

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*” or “*Agreement*”) is entered into by and between plaintiff Harley Seegert, individually, and in his representative capacity on behalf of all others similarly situated (“*Plaintiff*”), on the one hand, and defendant Lamps Plus, Inc. (“*Lamps Plus*” or “*Defendant*”), on the other (collectively referred to as the “*Parties*” or singularly “*Party*”).

### RECITALS

A. On July 5, 2017, Plaintiff Harley Seegert filed a putative class action lawsuit against Lamps Plus in the Superior Court of California, County of San Diego, Case No. 37-2017-00024439-CU-BT-CTL, asserting false and/or deceptive advertising claims based on allegations that Lamps Plus’s advertisement of discounts on merchandise improperly leads consumers to believe that they are receiving a discount on their purchase.

B. On August 9, 2017, Defendant removed the action to the United States District Court for the Southern District of California, contending that the complaint satisfied the jurisdictional requirements under the Class Action Fairness Act (“CAFA”). The case was assigned to the Honorable District Court Judge Cynthia Bashant and the Honorable Magistrate Judge Jan M. Adler. The District Court assigned the case number 17-cv-1602-BAS (JMA) to the matter.

C. On September 14, 2017, Defendant answered the complaint and asserted fourteen affirmative defenses.

D. Plaintiff and Lamps Plus thereafter engaged in initial disclosures under Rule 26 and conducted an investigation of the facts and analyzed the relevant legal issues in regard to the claims asserted in the complaint and Lamps Plus’s potential defenses.

E. On May 10, 2018, the Parties participated in a full day mediation session in Los Angeles, California before Hon. Carl J. West (ret.) of JAMS, Inc.

F. As a result of the progress made at the mediation session and the subsequent discussions, the Parties have reached a Settlement of the Action (defined below), the terms of which are set forth in this Settlement Agreement.

G. Plaintiff and his Counsel believe that the claims asserted in the Complaint (defined below) have merit. Lamps Plus has denied and continues to deny any and all allegations of wrongdoing alleged in the Action (defined below) and believes the claims asserted by Plaintiff are without merit. Nonetheless, the Parties have concluded that litigation could be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement in order to limit further expense, inconvenience, and uncertainty. The Parties also have considered the uncertainties of trial and the benefits to be obtained under the proposed Settlement and have considered the costs, risks, and delays associated with the prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiff or Lamps Plus.

**H.** It is now the intention of the Parties and the objective of this Settlement Agreement to avoid the costs of trial and settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Action.

#### AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Plaintiff, the Class and Lamps Plus, agree to Settlement of the Action, subject to Court approval, under the following terms and conditions.

**1. DEFINITIONS.** In addition to the definitions included in the Recitals above, and in later sections of the Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

**1.1** As used herein, the term “*Action*” means the lawsuit styled *Seegert v. Lamps Plus, Inc.*, Case No. 3:17-cv-1602-BAS-JMA (S.D. Cal.).

**1.2** As used herein, the term “*Authorized Claimant*” means any Class Member who either (i) receives notice via online media and timely submits a complete and sufficient Claim Form or (ii) receives direct notice via email or mail, according to the terms of this Settlement Agreement and does not validly request exclusion from the Class.

**1.3** As used herein, the term “*Claim*” means a request made by a Class Member in order to receive a Settlement Voucher pursuant to the procedures stated in Section 3.6.

**1.4** As used herein, the term “*Claim Response Deadline*” means the deadline by which Class Members must deliver Claim Forms. The Claim Response Deadline shall be one hundred and twenty (120) calendar days after Defendant, through the Claims Administrator, issues Notice to the Class.

**1.5** As used herein, the term “*Claim Form*” means the form a Class Member must complete and submit to receive a Settlement Voucher under this Agreement if that Class Member did not receive direct notice via email or mail. The Claim Form must be substantially similar to the form attached as **Exhibit F**.

