matter of law.

18 C. Plaintiffs represent and warrant that they are the sole and exclusive
19 owner of all claims that they personally are releasing under this Agreement. Plaintiffs
20 further acknowledge that they have not assigned, pledged, or in any manner
21 whatsoever, sold, transferred, assigned or encumbered any right, title, interest or
22 claim arising out of or in any way whatsoever pertaining to the Action, including
23 without limitation, any claim for benefits, proceeds or value under the Action, and
24 that Plaintiffs are not aware of anyone other than themselves claiming any interest,
25 in whole or in part, in the Action or in any benefits, proceeds or values under the
26 Action. Class Members submitting a Claim Form shall represent and warrant therein
27 that they are the sole and exclusive owner of all claims that they personally are
28 releasing under the Settlement and that they have not assigned, pledged, or in any
manner whatsoever, sold, transferred, assigned or encumbered any right, title,
interest or claim arising out of or in any way whatsoever pertaining to the Action,
including without limitation, any claim for benefits, proceeds or value under the

1 Action, and that such Class Member(s) are not aware of anyone other than
2 themselves claiming any interest, in whole or in part, in the Action or in any benefits,
3 proceeds or values under the Action.

4 D. Without in any way limiting its scope, and, except to the extent
5 otherwise specified in the Agreement, this Release covers by example and without
6 limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees,
7 interest, or litigation fees, costs or any other fees, costs, and/or disbursements
8 incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class Members.

9 E. In addition to the Released Claims, the Named Plaintiffs only agree to
10 a general release, which includes a release of any unknown claims that they did not
11 know or suspect to exist in their favor at the time of the general release, which, if
12 known, might have affected their Settlement with, and general release of, the
13 Released Parties. With respect to the general release, the Named Plaintiffs only
14 stipulate and agree that, upon the execution of this Agreement, and by operation of
15 the Final Judgment, they shall be deemed to have expressly waived and relinquished,
16 to the fullest extent permitted by law, the provisions, rights and benefits of Section
17 1542 of the Civil Code of the State of California, which provides that:

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

21 Named Plaintiffs only hereby agree that the provisions of all such principles of law
22 or similar federal or state laws, rights, rules, or legal principles are hereby knowingly
23 and voluntarily waived, relinquished and released.

24 F. Nothing in this Release shall preclude any action to enforce the terms
25 of the Agreement, including participation in any of the processes detailed therein.

26 G. Plaintiffs and Defendant hereby agree and acknowledge that the
27 provisions of this Release together constitute an essential and material term of the
28 Agreement and shall be included in any Final Order and Final Judgment entered by

1 the Court.

2 **VIII. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL**
3 **PLAINTIFF AWARDS**

4 A. Class Counsel will make and New Balance agrees not to oppose, an
5 application for an award of Attorneys' Fees and Expenses in the Action that will not
6 exceed \$650,000 in fees and expenses incurred up to the submission of their expenses
7 to the Court no later than twenty-one (21) calendar days after the entry of the
8 Preliminary Approval Order, which shall be the sole aggregate compensation paid by
9 New Balance for all Class Counsel representing the Class. In addition to the payments
10 set forth herein in Section III.A and New Balance's full and complete performance of
11 any and all obligations, terms and conditions set forth in the Agreement, New Balance
12 shall pay the Attorneys' Fees and Expenses awarded by the Court within fourteen (14)
13 business days after the occurrence of the Final Settlement Date.

14 B. Class Counsel, in their sole discretion, shall allocate and distribute this
15 award of Attorneys' Fees and Expenses among all of the counsel who have acted on
16 behalf of the Class, all of whom are the Class Counsel.

17 C. Class Counsel for Plaintiffs may petition the Court for class
18 representative service awards of up to \$5,000 per Plaintiff. The purpose of such
19 awards shall be to compensate the Plaintiffs for efforts and risks taken by them on
20 behalf of the Class. Any class representative service awards made by the Court shall
21 be paid out of the Escrowed Fund, as instructed by Class Counsel, within fourteen
22 (14) business days after the occurrence of the Final Settlement Date.

23 D. New Balance shall not be liable for or obligated to pay any fees,
24 expenses, costs, or disbursements to, or incur any expense on behalf of, any person or
25 entity, either directly or indirectly, in connection with the Actions or this Settlement
26 Agreement, other than the amount or amounts expressly provided for in this
27 Settlement Agreement.

