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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

MATT MCDUFFEE, on behalf of himself and)
others similarly situated,)
)
Plaintiff,)
)
vs.)
)
SPORTS WAREHOUSE, a California)
corporation, and DOES 1 to 10, inclusive,)
)
Defendant.)

Case No. 37-2017-00001781-CU-BT-NC
**STIPULATION FOR CLASS ACTION
SETTLEMENT**

1 2.9 The term "Class Counsel" as used herein means CounselOne, P.C.

2 2.10 The term "Class List" as used herein means identifying full names, associated email
3 addresses, and mailing addresses for Settlement Class Members ascertained from sales and
4 transaction data, for consumers in California during the Settlement Class Period.

5 2.11 The term "Class Representative" or "Named Plaintiff" or "Plaintiff" herein means
6 Matt McDuffee.

7 2.12 The term "Class Representative Enhancement Payment" as used herein means the
8 amount Class Counsel shall request be paid in accordance with this Agreement. Any Class
9 Representative Enhancement Payment shall be paid out of the Settlement Fund.

10 2.13 The term "Class Settlement Amount" or "Settlement Fund" as used herein means the
11 Three Million Dollars (\$3,000,000.00) to be made available by Sports Warehouse pursuant to this
12 Settlement, which represents Sports Warehouse's total liability under this Agreement.

13 2.14 The term "Court" as used herein means the San Diego County Superior Court for the
14 State of California, and any appellate court which may review any orders related to this Settlement.

15 2.15 The term "Execution" as used herein refers to the signing of this Agreement by all
16 signatories hereto.

17 2.16 The term "E-Mail Notice" as used herein refers to the Notice Of Proposed Class
18 Action Settlement and Final Approval Hearing, substantially in the form attached hereto as Exhibit
19 "B" and intended to be distributed via electronic mailing methods.

20 2.17 The term "Final Judgment" as used herein refers to the final order and judgment
21 granting final approval of this Settlement after the final approval hearing as provided for in this
22 Agreement.

23 2.18 The term "Net Settlement Fund" as used herein means the Class Settlement Amount,
24 less all of the following: Fee Award for Attorneys' Fees and Costs, Class Representative
25 Enhancement Payment, and Notice And Administration Costs.

26 2.19 The term "Notice" or "Website Notice" as used herein means a document
27 substantially in the form of the Notice of Proposed Class Action Settlement and Final Approval
28 Hearing, substantially in the form attached hereto as Exhibit "C" and intended, subject to Court

1 Approval, to be distributed via electronic mail to Settlement Class Members and/or made available
2 through the Settlement Website, explaining the terms of the Settlement, along with the claims, opt-
3 out, and objection processes.

4 2.20 The term "Notice And Administration Costs" as used herein means the costs to send
5 Notice, Email Notice, and otherwise administer the Settlement as contemplated by this Agreement.

6 2.21 The term "Notice Date" means the date by which the Notice Plan is completed,
7 which, subject to Court approval, shall be a date no later than thirty (30) days after the date of entry
8 of the Preliminary Approval Order.

9 2.22 The term "Notice Plan" means the plan of disseminating E-Mail Notice of the
10 Settlement to the Settlement Class, as set forth in this Agreement.

11 2.23 The term "Objection/Exclusion Deadline" means the date by which a written
12 objection to the Settlement or an exclusion request must be filed with the Court or postmarked
13 which, subject to Court approval, shall be no later than sixty (60) days after the Notice Date.

14 2.24 The term "Parties" as used herein means the Class Representative, the Settlement
15 Class Members, and Sports Warehouse.

16 2.25 The term "Preliminary Approval," shall mean the Court's order preliminarily
17 approving the Settlement.

18 2.26 The term "Releasing Settlement Class Members" as used herein means the Class
19 Representative and all Settlement Class Members, other than those who submit Requests For Opt
20 Out.

21 2.27 The term "Request For Opt Out" as used herein means the written request for opt out
22 to be sent by any Settlement Class Member not wishing to remain in the Settlement Class, which
23 must be submitted and in a form consistent with the parameters set forth in the Agreement.

24 2.28 The term "Settlement" as used herein means the compromise and settlement of the
25 Action as contemplated by this Agreement.