**1.6** As used herein, the term “*Claimant*” means any Class Member who submits a Claim Form under this Agreement.

**1.7** As used herein, the term “*Claims Administrator*” means Epiq Class Action & Claims Solutions, Inc. and any successors to that entity, that Lamps Plus designates (with approval from Class Counsel, whose approval shall not be unreasonably withheld), to administer the notice, claims, and Settlement relief distribution process provided for in the Settlement Agreement.

**1.8** As used herein, the term “*Claims Administrator Costs*” means all costs incurred by the Claims Administrator, including the cost of providing notice to the Class and administering the Settlement.

**1.9** As used herein, the terms “*Class*” and “*Class Members*” mean: All Lamps Plus customers who purchased Lamps Plus branded or trademarked merchandise bearing a “Compare At” price tag in the State of California from July 5, 2013 to the date of preliminary approval. Excluded from the Class are Lamps Plus’s Counsel, Lamps Plus’s officers, directors and employees, and the judge presiding over the Action.

**1.10** As used herein, the term “*Class Period*” means: July 5, 2013 through the date that the Court enters the Preliminary Approval Order.

**1.11** As used herein, the term “*Class Released Claims*” means all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have, arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged or otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, including, but not limited to, any and all claims related in any way to the advertisement of prices by Lamps Plus, Inc. or any of its subsidiaries or affiliates.

**1.12** As used herein, the term “*Class Releasers*” means Plaintiff and all Class Members who do not timely and sufficiently request to be excluded from the proposed settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives or anyone who can claim by or through them.

**1.13** As used herein, the term “*Complaint*” means the Complaint filed by Plaintiff on July 5, 2017 in the San Diego Superior Court, Case No. 37-2017-00024439-CU-BT-CTL.

**1.14** As used herein, the term “*Court*” means the United States District Court for the Southern District of California.

**1.15** As used herein, the term “*Defendant*” means Lamps Plus, Inc.

**1.16** As used herein, the terms “*Defendant’s Counsel*” and “*Lamps Plus’s Counsel*” means the law firm of Sheppard Mullin Richter & Hampton, LLP.

**1.17** As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Lamp’s Plus’s Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Settlement Agreement via electronic mail. The Email Notice must be substantially similar to the form attached as **Exhibit C**.

**1.18** As used herein, the term “*Fairness Hearing*” means the hearing(s) to be held by the Court to consider and determine whether the proposed Settlement of this Action as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Settlement contained in this Settlement Agreement should be entered.

**1.19** As used herein, the terms “*Final Order*” and “*Order Granting Final Approval of Class Settlement*” mean the Court order granting final approval of the Settlement of this Action

following the Fairness Hearing. The proposed Final Order that Plaintiff submits to the Court for its approval must be substantially similar to the form attached as **Exhibit G**.

**1.20** As used herein, the term “*Final Settlement Date*” means two Court days after the Final Order and Judgment become “final.” For the purposes of this section, “final” means after [i] sixty-one (61) calendar days after the entry of the Final Order and Judgment, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or [ii] in the event that an appeal or other effort to obtain review has been initiated, the date after any and all such appeals or other review(s) have been finally concluded in favor of the Final Order and Judgment, any mandates have been returned to the Court, and the Final Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise. In this regard, it is the intention of the parties that the Settlement shall not become effective until the Court’s order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

**1.21** As used herein, the term “*Full Notice*” means the full legal notice of the proposed Settlement terms, as approved by Class Counsel, Lamps Plus’s counsel, and the Court, to be provided to Class Members under Section 3.3 of this Settlement Agreement. The Full Notice must be substantially similar to the form attached as **Exhibit B**.

**1.22** As used herein, the terms “*Judgment*” and “*Final Judgment*” mean a document labeled by the Court as such and that has the effect of a judgment under Fed. R. Civ. P. 54. The proposed Judgment that Plaintiff will submit to the Court for entry must be substantially similar to the form attached as **Exhibit H**.