28 E. New Balance will pay its own attorneys' fees and costs incurred in this

1 Action.

2 **IX. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL**
3 **JUDGMENT AND RELATED ORDERS**

4 A. The Parties shall seek from the Court a Preliminary Approval Order in
5 a form substantially similar to **Exhibit 6**. The Preliminary Approval Order shall,
6 among other things:

7 1. Certify the Class, approve Plaintiffs Sheila Dashnaw, William
8 Meier, and Sherryl Jones as Class Representatives and appoint Plaintiffs' Counsel as
9 counsel for the class, pursuant to Fed. R. Civ. P. 23;

10 2. Preliminarily approve the Settlement;

11 3. Require the dissemination of the Notice and the taking of all
12 necessary and appropriate steps to accomplish this task;

13 4. Determine that the notice complies with all legal requirements,
14 including, but not limited to, the Due Process Clause of the United States Constitution;

15 5. Schedule a date and time for a Fairness Hearing to determine
16 whether the Preliminary Approval Order should be finally approved by the Court;

17 6. Require Class Members who wish to exclude themselves to
18 submit a timely Exclusion Form as directed in the Agreement and Class Notice and
19 that a failure to do so shall bind those Class Members who remain in the Class;

20 7. Require Class Members who wish to object to the Agreement to
21 submit an appropriate written statement as directed in the Agreement and Class
22 Notice;

23 8. Require attorneys representing individual Class Members, at their
24 own expense, to file a notice of appearance as directed in the Agreement and Class
25 Notice;

26 9. Appoint the Class Action Settlement Administrator and/or the
27 Notice Administrator;

28 10. Authorize New Balance to take all necessary and appropriate

1 steps to establish the means necessary to implement the Agreement;

2 11. Issue an order requiring execution of a Confidentiality Agreement
3 in the form attached hereto as **Exhibit 10**, governing Class Members or their counsel
4 who file a motion for access to discovery, in the event that such motion is granted;
5 and

6 12. Issue other related orders to effectuate the preliminary approval
7 of the Agreement.

8 B. After the Fairness Hearing, the Parties shall seek to obtain from the Court
9 a Final Order and Final Judgment in the forms substantially similar to **Exhibits 4** and
10 **5**, respectively. The Final Order and Final Judgment shall, among other things:

11 1. Find that the Court has personal jurisdiction over all Class
12 Members, the Court has subject matter jurisdiction over the claims asserted in the
13 Amended Complaint and/or Action, and that venue is proper.

14 2. Finally approve the Agreement and Settlement, pursuant to Fed.
15 R. Civ. P. 23;

16 3. Finally certify the Class for settlement purposes only;

17 4. Find that the notice and the notice dissemination methodology
18 complied with all laws, including, but not limited to, the Due Process Clause of the
19 United States Constitution;

20 5. Dismiss the Action with prejudice;

21 6. Incorporate the Release set forth in the Agreement and make the
22 Release effective as of the date of the Final Order and Final Judgment;

23 7. Authorize the Parties to implement the terms of the Agreement;

24 8. Retain jurisdiction relating to the administration,
25 consummation, enforcement, and interpretation of the Agreement, the Final Order
26 and Final Judgment, and for any other necessary purpose; and

27 9. Issue related Orders to effectuate the final approval of the
28 Agreement and its implementation.

1 C. If necessary, within ten (10) days following the Final Settlement Date,
2 Plaintiffs shall file a stipulation of dismissal with prejudice in the Action, in the form
3 attached hereto as **Exhibit 11**.

4 **X. MODIFICATION OR TERMINATION OF THIS AGREEMENT**

5 A. The terms and provisions of this Agreement may be amended,
6 modified, or expanded by written agreement of the Parties and approval of the Court;
7 provided, however that, after entry of the Final Order and Final Judgment, the Parties
8 may by written agreement effect such amendments, modifications, or expansions of
9 this Agreement and its implementing documents (including all exhibits hereto)
10 without further notice to the Class or approval by the Court if such changes are
11 consistent with the Court's Final Order and Final Judgment and do not limit the rights
12 of Class Members under this Agreement.