26 2.29 The term "Settlement Class" as used herein means all citizens of the State of
27 California, who (1) purchased merchandise from Sports Warehouse that was advertised with a price
28 comparison (2) who was a citizen of the State of California at the time of the purchase, and (3) made

1 his or her purchase between January 17, 2013 and October 23, 2017. Excluded from the Settlement
2 Class are Defendant, as well as its officers, employees, agents or affiliates, and any judge who
3 presides over this action, as well as all past and present employees, officers and directors of Sports
4 Warehouse.

5 2.30 The term "Settlement Class Member Released Claims" as used herein means the
6 claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than
7 those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges,
8 complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged
9 pursuant to this Agreement.

10 2.31 The term "Settlement Class Members" as used herein means the Named Plaintiff and
11 all members of the Settlement Class.

12 2.32 The term "Settlement Class Period" as used herein means the period of time from
13 January 17, 2013 to October 23, 2017.

14 2.33 The term "Settlement Effective Date" as used herein means the first day following
15 the last of the following occurrences:

16 2.33.1 The date of the Final Judgment; or

17 2.33.2 If an appeal or other judicial review has been taken or sought during the time
18 period to seek permission to appeal, the later of: (i) the date the Final Judgment is finally affirmed
19 by an appellate court with no possibility of subsequent appeal or other judicial review therefrom, or
20 (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility
21 of subsequent appeal or other judicial review; or (iii) if remanded to the trial court following an
22 appeal or other review, the date the Final Judgment is entered by the trial court after remand and the
23 time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final
24 Judgement has expired with no further appeal or other judicial review having been taken or sought.
25 If further appeal is sought after a remand, the time periods in this sub-section shall apply.

26 2.34 The term "Settlement Website" as used herein means an Internet website maintained
27 by the Claims Administrator containing the Notice, Claim Form, instructions on how to submit a
28

1 Claim Form, submit a Request For Opt-Out, and/or object to the Settlement, along with how to
2 obtain any additional information or get answers to any further questions.

3 3. RECITALS

4 3.1 On January 17, 2017, Plaintiff Matthew McDuffee filed a putative class action
5 complaint against Sports Warehouse in the Superior Court of California, San Diego County.

6 3.2 Concurrent with the complaint's filing, Plaintiff also sent Sports Warehouse a
7 California Consumers Legal Remedies Act ("CLRA") demand letter seeking remedy of the alleged
8 false discount violation on a class basis.

9 3.3. On February 13, 2017, Defendant Sports Warehouse removed the class action to the
10 United States District Court for the Southern District of California. Concurrent with its removal of
11 the litigation, Defendant also filed a motion to dismiss.

12 3.4 On April 14, 2017, before the motion to dismiss was heard, Plaintiff filed a first
13 amended complaint ("FAC") amending the class definition and requesting damages under the
14 CLRA on the grounds that Defendant did not agree to correct, repair, replace, or otherwise rectify
15 the violations within 30 days of receipt of Plaintiff's CLRA demand letter. Further, Plaintiff filed a
16 motion for remand of the litigation back to state court.

17 3.5 The Parties subsequently agreed and stipulated to the remand of this Action to the
18 San Diego County, Superior Court of California.

19 3.6 Sports Warehouse has filed a demurrer to the FAC, but further briefing was deferred
20 while the Parties conducted discovery and explored mediation. The Court has not ruled on any
21 motions.

22 3.7 Plaintiff's operative FAC alleges that Sports Warehouse engaged in and continues to
23 engage in a scheme of false price comparison advertising, as evidenced by Plaintiff's purchase of a
24 Babolat Pure Control 95 tennis racquet on October 11, 2016. Specifically, Plaintiff alleges that
25 Sports Warehouse advertised "Sale" prices that were substantially lower than its advertised "Was"
26 or former prices for its athletic products and apparel, but used false former "Was" prices at which it
27 hardly, if ever, offered, sold or intended to sell its merchandise. Plaintiff's allegations included
28 claims under California's (1) Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2)

1 False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; (3) Consumers Legal Remedies
2 Act, Cal. Civ. Code § 1750, *et seq.*; (4) Breach of contract; (5) Breach of express warranty; and (6)
3 Unjust enrichment. Plaintiff sued for damages, restitution, and injunctive relief.