**1.23** As used herein, the term “*Mail Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Lamps Plus’s Counsel, and the Court, to be provided to Class members under Section 3.3 of this Settlement Agreement via U.S. Mail. The Mail Notice must be substantially similar to the form attached as **Exhibit D**.

**1.24** As used herein, the term “*Named Plaintiff*” means Harley Seegert in his individual capacity only.

**1.25** As used herein, the term “*Objection or Exclusion Response Deadline*” means the deadline by which Class Members must deliver objections or requests for exclusion. The Objection or Exclusion Response Deadline shall be no later than ninety (90) days following the distribution of the Email Notice and Mail Notice.

**1.26** As used herein, the term “*Online Media Notice*” means a legal notice directing Class Members to the Settlement Website, as approved by Class Counsel, Lamps Plus’s Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Settlement Agreement via the Internet. The Online Media Notice must be substantially similar to the form attached as **Exhibit E**.

**1.27** As used herein, the terms “*Plaintiff’s Counsel*” and “*Class Counsel*” mean the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP.

**1.28** As used herein, the terms “*Preliminary Approval Order*” or “*Preliminary Approval and Provisional Class Certification Order*” mean the order provisionally certifying the Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiff submits to the Court for its approval must be substantially similar to the form attached as **Exhibit A**.

**1.29** As used herein, the term “*Qualifying Purchase*” means a purchase of any Lamps Plus branded and/or trademarked product bearing a “Compare At” price tag at a Lamps Plus retail store located in California or purchased online by a consumer located within the State of California.

**1.30** As used herein, the term “*Released Parties*” means Lamps Plus, Inc. and each of its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, principals, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with it, or any of them.

**1.31** As used herein, the term “*Settlement*” means the Settlement of the Action and related claims effectuated by this Settlement Agreement.

**1.32** As used herein, the term “*Settlement Website*” means the website that shall be created for settlement administration purposes and administered by the Claims Administrator.

**1.33** As used herein, the term “*Unknown Claims*” means with respect to the Class Released Claims only, Plaintiff and the Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

As part of this agreement, Plaintiff and the Class Members state that they fully understand that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Plaintiff and the Class Members and the Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that the Settlement Agreement will remain effective despite any difference in facts. Further, Plaintiff and the Class Members agree that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the Settlement would not have been accepted.

**1.34** As used herein, the term “*Voucher*” means a voucher good for a purchase in a Lamps Plus retail store in the United States for either (i) \$18 off a purchase (no minimum purchase), or (ii) 20% off a purchase (of up to \$150 in value) or \$30 in credit against the purchase of any item valued at over \$150. The Vouchers will have no expiration date. The Vouchers are good for a single use. The Vouchers are not stackable and may not be combined with any other coupon or

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promotional offer. However, the Vouchers may be used on items that are on sale or otherwise discounted. The Vouchers shall not be redeemable for cash, and will not be replaced if lost, stolen, or damaged. The Vouchers are transferrable.

## 2. SETTLEMENT TERMS.

**2.1 Award to the Class.** To each Authorized Claimant, Lamps Plus shall issue:

- (a) One (1) Voucher worth \$18 that may be used for the purchase of any item in a Lamps Plus retail store; or
- (b) One (1) coupon for 20% off the purchase of any item in a Lamps Plus store up to \$150 in value, or for \$30 in credit against the purchase of any item valued at over \$150.

The Authorized Claimant will be able to elect which form of the Voucher he or she wishes to redeem at the time of purchase.

**2.2** If the Court approves the Settlement of this Action, Lamps Plus or the Claims Administrator, shall distribute the Vouchers to either the email address or mailing address Authorized Claimants designated on their Claim Form within fifteen (15) calendar days of the Final Settlement Date. Class Members who receive direct notice (the Class Members for whom Lamps Plus has valid email or mailing addresses), need not do anything in response to the Notice and will automatically receive a Voucher within sixty (60) calendar days of the Final Settlement Date. Lamps Plus will declare that it maintains valid email and/or mailing addresses for at least 930,835 potential Class Members.