13 B. This Agreement shall terminate at the discretion of either New Balance
14 or the Plaintiffs, through Class Counsel, if: (1) the Court, or any appellate court(s),
15 rejects, modifies, or denies approval of any portion of this Agreement or the
16 proposed Settlement that the terminating party in its (or their) sole judgment and
17 discretion reasonably determine(s) is material, including, without limitation, the
18 terms of relief, the findings, or conclusions of the Court, the provisions relating to
19 notice, the definition of the Class, and/or the terms of the Release; or (2) the Court,
20 or any appellate court(s), does not enter or completely affirm, or alters or expands,
21 any portion of the Final Order and Judgment, or any of the Court's findings of fact
22 or conclusions of law, that the terminating party in its (or their) sole judgment and
23 discretion reasonably determine(s) is material. The terminating party must exercise
24 the option to withdraw from and terminate this Agreement, as provided in this
25 Section X, by a signed writing served on the other Parties no later than 20 days after
26 receiving notice of the event prompting the termination. The Parties will be returned
27 to their positions status quo ante.

28 C. If an option to withdraw from and terminate this Agreement arises

1 under Section X.B above, neither New Balance nor Plaintiffs are required for any
2 reason or under any circumstance to exercise that option and any exercise of that
3 option shall be in good faith.

4 D. If this Agreement is terminated pursuant to Section X.B, above, then:

5 1. This Agreement shall be null and void and shall have no force or
6 effect, and no Party to this Agreement shall be bound by any of its terms, except for
7 the terms of Sections X.D herein;

8 2. The Parties will petition to have any stay orders entered pursuant
9 to this Agreement lifted;

10 3. All of its provisions, and all negotiations, statements, and
11 proceedings relating to it shall be without prejudice to the rights of New Balance,
12 Plaintiffs or any Class Member, all of whom shall be restored to their respective
13 positions existing immediately before the execution of this Agreement, except that
14 the Parties shall cooperate in requesting that the Court set a new scheduling order
15 such that neither Party's substantive or procedural rights is prejudiced by the
16 attempted Settlement;

17 4. Released Parties, as defined in Section II, above, including,
18 without limitation, New Balance, expressly and affirmatively reserve all defenses,
19 arguments, and motions as to all claims that have been or might later be asserted in
20 the Actions, including, without limitation, the argument that the Actions may not be
21 litigated as a class action;

22 5. Plaintiffs and all other Class Members, on behalf of themselves
23 and their heirs, assigns, executors, administrators, predecessors, and successors,
24 expressly and affirmatively reserve and do not waive all motions as to, and
25 arguments in support of, all claims, causes of actions or remedies that have been or
26 might later be asserted in the Actions including, without limitation, any argument
27 concerning class certification, consumer fraud, and treble or other damages;

28 6. Neither this Agreement, the fact of its having been made, nor the

1 negotiations leading to it, nor any discovery or action taken by a Party or Class
2 Member pursuant to this Agreement shall be admissible or entered into evidence for
3 any purpose whatsoever;

4 7. Any Settlement-related order(s) or judgment(s) entered in this
5 Action after the date of execution of this Agreement shall be deemed vacated and
6 shall be without any force or effect;

7 8. All costs incurred in connection with the Settlement, including,
8 but not limited to, notice, publication, and customer communications, will be paid
9 from the Escrowed Funds. Neither Plaintiffs nor Class Counsel shall be responsible
10 for any of these costs or other Settlement-related costs. After all such costs are paid,
11 any remaining Escrowed Funds shall be returned to New Balance as soon as
12 practicable;

13 9. Any attorneys' fees and expenses previously paid to Plaintiffs'
14 Counsel shall be returned to New Balance; and

15 10. Notwithstanding the terms of this paragraph, if Settlement is not
16 consummated, Plaintiffs' Counsel may include any time spent in Settlement efforts
17 as part of any statutory fee petition filed at the conclusion of the case, and New
18 Balance reserves the right to object to the reasonableness of such requested fees.

19 **XI. GENERAL MATTERS AND RESERVATIONS**

20 A. The obligations of the Parties to conclude the proposed Settlement is
21 and shall be contingent on the following:

22 1. Entry by the Court of the Final Order and Final Judgment
23 approving the Settlement, from which the time to appeal has expired or which has
24 remained unmodified after any appeal(s); and

25 2. New Balance's payments as set forth in Section III.A. and
26 Section VIII.A. of this Settlement Agreement, and New Balance's full and complete
27 performance of any and all obligations, terms and conditions set forth in the
28 Agreement.