4 3.8 Plaintiff and Class Counsel believe this Action is meritorious. Beginning as early as
5 October 2016, they have conducted a thorough investigation into the facts of this case and have
6 diligently pursued an investigation of Sports Warehouse’s price comparison advertising policies and
7 practices, including, but not limited to: (i) researching the applicable law and potential defenses; (ii)
8 drafting a CLRA demand letter; (iii) conducting discovery and meeting and conferring; (iv)
9 negotiating protective orders and an electronically-stored information (“ESI”) production protocol;
10 (v) interviewing other consumers of Sports Warehouse; (vi) reviewed voluminous documents; (vii)
11 retaining professional economists to assist with, among other things, valuation of damages and
12 engaging in multiple discussions with that economist (and along with defense counsel’s expert)
13 about methods and estimates of damages; (viii) reviewing and analyzing damage calculations and
14 data; (ix) consulting with an insurance coverage expert given presence of coverage counsel and
15 burning limits policy; (x) researching and analyzing settlements concerning previous price
16 comparison discount cases in order to evaluate range of settlement outcomes; (xi) drafting and
17 preparing mediation submissions; and (xii) engaging in two (2) full-day, non-consecutive arm’s-
18 length mediation sessions, as well as additional in-person caucuses, telephonic conferences, and e-
19 mail follow up, with experienced mediator Jill R. Sperber at Judicate West, at the conclusion of
20 which the Parties accepted the mediator’s proposal.

21 3.9 Based on their own independent investigation and evaluation, Class Counsel is of the
22 opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the
23 Settlement Class Members, in light of all known facts and circumstances, including the risk of
24 significant delay, the defenses asserted by Sports Warehouse, trial risk and appellate risk.

25 3.10 Sports Warehouse denies liability and wrongdoing of any kind associated with the
26 claims alleged and contends that this Action is not appropriate for class treatment. Sports Warehouse
27 continues to assert that the Plaintiff will not be able to establish entitlement to damages, any
28 restitutionary remedy, or injunctive relief at trial. Sports Warehouse continues to assert that it has

1 complied with all applicable provisions of California's price comparison advertising laws. Sports
2 Warehouse further states that despite its good faith belief that it is not liable for any of the claims
3 asserted, and despite its good faith belief that certification was not appropriate, Sports Warehouse
4 will not oppose the Court's certification of the Settlement Class contemplated by this Agreement
5 solely for purposes of effectuating this Settlement. Sports Warehouse's agreement to certification
6 of the Settlement Class is without prejudice to its right to oppose certification of a class or oppose
7 any other claim in the Action, should the Agreement not be approved or implemented for any reason.

8 3.11 In the event the Settlement is not approved, this Agreement shall be deemed null and
9 void and be of no further force or effect and may not be used by either Party for any purpose in this
10 or any other action.

11 3.12 The entry of Final Judgment in this Action shall release all claims which were or
12 which could have been alleged based on factual allegations of the operative complaint by Settlement
13 Class Members against Sports Warehouse, with the exception of any claims which might be retained
14 by Settlement Class Members who exclude themselves from the Settlement, if any. The Parties agree
15 to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of
16 this Settlement, and to effectuate its terms.

17 4. **CERTIFICATION OF THE SETTLEMENT CLASS**

18 4.1 The Parties and Class Counsel agree that, if approved, certification of the Settlement
19 Class is a conditional certification for settlement purposes only and if, for any reason, the Court does
20 not grant final approval of the Settlement, or if final approval is not granted following appeal of any
21 order by the Court, the certification of the Settlement Class shall be deemed null and void, and each
22 Party shall retain all their respective rights as they existed prior to the execution of the Settlement
23 Agreement.

24 5. **SETTLEMENT CLASS**

25 5.1 The Parties agree to the following definition of the Settlement Class, and request
26 conditional certification for settlement purposes only, under the terms of this Agreement:

27 All citizens of the State of California, who (1) purchased merchandise from Sports
28 Warehouse that was advertised with a price comparison (2) who was a citizen of the

1 State of California at the time of the purchase, and (3) made his or her purchase
2 between January 17, 2013 and October 23, 2017. ("Settlement Class Members")

3 Excluded from the Settlement Class are Defendant, as well as its officers, employees, agents or
4 affiliates, and any judge who presides over this action, as well as all past and present employees,
5 officers and directors of Sports Warehouse.

6 5.2 Solely to settle the Action only, the Parties stipulate and agree that the requisites for
7 establishing class certification regarding the Settlement Class Members have been met and are met.