**2.3 Change in Practices.** If the Court approves the Settlement of this Action, then the Parties agree that Lamps Plus will post notice in each of its California Lamps Plus retail stores that clarifies and further explains to customers the meaning of the “Compare At” terminology on its price tags. Plaintiff’s Counsel agrees that the additional notification to be provided by Lamps Plus under this Section will avoid confusion by future customers regarding Lamps Plus’s “Compare At” price tags.

**2.4 Individual Settlement Award to Named Plaintiff.** The Parties acknowledge that Named Plaintiff must petition the Court for approval of any award to Named Plaintiff for an incentive award (the “Individual Settlement Award”). Named Plaintiff agrees that he will not seek an Individual Settlement Award of greater than \$5,000. Lamps Plus agrees not to object to Named Plaintiff’s request for an Individual Settlement Award of up to a maximum payment of \$5,000. Named Plaintiff further agrees that, in any event, Lamps Plus will not be obligated to pay any Individual Settlement Award in excess of \$5,000 for Named Plaintiff. If the Court approves the Settlement of this Action and an Individual Settlement Award to Named Plaintiff, Lamps Plus agrees to pay the award approved by the Court up to \$5,000 for Named Plaintiff within ten (10) calendar days after both of the following events occur (a) the Final Settlement Date, and (b) Named Plaintiff provides Lamps Plus with a completed and valid Form W-9. No interest shall be paid on the Individual Settlement Award.

**2.5 Attorneys' Fees and Costs.** The Parties acknowledge that Plaintiff must petition the Court for approval of any award to Class Counsel for attorneys' fees and costs. Plaintiff and Class Counsel agree that Class Counsel will not seek an award greater than \$750,000.00 (total) for fees and costs. Lamps Plus agrees not to object to Class Counsel's request for up to a maximum payment of \$750,000.00 (total) for attorneys' fees and costs. Plaintiff and Class Counsel further agree that, in any event, Lamps Plus will not be obligated to pay any award to Class Counsel and any and all Additional Counsel (defined below) in excess of \$750,000.00 (total) for attorneys' fees and costs. If the Court approves the Settlement of this Action and an award of attorneys' fees and costs to Class Counsel, unless the Court orders a different timetable, Lamps Plus agrees to pay the attorneys' fees and costs approved by the Court up to \$750,000.00 (total) to Class Counsel and any and all Additional Counsel upon the occurrence of both of the following events (a) the Final Settlement Date, and (b) Class Counsel's delivery to Lamps Plus of a complete and valid Form W-9. Unless the Court orders a different timetable, any such payment shall be made within ten (10) calendar days of the occurrence of the later of these events and shall be made to the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP. Carlson Lynch Sweet Kilpela & Carpenter, LLP shall have control over and responsibility to distribute any payment of fees and costs to any other attorney or law firm that may claim entitlement to fees and costs under this Settlement or as a result of the Action (each, an "Additional Counsel"). No interest shall be paid on the attorneys' fees and costs award.

**2.6 Reduction in Plaintiff's Individual Settlement Award or Class Counsel's Attorneys' Fees.** Plaintiff's Individual Settlement Award is to be paid separate and apart from the award to the Class. A reduction by the Court or by an appellate court of the Individual Settlement Award sought by the Named Plaintiff shall not affect any of the Parties' other rights and obligations under the Settlement Agreement.

**2.7 No Tax Liability.** Under no circumstances will Lamps Plus or Lamps Plus's Counsel have any liability for taxes or tax expenses under the Settlement. Plaintiff and/or Class Counsel are responsible for any taxes on any recovery or award. Nothing in this Settlement, or statements made during the negotiation of its terms, shall constitute tax advice by Lamps Plus or Lamps Plus's Counsel.

**2.8 Settlement Implementation Costs.** Lamps Plus shall bear the costs of providing notice to the Class in the manner prescribed in Section 3.3 of this Settlement Agreement and the costs associated with independent administration of benefits by the Claims Administrator.

