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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE and NICOLAS STATHAKOS, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

PLAINTIFFS' NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

Hearing Date: November 14, 2017
Time: 2:00 p.m.
Courtroom: 1, 4th Floor, Oakland Courthouse

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD, PLEASE TAKE NOTICE that on November 14, 2017 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 1 of the United States District Courthouse located at 1301 Clay Street, Oakland, California 94612, before the Honorable Yvonne Gonzalez Rogers, United States District Court Judge, Plaintiffs Jeanne and Nicolas Stathakos will, and hereby do, move the Court for an order granting final approval of the parties' settlement agreement.

This Motion is made on the basis of this Notice of Motion and Motion, the Memorandum of Points and Authorities submitted herewith, the Declaration of Hassan A. Zavareei, including all attached exhibits, the Declaration of Jeanne Stathakos, the Declaration of Nicolas Stathakos, as well as all pleadings, papers, and other documentary materials in the Court's file for this action, and such other matters as the Court may consider. Settlement approval is warranted because the settlement is fair, adequate, and reasonable, and each of the applicable factors weigh in favor of settlement approval.

Dated: October 6, 2017

Respectfully submitted,

By: */s/ Hassan A. Zavareei*
Hassan A. Zavareei

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PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

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I. INTRODUCTION

Plaintiffs Jeanne and Nicolas Stathakos respectfully move for approval of a proposed class action settlement with Defendants, Columbia Sportswear Company and Columbia Sportswear USA Corporation (collectively "Defendants" or "Columbia"), the terms and conditions of which are set forth in the Settlement Agreement. *See*, Declaration of Hassan Zavareei in Support of Settlement Approval ("Zavareei Decl."), Settlement Agreement, attached as Exhibit A.[1]

After years of hard-fought litigation, including extensive discovery and motion practice, Columbia agreed to provide injunctive relief to the Settlement Class that remedies the deception alleged in this action. Specifically, Plaintiffs alleged that Columbia's use of reference prices on merchandise tags for items sold exclusively at their outlet stores is deceptive because it leads consumers to believe that such merchandise was formerly sold at the reference price when the truth was to the contrary. *See e.g.*, 5/11/17 Order at 2. As this Court observed, "Plaintiffs' proffered evidence demonstrates that consumers could not distinguish based on the price tags between garments which were Outlet SMU Builds that were never sold for the advertised reference price and Inline styles sold at the outlets which were at some point sold for the advertised reference price." *Id.* at 13. Accordingly, Plaintiffs sought a change in Columbia's use of reference prices on outlet exclusive products. The parties' settlement does exactly that.

If the Settlement is approved, consumers will be able to distinguish between the Outlet SMU Builds that were sold exclusively at outlets, and never for the higher price, and the Inline styles that were formerly sold elsewhere at a higher price. The terms of the Agreement provide that the Outlet SMU tags will qualify the reference price with one of the following: "Comparable Value, Comp. Value, Comparable Item, Comp. Item, Comparable Style, or Comp. Style." Agreement, Zavareei Decl. Ex. A, at § III.B.1(a).[2] Each of those terms will communicate to consumers that the higher price on the tag refers to the price of a comparable item, and not to a former price of the same item.

[1] The capitalized terms used herein are defined in and have the same meaning as used in the Settlement Agreement unless otherwise stated.

[2] If Columbia does not use one of the terms identified in Section III.B.1(a), Columbia can include a label on its price tags describing the comparison prices with a different word or phrase, except that, in addition, Columbia must also post in-store signage explaining what Columbia means by term it opts to use. *See* Settlement Agreement, Zavareei Decl. Ex. A, at § III.B.1(b).

Because Plaintiffs sought a change in Columbia's labeling of reference prices on Outlet SMU Builds on behalf of the Rule 23(b)(2) class that this Court certified, Columbia's agreement to change those labels is an exceptional result for the class. Consequently, the resolution proposed in the parties' Settlement Agreement is fair, adequate, and reasonable.

Given that the Settlement that Plaintiffs negotiated provides for immediate and tangible benefits to the Settlement Class, and forestalls trial and appeals, Plaintiffs request that the Court grant Final Approval. As discussed below, the Court need not order that notice of this injunctive relief settlement be provided to the Rule 23(b)(2) Settlement Class members in this case. Since a class has been certified, no conditional certification of a class for settlement purposes is required either. As a result, there is no need for preliminary approval because it is not necessary to evaluate whether the settlement is in the range of possible approval to warrant the sending of notice, or to determine whether the class should be conditionally certified for settlement purposes. Instead, all of the factors relevant to the Final Approval of this injunctive relief Settlement may be fully evaluated now. As such, to preserve the resources of the parties and the Court, and to ensure that the injunctive relief is provided to the Settlement Class without further delay, the terms of the parties' Agreement specifically state that Plaintiffs should seek preliminary and Final Approval simultaneously. *See* Agreement, Zavareei Decl. Ex. A, at § IV.A.