8 The Parties stipulate and agree that:

9 5.2.1 The Settlement Class Members are ascertainable and so numerous as to make
10 it impracticable to join all Settlement Class Members;

11 5.2.2 There are common questions of law and fact;

12 5.2.3 Plaintiff believes his claims are typical of the claims of the Settlement Class
13 Members;

14 5.2.4 Plaintiff and Class Counsel will fairly and adequately protect the interests of
15 the Settlement Class Members;

16 5.2.5 The prosecution of separate actions by Settlement Class Members would
17 create the risk of inconsistent adjudications and risk establishing incompatible standards of conduct;
18 and

19 5.2.6 Plaintiff believes questions of law and fact common to the Settlement Class
20 Members predominate over individual questions and that a class action is superior to other available
21 means for the fair and efficient adjudication of the controversy.

22 5.3 The Settlement is conditioned on the Court certifying this Settlement Class.

23 5.4 The Settlement described herein will resolve fully and finally all claims based on the
24 factual allegations in the operative complaint, due or to be due, in the Action by all Settlement Class
25 Members who do not opt out of the Settlement, as well as all claims listed herein.

26 6. TERMS OF SETTLEMENT

27 6.1 Subject to the other terms and conditions of this Agreement, and subject to Court
28 approval, Sports Warehouse agrees to pay the total amount of Three Million Dollars (\$3,000,000)

1 as a non-reversionary Class Settlement Amount to settle this case on a claims-made basis and to pay
2 timely, valid, and approved claims of Settlement Class Members.

3 6.1.1 Defendant Sports Warehouse shall pay the gross Class Settlement Amount to
4 a qualified Settlement Fund established by the Claims Administrator within ten (10) calendar days
5 from the Settlement Effective Date ("Settlement Fund").

6 6.1.2 The Claims Administrator may periodically invoice Sports Warehouse for
7 Notice And Administration Costs incurred prior to the Settlement Effective Date. Any such amounts
8 paid by Sports Warehouse to the Claims Administrator shall be deducted from the Settlement Fund
9 due and payable within ten (10) calendar days from the Settlement Effective Date.

10 6.1.3 All of the following shall be paid from the Settlement Fund: Attorneys' Fees
11 and Costs Award; Class Representative Enhancement Payment; and Notice And Administration
12 Costs subject to Court approval. Sports Warehouse agrees to pay such deductions from the
13 Settlement Fund as follows:

14 6.1.3.1 Reasonable Attorneys' Fees and Costs. Class Counsel shall apply to
15 the Court for an award of reasonable attorneys' fees not to exceed one-third of the Class Settlement
16 Amount and an award of their actual and reasonable litigation expenses not to exceed \$30,000.
17 Sports Warehouse will not oppose Class Counsel's application for an award of Attorneys' Fees and
18 Costs sought in accordance with this Agreement. In the event that the Court does not approve the
19 Attorneys' Fees and Costs requested by Class Counsel, or if the Court awards Attorneys' Fees and
20 Costs in an amount less than that requested by Class Counsel, the amount that is not awarded will
21 be available for distribution to the Settlement Class and the Court's decision shall not affect the
22 validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the
23 Settlement or for rendering the entire Settlement null, void, or unenforceable.

24 6.1.3.2 Reasonable Class Representative Enhancement Payment. Class
25 Counsel intends to seek \$5,000 for the Class Representative. Sports Warehouse will not oppose the
26 application. Any request made by Class Counsel in accordance with this Section is without prejudice
27 to the Class Representative's right to file a Claim Form as a Settlement Class Member. In the event
28 that the Court does not approve the Class Representative Enhancement Payment, or the Court

1 awards an amount that is less than sought, the amount that is not awarded will be available for
2 distribution to the Settlement Class and shall not affect the validity and enforceability of the
3 Settlement and shall not be a basis for anyone to seek to void the Settlement or for rendering the
4 entire Settlement null, void, or unenforceable.

5 6.1.3.3 Notice And Administration Costs. The actual Notice and
6 Administration Costs incurred in accordance with this Agreement in an amount not to exceed
7 \$175,000.

8 6.1.4 The remaining amount shall constitute the Net Settlement Fund to be made
9 available to Settlement Class Members who submit valid and timely Claim Forms (“Authorized
10 Claimants”).

11 6.1.4.1 The Claims Administrator will review Defendant’s sales and
12 transactions data to calculate the total number of compensable qualifying purchases for all known
13 and identifiable Settlement Class Members during the Settlement Class Period.

14 6.1.4.2 The respective number of compensable qualifying purchases for each
15 Settlement Class Member will then be divided by the total compensable qualifying purchases for all
16 Settlement Class Members, resulting in a payment ratio for each Settlement Class Member. Each
17 Settlement Class Member’s payment ratio will then be multiplied by the Net Settlement Fund to
18 determine his or her estimated settlement payment from the Net Settlement Fund.