**2.9 Release as to All Class Members.** Upon entry of the Judgment, Class Releasers shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Class Released Claims (including Unknown Claims) against all Released Parties.

**2.10 Release by Named Plaintiff.** In addition to the releases made by the Class Members set forth in Section 2.10 above, effective upon entry of the Judgment, Named Plaintiff will make the additional following general release of all claims, known or unknown. Upon entry of the Judgment, the Named Plaintiff, and each of his successors, assigns, legatees, heirs, and personal representatives release and forever discharge the Released Parties, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,

promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

In addition, Named Plaintiff, and each of Named Plaintiff's successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Named Plaintiff fully understands that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Named Plaintiff and Plaintiff's Counsel to be true and expressly accepts and assumes the risk of this possible difference in facts and agrees that the Settlement Agreement will remain effective despite any difference in facts. Further, Named Plaintiff agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the Settlement would not have been accepted.

**2.11 No Admission of Liability or Wrongdoing.** This Settlement Agreement reflects the Parties' compromise and Settlement of disputed claims. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Lamps Plus, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Lamps Plus has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Action. Lamps Plus has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

### **3. CLASS SETTLEMENT PROCEDURES.**

**3.1 Preliminary Approval and Provisional Class Certification.** Plaintiff shall file his motion for preliminary approval of the Settlement Agreement as soon as feasibly possible. The motion for preliminary approval of the class action settlement and provisional class certification must request the Court to:

- (a) preliminarily approve this Settlement Agreement.
- (b) preliminarily approve the form, manner, and content of the Full Notice, Email Notice, Mail Notice, Online Media Notice, and Claim Form described in Sections 3.3 and 3.6 of this Settlement Agreement, and attached as **Exhibits B - F**;



- (c) set the date and time of the Fairness Hearing;
- (d) provisionally certify the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, for settlement purposes only;
- (e) find that Lamps Plus has complied with 28 U.S.C. § 1715(b);
- (f) stay all proceedings in the Action against Lamps Plus until the Court renders a final decision on approval of the Settlement and sets a briefing schedule for the papers in support of the Final Order;
- (g) conditionally appoint Named Plaintiff as the class representative for settlement purposes only; and
- (h) conditionally appoint the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP as Class Counsel for settlement purposes only.

The proposed Preliminary Approval and Provisional Class Certification Order must be substantially similar to the form attached as **Exhibit A**. Class Counsel must draft the motion papers and give Lamps Plus's Counsel drafts of the motion and proposed order to review before the motion's filing and service date/deadline. Lamps Plus shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Preliminary Approval and Provisional Class Certification Order.

**3.2 Class Notice.** Subject to the Court entering the Preliminary Approval Order, the Parties agree that Lamps Plus and its retained Claims Administrator will provide the Class notice within fifteen (15) calendar days after entry of the Preliminary Approval order:

- (a) **Settlement Website.** The claims administrator will post the Full Notice on an Internet website ("Internet Posting") specifically created for the settlement of this Action. The Full Notice will be substantially similar to the form attached as **Exhibit B**. The Internet Posting will also contain the Claim Form, Complaint, Settlement Agreement, and Preliminary Approval Order. Within seven (7) court days of when Class Counsel files a motion for attorneys' fees and costs, the Internet Posting will also post the fees and costs motion. The Internet Posting shall be operative starting on or before fifteen (15) calendar days after entry of the Preliminary Approval Order. The Internet Posting shall remain active at least until the Final Settlement Date.
- (b) **Email Notice.** Lamps Plus shall use reasonable efforts to identify those Lamps Plus customers who may be Class Members and for whom it has a valid email address. Through the Claims Administrator, for those Class Members for whom Lamps Plus has a valid email address, Lamps Plus will send an Email Notice to such Class Members. The Email Notice will be substantially similar to the form attached as **Exhibit C**, and will provide the web address of the Settlement Website and an email and mailing address to

contact the Claims Administrator. Lamps Plus, through the Claims Administrator, will provide the Email Notice on or before fifteen (15) calendar days after entry of the Preliminary Approval Order.