1 B. The Parties and their counsel agree to keep the existence and contents
2 of this Agreement confidential until the date on which the Motion for Preliminary
3 Approval is filed; *provided, however*, that this section shall not prevent New Balance
4 from disclosing such information, prior to the date on which the Motion for
5 Preliminary Approval is filed, to state and federal agencies, independent accountants,
6 actuaries, advisors, financial analysts, insurers or attorneys, nor shall it prevent the
7 Parties and their counsel from disclosing such information to persons or entities (such
8 as experts, courts, co-counsel, and/or administrators) to whom the Parties agree
9 disclosure must be made in order to effectuate the terms and conditions of this
10 Agreement.

11 C. The Parties and their Counsel agree to release a joint statement in the
12 form attached hereto as **Exhibit 12**, upon Plaintiffs’ filing of the Motion for
13 Preliminary Approval of Settlement. The Parties and their counsel further agree that
14 any additional public statements regarding this Settlement shall be agreed upon by
15 both Parties prior to any release of such statement.

16 D. Plaintiffs and Class Counsel agree that the confidential information
17 made available to them solely through the settlement process was made available, as
18 agreed to, on the condition that neither Plaintiffs nor their counsel may disclose it to
19 third parties (other than experts or consultants retained by Plaintiffs in connection
20 with this case); that it not be the subject of public comment; that it not be used by
21 Plaintiffs or Plaintiffs’ Counsel in any way in this litigation should the Settlement
22 not be achieved, and that it is to be returned if a Settlement is not concluded;
23 *provided, however*, that nothing contained herein shall prohibit Plaintiffs from
24 seeking such information through formal discovery if not previously requested
25 through formal discovery or from referring to the existence of such information in
26 connection with the Settlement of this litigation.

27 E. All information marked as “Attorneys’ Eyes Only” or “Confidential”
28 provided by New Balance to Plaintiffs, Plaintiffs’ Counsel, or any individual Class

1 Member, counsel for any individual Class Member and/or administrators, pursuant
2 to the implementation of this Agreement or by Court Order, constitutes trade secrets
3 and highly confidential and proprietary business information and shall be deemed
4 “Attorneys’ Eyes Only” or “Confidential” pursuant to the protective orders that have
5 been or will be entered in the Actions, and shall be subject to all of the provisions
6 thereof. Any materials inadvertently produced shall, upon New Balance’s request,
7 be promptly returned to New Balance’s Counsel, and there shall be no implied or
8 express waiver of any privileges, rights, and defenses.

9 F. Within ninety (90) days after the Final Settlement Date (unless the
10 time is extended by agreement of the Parties), Plaintiffs’ Counsel, and any expert or
11 other consultant employed by them in such capacity or any other individual with
12 access to documents provided by New Balance to Plaintiffs’ Counsel shall either: (i)
13 return to New Balance’s Counsel, all such documents and materials (and all copies
14 of such documents in whatever form made or maintained) produced by New
15 Balance in the Actions and any and all handwritten notes summarizing, describing
16 or referring to such documents; or (ii) certify to New Balance’s Counsel that all such
17 documents and materials (and all copies of such documents in whatever form made
18 or maintained) produced by New Balance in the Actions and any and all handwritten
19 notes summarizing, describing or referring to such documents have been destroyed;
20 provided, however, that this section shall not apply to any documents made part of
21 the record in connection with a Claim, nor to any documents made part of a Court
22 filing, nor to Plaintiffs’ Counsel’s work product. New Balance’s Counsel agrees to
23 hold all documents returned by Plaintiffs’ Counsel, and any expert or other
24 consultant or any other individual employed by Plaintiffs’ Counsel in such capacity
25 with access to documents provided by New Balance, until six months after the
26 distribution of the Escrowed Funds to Class Members who submitted acceptable
27 Claim Forms. Six months after the distribution of the Escrowed Funds to Class
28 Members who submitted acceptable Claim Forms, the Class Action Settlement

1 Administrator shall return all documents and materials to New Balance and/or Class
2 Counsel that produced the documents and materials, except that it shall destroy any
3 and all Claim Forms, including any and all information and/or documentation
4 submitted by Class Members.

5 G. New Balance's execution of this Agreement shall not be construed to
6 release - and New Balance expressly does not intend to release - any claim New
7 Balance may have or make against any insurer for any cost or expense incurred in
8 connection with this Settlement, including, without limitation, for attorneys' fees and
9 costs.