19 6.1.4.3 If not all Settlement Class Members submit timely and valid Claim
20 Forms, then the settlement payments to each Authorized Claimant shall be increased *pro rata*
21 based on his or her number of compensable qualifying purchases.

22 6.1.5 Authorized Claimants may elect to receive their individual settlement
23 payments either as a cash payment by check or by ACH/direct deposit. An option to make the
24 election between check or ACH/direct deposit will be provided on the Claim Form. The costs of
25 mailing cash payments to Authorized Claimants shall be part of the Notice And Administration
26 Costs as set forth in this Agreement.

27 6.2 Injunctive Relief, Changed Business Practices, and Compliance Program. As a direct
28 result of this Action, Sports Warehouse agrees that its advertising and pricing practices as of the

1 date of this Settlement Agreement, and continuing forward, will not violate Federal or California
2 law, including California's specific price-comparison advertising statutes.

3 6.2.1 In connection with this Action, Sports Warehouse has changed its policies
4 and practices regarding its price comparison advertisements. In doing so, Sports Warehouse has
5 incurred in excess of \$160,000 by, among other thing, modifying software program(s) and related
6 websites, investigating its advertisement practices, training employees, and retaining consultants.
7 As a result of these changes, Sports Warehouse has stopped using price comparison advertisements
8 in selling its products.

9 6.2.2 As a further direct result of this action, to the extent that Sports Warehouse
10 decides to use price comparison advertisements in the future, it will implement a compliance
11 program, which will consist of periodic (no less than once a year) monitoring, training, and auditing
12 to ensure compliance with Federal and California price comparison laws. The value of this
13 compliance program is estimated at \$250,000 over a ten-year period.

14 7. NOTICE TO THE SETTLEMENT CLASS

15 7.1 Given the expected size of the Settlement Class, the Parties agree that direct notice
16 via e-mail ("E-Mail Notice") is the best practicable notice for those Settlement Class Members for
17 which the vast majority of such information exists. In those limited circumstances, where only a
18 mailing address is available for a Settlement Class Member, or for all Settlement Class Members
19 whose E-Mail Notice (substantially in the form attached hereto as Exhibit "B") was not deliverable,
20 a Postcard Notice shall be mailed by first class mail substantially in the form attached hereto as
21 Exhibit "D". The combination of E-Mail Notice, plus Postcard Notice by mail as necessary, is
22 intended to provide direct notice to all Settlement Class Members.

23 7.2 The E-Mail Notice and the Postcard Notice shall provide links and/or direct
24 Settlement Class Members the Settlement Website to access additional information and to submit
25 their Claim Form.

26 7.3 The long-form Notice substantially in the form attached hereto as Exhibit "C" will
27 be made available on the interactive Settlement Website that is to be hosted by the Claims
28 Administrator. The Notice shall advise Settlement Class Members of the deadline for submitting

1 Claim Forms, their right to opt out of the Settlement or to object to the Settlement, the process by
2 which such opt-outs or objections must be made, and the date set by the Court for a hearing on final
3 approval of the Settlement.

4 7.4 Sports Warehouse will provide the Class List to the Claims Administrator in
5 sufficient time for notice to go out. All Class List information shall be treated as confidential, the
6 contents of the Class List shall not be shared with third parties other than the Claims Administrator,
7 and the Claims Administrator shall be required to preserve the confidentiality of the Class List.

8 7.5 The E-Mail Notice shall be sent by the Claims Administrator to Settlement Class
9 Members within thirty (30) days following the Court's Preliminary Approval of the Settlement,
10 provided that any challenges or other barriers to the use of E-Mail Notice have been resolved. In
11 the event an E-Mail Notice is "bounced-back" or otherwise undelivered, a Postcard Notice shall be
12 sent via first-class U.S. Mail to that Settlement Class Member as soon as practicable, but in no event
13 longer than five (5) calendar days later. The Claims Administrator shall run a Notice Of Change Of
14 Address ("NCOA") search, or take other reasonable steps to effectuate delivery and mailing to
15 physical address as deemed appropriate.

16 7.6 The Notice, Claim Form, along with instructions on how to Request Opt-Out and/or
17 object to the Settlement, a copy of the Settlement Agreement and other materials as agreed to by the
18 Parties shall be available on the Settlement Website. The Claims Administrator shall also establish
19 a toll-free phone line to respond to inquiries from Settlement Class Members. The Settlement
20 Website address and the toll-free phone number will be included in the E-Mail Notices and Postcard
21 Notices that are distributed.