- (c) **Mail Notice.** Lamps Plus shall use reasonable efforts to identify those Lamps Plus customers who may be Class Members and for whom it has only a valid mailing address (and not an email address). Through the Claims Administrator, for those Class Members for whom Lamps Plus has a valid mailing address only, Lamps Plus will send a Mail Notice via the U.S. Postal Service to such Class Members. The Mail Notice will be substantially similar to the form attached as **Exhibit D**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. Lamps Plus, through the Claims Administrator, will provide the Mail Notice on or before fifteen (15) calendar days after entry of the Preliminary Approval Order. Lamps Plus is not required to provide the Mail Notice to any potential Class Member to whom it is sending the Email Notice.
- (d) **Online Media Notice.** Unless otherwise ordered by the Court, within fifteen (15) calendar days after entry of the Preliminary Approval Order, Lamps Plus, through the Claims Administrator, will start implementing an online media notice program through the Google Display Network or an equivalent program. The text of the Online Media Notice will be substantially similar to the form attached as **Exhibit E**.

**3.3 CAFA Notice.** Within ten (10) calendar days after this Settlement Agreement is filed with the Court, Lamps Plus shall serve upon relevant government officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715.

**3.4 Proof of Notice.** No later than ten (10) calendar days before the Fairness Hearing, Lamps Plus and/or the Claims Administrator will serve upon Class Counsel a declaration confirming that notice to the Class has been provided in accordance with Section 3.3 of this Settlement Agreement.

**3.5 Claims Procedure.** Class Members who do not receive direct notice, (those Class Members for whom Lamps Plus does not already have a valid email or mailing address), must submit complete, valid and sufficient Claim Forms on or before the Claim Response Deadline in order to be included in the distribution of the Vouchers. Class Members who do not receive direct notice shall also be required to provide proof of Qualifying Purchase(s) as described in Section 3.6(b) below. **Class Members who receive direct notice are not required to submit a Claim Form in order to receive a Voucher.** If the Class Member who receives direct notice does not object to the Settlement or request to exclude himself or herself from the Settlement, the Class Member will receive via email or mail a Voucher within sixty (60) calendar days of the Final Settlement Date. Any Class Member who did not receive direct notice and who fails to submit a valid and timely Claim Form will not receive any benefits under this Settlement Agreement.

- (a) **Date of Submission.** The Claim Form may be submitted electronically or by postal mail. The delivery date is deemed to be the date [i] the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. mail, or [ii] in the case of submission electronically through the Settlement Website, the date the Claims Administrator receives the Claim Form, as evidenced by the transmission receipt.
- (b) **Proof of Qualifying Purchase(s).** Acceptable proof of Qualifying Purchases include either [i] receipt(s) clearly showing the date of purchase(s), or [ii] a declaration signed under penalty of perjury in which the Class Member identifies the month and year of purchase, the location of the store at which the purchase was made, and a description of the product purchased. Copies of such documents must be attached to the Claim Form whether submitted electronically or by postal mail.

**3.6 Right to Verify.** The Claims Administrator and/or Lamps Plus may review all submitted Claim Forms and proof of Qualifying Purchase(s) for completeness, validity, accuracy, and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any claim. In addition, the Claims Administrator and/or Lamps Plus may verify that: [i] the information set forth in or attached to a submitted Claim Form is accurate; and [ii] the Claimant is a Class Member.

**3.7 Disputed Claims.** If the Parties dispute a Claim Form's timeliness or validity, the Parties must meet and confer in good faith to resolve the dispute. Lamps Plus's records shall have a strong presumption of accuracy, which may be rebutted by clear and convincing evidence.

**3.8 Objections.** Any Class Member who has not submitted a timely written exclusion request pursuant to Section 3.10 of this Settlement Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, must deliver written objections to the Claims Administrator no later than the Objection or Exclusion Response Deadline.