10 H. Class Counsel represent that: (1) they are authorized by the Plaintiffs
11 to enter into this Agreement on behalf of Plaintiffs, their respective present or past
12 law firms and any other attorneys who have represented or who now represent
13 Plaintiffs in these Actions with respect to the claims in these Actions; and (2) they
14 are seeking to protect the interests of the Class.

15 I. Plaintiffs represent and certify that: (1) they have agreed to serve as
16 representatives of the Class proposed to be certified herein; (2) they are willing,
17 able, and ready to perform all of the duties and obligations of representatives of the
18 Class, including, but not limited to, being involved in discovery and fact finding; (3)
19 they have read the substantive pleadings in the Actions, including the complaint
20 and/or the Amended Complaints, or have had the contents of such pleadings
21 described to them; (4) they are familiar with the results of the fact- finding
22 undertaken by Class Counsel; (5) they have been kept apprised of settlement
23 negotiations among the Parties, and have either read this Agreement, including the
24 exhibits annexed hereto, or have received a detailed description of it from Class
25 Counsel and they have agreed to its terms; (6) they have consulted with Class
26 Counsel about the Actions and this Agreement and the obligations imposed on
27 representatives of the Class; (7) they have authorized Class Counsel to execute this
28 Agreement on their behalf; and (8) they shall remain and serve as representatives of

1 the Class until the terms of this Agreement are effectuated, this Agreement is
2 terminated in accordance with its terms, or the Court at any time determines that
3 said Plaintiff(s) cannot represent the Class.

4 J. New Balance represents and warrants that the individual(s) executing
5 this Agreement is authorized to enter into this Agreement on behalf of New Balance.

6 K. This Agreement, complete with its exhibits, sets forth the sole and
7 entire agreement among the Parties with respect to its subject matter, and it may not
8 be altered, amended, or modified except by written instrument executed by Class
9 Counsel and New Balance's Counsel on behalf of New Balance. The Parties
10 expressly acknowledge that no other agreements, arrangements, or understandings
11 not expressed in this Agreement exist among or between them and that in deciding
12 to enter into this Agreement, they rely solely upon their judgment and knowledge.
13 This Agreement supersedes any prior agreements, understandings, or undertakings
14 (written or oral) by and between the Parties regarding the subject matter of this
15 Agreement.

16 L. This Agreement and any amendments thereto shall be governed by and
17 interpreted according to the law of the State of California, notwithstanding its
18 conflict of laws provisions.

19 M. Any disagreement and/or action to enforce this Agreement shall be
20 commenced and maintained only in the Court in which the Action is pending.

21 N. Whenever this Agreement requires or contemplates that one of the
22 Parties shall or may give notice to the other, notice shall be provided by e-mail
23 and/or next-day (excluding Saturdays, Sundays, and Federal Holidays) express
24 delivery service as follows:

25 1. If to New Balance, then to:

26 R. David Hosp
27 Laura B. Najemy
28 FISH & RICHARDSON P.C.
1 Marina Park Drive

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Boston, Massachusetts 02210
Tel.: 617.542.5070
Fax: 617.542.8906
E-Mail: hosp@fr.com; najemy@fr.com

and

Erin Michael
New Balance Athletics, Inc.
100 Guest Street
Boston, Massachusetts 02135
Tel.: 617.779.7408
E-Mail: erin.michael@newbalance.com

With a copy to:

General Counsel
New Balance Athletics, Inc.
100 Guest Street
Boston, Massachusetts 02135
Fax: 617.787.9355

2. If to Plaintiffs, then to:

Jason H. Kim
SCHNEIDER WALLACE COTTRELL
KONECKY & WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
E-Mail: jkim@schneiderwallace.com

and

Aubry Wand
THE WAND LAW FIRM, PC
400 Corporate Pointe, Suite 300
Culver City, California 90230
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
E-Mail: awand@wandlawfirm.com

1 O. All time periods set forth herein shall be computed in calendar days
2 unless otherwise expressly provided. In computing any period of time prescribed or
3 allowed by this Agreement or by order of the Court, the day of the act, event, or
4 default from which the designated period of time begins to run shall not be included.
5 The last day of the period so computed shall be included, unless it is a Saturday, a
6 Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in
7 court, a day on which weather or other conditions have made the office of the clerk
8 of the court inaccessible, in which event the period shall run until the end of the next
9 day that is not one of the aforementioned days. As used in this section "Federal
10 Holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents'
11 Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day,
12 Patriot's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a
13 holiday by the President or the Congress of the United States.