22 8. VERIFICATION PROCESS

23 8.1 In order to be eligible to receive a share of the Class Settlement Amount, a Settlement
24 Class Member must submit a completed Claim Form (substantially in the form attached hereto as
25 Exhibit "A") within sixty (60) days from the Notice Date. Only those Settlement Class Members
26 who submit an approved Claim Form shall be eligible to receive an individual settlement payment.
27 In order for a Claim Form to be considered timely, the Claims Administrator must receive the
28 completed Claim Form by 11:59 p.m. Pacific Time on the sixtieth (60th) day from the Notice Date.

1 These deadlines shall be set forth clearly in the Notice, E-Mail Notice, Postcard Notice, and Claim
2 Form.

3 8.2 Claim Forms shall be executed under penalty of perjury, but need not be notarized.

4 8.3 If a Settlement Class Member disputes his or her compensable qualifying purchases
5 as set forth on the Claim Form, he or she must follow the directions on the Claim Form and/or
6 Notice, including preparing a statement setting forth the total number of compensable qualifying
7 purchases such person believes in good faith is correct, authorizing the Claims Administrator to
8 review the Settlement Class Member's customer records to determine such information, and
9 attaching any relevant documentation in support thereof. The Settlement Class Member must
10 submit the completed statement and documentation within sixty (60) days of the Notice Date.

11 8.3.1 Upon timely receipt of any such challenge, the Claims Administrator shall
12 notify Class Counsel and counsel for Defendant who may submit a response within three days and
13 thereafter the Claims Administrator will review the information and documentary evidence
14 submitted provided as well as any customer records available.

15 8.3.2 The Claims Administrator shall decide the total number of compensable
16 qualifying purchases made by the Settlement Class Member and such decisions shall be final and
17 non-appealable. The Claims Administrator shall send written notice of the decision on any such
18 claim to the Settlement Class Member, to Class Counsel, and counsel for Defendant within ten (10)
19 calendar days of receipt of Settlement Class Member's challenge.

20 8.4 Settlement Class Members may only submit one Claim Form. The Claims
21 Administrator shall send to all Settlement Class Members who have submitted an incomplete Claim
22 Form a notice of deficiency with instructions on how to cure the deficiency. Settlement Class
23 Members will have thirty (30) days to cure deficiencies.

24 8.5 Within twenty (20) days after the deadline to submit Claim Forms, the Claims
25 Administrator shall provide a spreadsheet to Class Counsel and to counsel for Defendant that
26 contains sufficient information for the Parties to determine the number of approved Claim Forms
27 made by Settlement Class Members, number of Requests to Opt-Out, information regarding any
28

1 objections, etc. The Claims Administrator shall also provide information regarding rejected Claim
2 Forms, as well as the reasons why each Claim Form was rejected.

3 9. OPT-OUT PROCESS

4 9.1 A Settlement Class Member who wishes to exclude himself or herself from this
5 Settlement and from the release of claims pursuant to this Settlement must mail a written opt-out
6 statement to the Claims Administrator at the address listed in the E-Mail Notice/Postcard Notice.
7 Each Settlement Class Member who elects to opt out of the Settlement must send, by first-class U.S.
8 mail, a written notice containing: (a) the name, address, and telephone number of the person
9 requesting exclusion; (b) the name of this Action; (c) a clear statement that the person is requesting
10 exclusion from the Settlement Class and does not want to participate in the Settlement; and (d) his
11 or her signature. To be effective, an opt-out statement must be postmarked on or before the sixty
12 (60) calendar days after the Notice Date (the "Exclusion Deadline"). Individuals who opt out are
13 not entitled to any monetary payment under this Agreement. The Claims Administrator will provide
14 copies of all opt-out statements that are timely received to all counsel.

15 9.2 A Settlement Class Member who submits a request to opt-out is not eligible to
16 recover a share of the Class Settlement Amount. No Settlement Class Member may submit both a
17 request to opt-out and a Claim Form and, if a Settlement Class Member submits both a request to
18 opt-out and a Claim Form, the Claim Form will govern.

19 9.3 The Claims Administrator shall maintain a list of persons who have excluded
20 themselves and shall provide such list to the Parties upon request. The Claims Administrator shall
21 retain the originals of all requests to opt-out (including the envelopes with the postmarks) received
22 from Settlement Class Members, and shall make copies or the originals available to Sports
23 Warehouse or Class Counsel upon request.