- (a) The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Claims Administrator.
- (b) Any written objections must contain: **(1)** the name and case number of the Action; **(2)** the Class Member's full name, address, and telephone number; **(3)** the words "Notice of Objection" or "Formal Objection"; **(4)** in clear and concise terms, the legal and factual arguments supporting the objection; **(5)** facts supporting the person's status as a Class Member (e.g., the date and location of his/her relevant purchases and description of item(s) purchased); **(6)** the Class Member's signature and the date; and **(7)** the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the United States

of America that the foregoing statements regarding class membership are true and correct to the best of my knowledge.”

- (c) Any Class Member who submits a written objection, as described in this section, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys’ fees. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must include on a timely and valid objection a statement substantially similar to “Notice of Intention to Appear.” If an objecting Class Member intends to speak at the Fairness Hearing in support of the objection, the Class Member’s objection must state this intention. If the objecting Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member’s written objection, which must also contain a list of any such witnesses and a summary of each witness’s expected testimony. Only Class Members who submit timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney’s fees and costs.

**3.9 Exclusion from the Class.** Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. To make this election, Class Members must send a signed letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than the Objection or Exclusion Response Deadline. Lamps Plus must serve on Class Counsel a list of Class Members who have timely and validly excluded themselves from the Class no later than seven (7) calendar days before the filing date for Plaintiff’s motion in support of the Final Order and Judgment.

**3.10 Final Order and Judgment.** Before the Fairness Hearing, Plaintiff must apply for Court approval of a proposed Final Order and Judgment, substantially similar to the forms attached as **Exhibits G** and **H**, respectively. Subject to the Court’s approval, the Final Order and Judgment shall, among other things:

- (a) finally approve the Settlement Agreement as fair, reasonable and adequate;
- (b) finally certify the Class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3);

- (c) find that the notice and the notice dissemination methodology complied with the Settlement Agreement, Federal Rule of Civil Procedure 23, and the Due Process Clause of the United States Constitution;
- (d) issue orders related to the relief provided for in the Settlement Agreement, including distribution of the Vouchers, payment of Plaintiff's Individual Settlement Award, and payment of Class Counsel's fees and costs;
- (e) incorporate the releases set forth in the Settlement Agreement;
- (f) dismiss the Action with prejudice; and
- (a) retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Agreement and/or the Final Order and Judgment, and for any other necessary purpose.

Class Counsel must also draft the motion papers and give Lamps Plus's Counsel drafts of the motion and proposed order to review before the motion's filing and service date/deadline. Lamps Plus shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Final Order and Judgment.

**3.11 Judgment and Enforcement.** The Parties agree that should the Court grant final approval of the proposed Settlement and enter Judgment, the Judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

#### **4. Nullification of Settlement Agreement.**

**4.1 Lamps Plus's Right to Revoke.** Lamps Plus has the right in its sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to the Fairness Hearing if: (a) the Court makes an order inconsistent with any of the terms of this Settlement (except for an order reducing the Class Counsel award or the Plaintiff's Individual Settlement Award); or (b) any court following the signing of this Settlement Agreement but before the Fairness Hearing, certifies, whether on a conditional basis or not, a class, collective, or representative action involving a claim described in the Action by potential class members covered by this Settlement; or (c) more than one hundred (100) Class Members timely and validly opt out of the Settlement; or (d) Plaintiff breaches the Settlement Agreement.

**4.2 Effect of Agreement if Settlement Is Not Approved.** This Settlement Agreement was entered into only for the purpose of Settlement. In the event that Section 4.1 is invoked by Lamps Plus, the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective positions *status quo ante*, and as if this Agreement was never executed. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including,

but not limited to, vacating conditional certification of the Class, conditional appointment of Plaintiff as class representative, and conditional appointment of Plaintiff's Counsel as Class Counsel; (b) the Action will revert to the status that existed before the Plaintiff filed his motion for approval of the Preliminary Approval Order (allowing Lamps Plus to, among other things, move to dismiss the Complaint and/or move to strike allegations contained therein); and (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Lamps Plus shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

## 5. ADDITIONAL PROVISIONS.

**5.1 Change of Time Periods.** All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

**5.2 Fair, Adequate, and Reasonable Settlement.** The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations, including a mediation session conducted with the assistance of Hon. Carl J. West (Ret.).