14 P. The Parties reserve the right, subject to the Court's approval, to agree
15 to any reasonable extensions of time that might be necessary to carry out any of the
16 provisions of this Agreement.

17 Q. The Class, Plaintiffs, Class Counsel, New Balance and/or New
18 Balance's Counsel shall not be deemed to be the drafter of this Agreement or of any
19 particular provision, nor shall they argue that any particular provision should be
20 construed against its drafter or otherwise resort to the *contra proferentem* canon of
21 construction. All Parties agree that this Agreement was drafted by counsel for the
22 Parties during extensive arm's length negotiations. No parol or other evidence may
23 be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties
24 or their counsel, or the circumstances under which this Agreement was made or
25 executed.

26 R. The Parties expressly acknowledge and agree that this Agreement and
27 its exhibits, along with all related drafts, motions, pleadings, conversations,
28 negotiations, and correspondence, constitute an offer of compromise and a

1 compromise within the meaning of Federal Rule of Evidence 408 and any equivalent
2 rule of evidence in any state. In no event shall this Agreement, any of its provisions
3 or any negotiations, statements or court proceedings relating to its provisions in any
4 way be construed as, offered as, received as, used as, or deemed to be evidence of
5 any kind in the Actions, any other action, or in any judicial, administrative,
6 regulatory or other proceeding, except in a proceeding to enforce this Agreement or
7 the rights of the Parties or their counsel. Without limiting the foregoing, neither this
8 Agreement nor any related negotiations, statements, or court proceedings shall be
9 construed as, offered as, received as, used as or deemed to be evidence or an
10 admission or concession of any liability or wrongdoing whatsoever on the part of any
11 person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the
12 Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable
13 privileges, claims or defenses.

14 S. Plaintiffs expressly affirm that the allegations contained in the
15 Amended Complaints were made in good faith and have a basis in fact, but consider
16 it desirable for the Actions to be settled and dismissed because of the substantial
17 benefits that the proposed Settlement will provide to Class Members.

18 T. The Parties, their successors and assigns, and their counsel undertake
19 to implement the terms of this Agreement in good faith, and to use good faith in
20 resolving any disputes that may arise in the implementation of the terms of this
21 Agreement.

22 U. The waiver by one Party of any breach of this Agreement by another
23 Party shall not be deemed a waiver of any prior or subsequent breach of this
24 Agreement.

25 V. If one Party to this Agreement considers another Party to be in breach
26 of its obligations under this Agreement, that Party must provide the breaching Party
27 with written notice of the alleged breach and provide a reasonable opportunity to
28 cure the breach before taking any action to enforce any rights under this Agreement.

1 W. The Parties, their successors and assigns, and their counsel agree to
2 cooperate fully with one another in seeking Court approval of this Settlement
3 Agreement and to use their best efforts to effect the prompt consummation of this
4 Agreement and the proposed Settlement.

5 X. This Agreement may be signed with a facsimile signature and in
6 counterparts, each of which shall constitute a duplicate original.

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1 APPROVED AND AGREED TO BY THE PLAINTIFFS IN THEIR INDIVIDUAL
2 CAPACITIES

3
4 By: Sheila Dashraw Date: 12/07/18
5 SHEILA DASHRAW

6
7 By: William Meier Date: 12/7/18
8 WILLIAM MEIER

9
10 By: [Signature] Date: 12/7/18
11 SHERRYL JONES

12
13 APPROVED AND AGREED TO BY CLASS COUNSEL

14
15 By: [Signature] Date: 12/7/18
16 Jason H. Kim
17 Schneider Wallace Cottrell Konecky
18 & Wotkyns LLP

19 By: [Signature] Date: 12/7/18
20 Aubry Wand
21 The Wand Law Firm, P.C.

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1 APPROVED AND AGREED TO BY NEW BALANCE ATHLETICS, INC.

2
3 By: Paul R. Skuseon Date: 12/7/18
4

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6 APPROVED AND AGREED TO BY COUNSEL FOR NEW BALANCE
7 ATHLETICS, INC.

8
9 By: R. David Hosp Date: 12/7/18
10 R. David Hosp, Fish & Richardson P.C.

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