24 9.4 If ten percent (10%) or more of the Settlement Class make a valid request to be
25 excluded from the Settlement Class, then Sports Warehouse will have the right, but not the
26 obligation, to void the Agreement. If Sports Warehouse exercises that right to void the Agreement,
27 then the Parties will have no further obligations under the Agreement, including any obligation by
28 Sports Warehouse to pay the Class Settlement Amount, or any amounts that otherwise would have

1 acknowledged, release and forever discharge Sports Warehouse (and each of its current and former
2 parents, subsidiaries, affiliates, controlled companies, officers, directors, shareholders employees,
3 predecessors, successors, assigns, insurers, and attorneys) (the “Released Parties”) from any and all
4 claims, demands, debts, liabilities, actions, and causes of action of every kind and nature, actual or
5 potential, suspected or unsuspected, direct or indirect, contingent or fixed, that were asserted in the
6 Action, or that could have been asserted but were not asserted in the Action or in any other court or
7 forum, whether known or unknown, on the basis of, connected with, arising out of, or related in
8 whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions,
9 circumstances, and occurrences that were alleged, asserted, described, set forth or referred to in the
10 Action, whether such allegations were or could have been based on common law or equity, or on
11 any statute, rule, regulation, order, or law, whether federal, state, or local, including, without
12 limitation, claims under federal or state unfair competition and false advertising laws as pertains to
13 the Released Parties between January 17, 2013 to October 23, 2017 (the “Released Claims”).

14 11.2. Releasing Settlement Class Members understand and agree that the release of the
15 Settlement Class Member Released Claims is a full and final general release applying to both those
16 Settlement Class Member Released Claims that are currently known, anticipated, or disclosed to
17 Releasing Settlement Class Members and to all those Settlement Class Member Released Claims
18 that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class
19 Members arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims
20 set forth in the Action; or (ii) Sports Warehouse’s conduct with respect to the Action. Releasing
21 Settlement Class Members acknowledge that the facts could be different than they now know or
22 suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for
23 the good and valuable consideration at forth herein, all Releasing Settlement Class Members further
24 waive any and all rights or benefits that they as individuals or the class may not have as a result of
25 the alleged facts, circumstances, and occurrences underlying the claims set forth in the Action under
26 the terms of Section 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN
2 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT
3 WITH DEBTOR.

4 11.3 Each of the releases in the paragraph may be pleaded as a full and complete defense
5 to any action, suit or other proceeding that may be instituted or prosecuted with respect to any of
6 the Released Claims. The Parties fully agree that this Agreement may be pleaded as necessary for
7 the purpose of enforcing this Agreement in any court of competent jurisdiction.

8 11.4 The Parties acknowledge that this Agreement, including the releases provided in this
9 section, reflects a compromise of disputed claims.

10 11.5 The Final Judgment shall incorporate the terms of this release.

11 **12. DUTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL**

12 12.1 Class Counsel shall apply to the Court for the entry of an order granting Preliminary
13 Approval of the Settlement substantially in the following form:

14 12.1.1 Conditionally Certifying the Settlement Class;

15 12.1.2 Preliminarily approving the Settlement;

16 12.1.3 Approving as to form and content the proposed notices and notice plan,
17 including the Notice, E-Mail Notice, Postcard Notice, and Claim Form;

18 12.1.4 Scheduling a fairness hearing on the question of whether the proposed
19 Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

20 12.1.5 Approving Matt McDuffee as Class Representative;

21 12.1.6 Approving CounselOne, P.C. as Class Counsel for the Settlement Class; and

22 12.1.7 Approving CPT Group, Inc. as Claims Administrator.

23 12.2 Sports Warehouse shall cooperate with Class Counsel as necessary to obtain
24 Preliminary Approval.

25 **13. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL**

26 13.1 Following Preliminary Approval by the Court of the Settlement, and prior to the final
27 fairness hearing, Class Counsel will submit a proposed Final Judgment. The proposed Final
28 Judgment shall:

1 Action. Likewise, nothing in this Agreement shall be construed or deemed an admission by Plaintiff
2 or the Settlement Class with regards to the validity of any of Sport Warehouse's defenses or
3 affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid
4 further disputes and litigation with the attendant inconvenience and expenses.