**5.3 Real Parties in Interest.** In executing this Settlement Agreement, the Parties warrant and represent that except as provided herein, neither the claims or causes of action released herein nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**5.4 Voluntary Agreement.** This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**5.5 Binding on Successors.** This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**5.6 Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

**5.7 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of

**Settlement Agreement and Release**

SMRH:486368943.3

action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**5.8 Entire Agreement.** This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

**5.9 Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**5.10 Headings and Formatting of Definitions.** The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

**5.11 Exhibits.** The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and Settlement and are hereby incorporated and made a part of this Settlement Agreement as though fully set forth in the Settlement Agreement.

**5.12 Modifications and Amendments.** No amendment, change, or modification of this Settlement Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

**5.13 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

**5.14 Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

**5.15 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

**5.16 Execution Date.** This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

Settlement Agreement and Release

SMRH:486368943.3

**5.17 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement.

**5.18 Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**5.19 Recitals.** The Recitals are incorporated by this reference and are part of the Settlement Agreement.

**5.20 Inadmissibility.** This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

**5.21 No Conflict Intended.** Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

**5.22 Disposal of the Class List.** Within six (6) months after the Final Settlement Date and completion of the administration, or in the event the Settlement is terminated pursuant to Section 4, after providing Lamps Plus’s Counsel at least ten (10) calendar days advance notice of its invocation of this section, all originals, copies, documents, transcriptions, iterations, or drafts of the contact information for Class Members or any portion thereof shall be returned to Lamps Plus by the Claims Administrator.

**5.23 Notices.** Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Lamps Plus to the attention of Lamps Plus’s Counsel, and if to Class Members to the attention of Class Counsel on their behalf.

CLASS COUNSEL	LAMPS PLUS’S COUNSEL
Todd D. Carpenter, Esq. CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP 1350 Columbia Street Suite 603 San Diego, California 92101	John C. Dineen, Esq. SHEPPARD MULLIN RICHTER & HAMPTON, LLP 501 West Broadway, 19th Floor San Diego, CA 92101

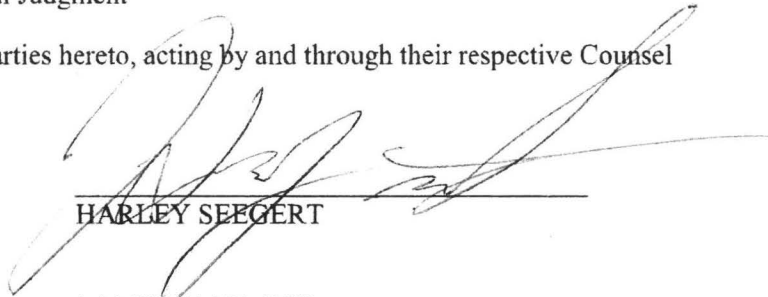


**5.24 List of Exhibits:** The following exhibits are attached to this Settlement Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Mail Notice
- Exhibit E: Online Media Notice
- Exhibit F: Claim Form
- Exhibit G: [Proposed] Order Granting Final Approval of Class Settlement
- Exhibit H: [Proposed] Final Judgment

**IN WITNESS WHEREOF**, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED.

Dated: 23 Aug 18



HARLEY SEEGERT

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

LAMPS PLUS, INC.

By: \_\_\_\_\_  
 Its: \_\_\_\_\_

**5.24 List of Exhibits:** The following exhibits are attached to this Settlement Agreement:

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

\_\_\_\_\_  
HARLEY SEEGERT

Dated: August 24, 2018

LAMPS PLUS, INC.

  
 \_\_\_\_\_  
 By: Clark Linstone  
 Its: Chief Financial Officer