5 15.2 This Agreement, and all related documents, including any Notice/E-Mail
6 Notice/Postcard Notice, Claim Form, written requests to opt-out or objections submitted by
7 Settlement Class Members and all other actions taken in implementation of the Settlement, including
8 any statements, discussions, or communications, and any materials prepared, exchanged, issued, or
9 used during the course of the negotiations leading to this Agreement, are settlement documents and
10 shall be inadmissible in evidence and shall not be used for any purpose in this Action or any other
11 judicial, arbitral, administrative, investigative, or other court tribunal, forum, or proceeding, or any
12 other litigation against Sports Warehouse for any purpose, except in an action or proceeding to
13 approve, interpret, or enforce the terms of this Agreement.

14 16. VOIDING THE AGREEMENT

15 16.1 In the event that this Settlement is not approved, or if for any reason the Settlement
16 Effective Date does not occur, the Settlement shall be deemed null, void, and unenforceable and
17 shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in
18 any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other
19 proceeding, or other litigation against Sports Warehouse.

20 16.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the
21 amount request by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by
22 Class Counsel are reduced, that finding shall not be a basis for rendering the entire Settlement
23 Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by
24 the Court regarding the Attorneys' Fees and Costs or Class Representative Enhancement Payment.

25 17. SIGNATORIES' AUTHORITIES

26 17.1 The respective signatories to this Agreement each represent that they are fully
27 authorized to enter into this Settlement on behalf of the respective Parties for submission to the
28 Court for preliminary and final approval.

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18. NO PRIOR ASSIGNMENTS

18.1 The Parties represent, covenant, and warrant that they have not directly, or indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber, to any person or entity any portion of any liability, claim, demands, action, cause of action, or right released and discharged in this Settlement.

19. MISCELLANEOUS PROVISIONS

19.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor or of against any party by reason of the extent to which any party of her or his counsel participated in the drafting of this Settlement.

19.2 Captions and interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

19.3 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

19.4 Integration Clause. This Agreement, the Exhibits hereto, the Supplemental Agreement Regarding Opt-Outs, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

1 19.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of,
2 the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.


3 19.6 Class Counsel Signatories. It is agreed that because the Settlement Class Members are
4 so numerous, it is impossible or impractical to have each Settlement Class Member execute this
5 Settlement. The Notices will provide all Settlement Class Members with a summary of the
6 Settlement, and will advise all Settlement Class Members of the binding nature of the release.

7 19.7 Counterparts. This Agreement may be executed by facsimile signature and in any
8 number of counterparts, and when each party has signed and delivered at least one such counterpart,
9 each counterpart shall be deemed an original, and, when taken together with other signed
10 counterparts, shall constitute one and the same Agreement which shall be binding upon and
11 effective as to all Parties.

12 19.8 Enforcement. In the event that one or more of the Parties to this Agreement institutes
13 any legal action or other proceeding against any other party or parties to enforce the provisions of
14 this Agreement or to declare rights and/or obligations under this Agreement, the successful party or
15 parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees
16 and costs incurred in connection with any enforcement actions.

17 19.9 Applicable Law. This Agreement shall be governed by California law without regard
18 to its choice of law or conflicts of law principles or provisions.

19
20 Dated: November 3, 2017
21 By: 
22 Matt Mc Duff, individually and on behalf of
23 the Settlement Class

24
25 Dated: November 3, 2017
26 SPORTS WARLHOUSE
27 By: 
28 Its: Matt

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19
20 Dated: November __, 2017

By: _____

21
22 Matt McDuff, individually and on behalf of
the Settlement Class

23
24 Dated: November 3, 2017

SPORTS WAREHOUSE

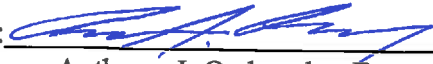
25
26 By: 
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1 **APPROVED AS TO FORM BY COUNSEL:**

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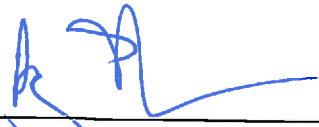
Dated: November 3, 2017

COUNSELONE, P.C.

By: 
Anthony J. Orshansky, Esq.
Justin Kachadoorian, Esq.
Scott E. Brown, Esq.
Alexandria R. Kachadoorian, Esq.

Dated: November 3, 2017

RUTAN & TUCKER, LLP

By: 
Alejandro S. Angulo, Esq.
Bradley A. Chapin, Esq.
Golsa Honarfar, Esq.
Attorneys on behalf of Defendant Sports
Warehouse