As set forth below, each of the applicable approval factors weighs in favor of finally approving the Settlement. The Settlement was negotiated at arms-length, with the assistance of former Chief Magistrate Judge Edward Infante (Ret.), after substantial discovery and motion practice. The fact that the parties only reached agreement on the benefit offered to the class, and did not reach agreement on the amount of attorney's fees, highlights the non-collusive nature of this agreement. *See e.g.*, *Dei Rossi v. Whirlpool Corp.*, 2016 WL 3519306 (E.D. Cal. June 28, 2016) ("Further, the Parties reached the Settlement Agreement without reaching any agreement regarding the reasonable amount of attorneys' fees and costs to be awarded to Class Counsel, which helps to confirm that the Settlement is the product of an arms-length negotiation process."). Since the Settlement is the product of an arms-length negotiation, the Settlement is entitled to a presumption of

fairness. *See Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). The benefits offered by this Settlement are also substantial. Indeed, the injunction ensures that the Settlement Class and other customers will be able to understand that the higher price on Columbia Outlet SMU Build tags does not represent a former price of the same item—addressing the very problems at the heart of Plaintiffs' Complaint. In contrast to the time and risks associated with litigating through trial however, the Settlement allows the implementation process for these benefits to take effect *post haste*. Therefore, all of the relevant factors strongly favor approval. Accordingly, Plaintiffs request that the Court approve the Settlement, enter the stipulated injunction, and schedule a hearing to determine an appropriate award of attorney's fees and costs and the Class Representatives' Service Awards.

II. PROCEDURAL BACKGROUND

On October 2, 2015, Plaintiffs Jeanne and Nicolas Stathakos filed a class action complaint against Defendants. Dkt. 1. Plaintiffs asserted claims on behalf of themselves and a proposed California Class of purchasers who had purchased a Columbia Outlet Product with a price tag bearing a "Former Price." Plaintiffs alleged that Columbia deceptively advertised a "Former Price" on Columbia Products that were sold exclusively at Columbia Outlet stores ("Outlet SMU Builds").

On November 2, 2015, counsel for Defendant Columbia Sportswear Company informed Plaintiffs that Defendant Columbia Sportswear USA Corporation should also be named as a defendant. Accordingly, on November 15, 2016, Plaintiffs filed a First Amended Complaint naming as Defendants Columbia Sportswear Company and Columbia Sportswear USA Corporation (collectively "Defendants" or "Columbia"), and sent an updated certified CLRA letter addressed to both Defendants. Dkt. 9.

On January 12, 2016, after the expiration of the CLRA notice period, Plaintiffs, with leave of Court, filed and served their Second Amended Complaint ("SAC"). Dkt. 13. Defendants waived service of the SAC. On March 7, 2016, again with leave of Court, Plaintiffs filed a Third Amended Complaint adding a claim for damages ("TAC"). The TAC alleges violations of California's Unfair

Competition Law, California's False Advertising Law, California's Consumer Legal Remedies Act. Dkt. 35.

On March 29, 2016, Columbia filed a motion to dismiss. Dkt. 38. On April 12, 2016, Plaintiffs opposed the motion. Dkt. 39. On May 2, 2016, the Court denied Columbia's motion in its entirety. Dkt. 41. On May 16, 2016, Columbia answered Plaintiffs' TAC, denying liability.

Following denial of Columbia's motion to dismiss, Plaintiffs worked closely with Defendants to obtain and review documents that were proportionate to the needs of Plaintiffs' motion for class certification. Documents included, for example, spreadsheets identifying 580 unique Outlet SMU Builds. At first, Columbia refused to produce any design schematics, or "Tech Sketch[es]" other than those that specifically related to the products that Plaintiffs purchased. Thus, on September 9, 2016, the parties submitted a Joint Discovery Dispute Letter in which Plaintiffs sought design schematics, Tech Sketches and cost information for a randomly selected sample of all of Outlet SMU Builds. Dkt. 53. On October 4, 2016, the Court granted Plaintiffs' request. Dkt. 56. Following Plaintiffs' review of the documents, Plaintiffs deposed Columbia's former Director of Retail Merchandising for North America, James Robert "Bobby" Bui, and 30(b)(6) designee Melissa Olson. Defendants deposed Plaintiff Jeanne Stathakos and Plaintiff Nicolas Stathakos.

On November 18, 2016, Plaintiffs filed a motion for class certification. Dkt. 59. In support of that motion, Plaintiffs submitted expert reports from Professor Larry D. Compeau, an expert on the effects of reference pricing on consumer retail behavior, from Ms. Gabriele Goldaper, who is an expert in the fashion industry working in the industry, and from Arthur Olsen, an expert in data analysis, data development, and database support.

After deposing each of Plaintiffs' experts, on January 31, 2017, Columbia opposed Plaintiffs' motion, moved for summary judgment, and moved to exclude the opinions of Ms. Goldaper and Dr. Compeau. Dkts. 75-77. In support of their opposition to class certification, and their motion for summary judgment, Columbia submitted an expert report from Dr. Carol Scott in which she discussed a consumer survey that she had performed to evaluate the effect of reference prices.

Before filing their reply in support of certification, and opposition to the motion for summary judgment, Plaintiffs deposed Dr. Scott, and retained Hal Poret, a rebuttal expert to evaluate Dr. Scott's Survey. On March 13, 2017, Plaintiffs opposed summary judgment, opposed Columbia's motion to exclude experts, and submitted a reply in support of the motion for class certification. Dkts. 86-88.

On April 4, 2017, Columbia filed a reply in support of its motion for summary judgment, as well as an objection to and motion to strike Plaintiffs' rebuttal expert. On April 11, 2017, Plaintiffs opposed Columbia's motion to strike on the ground that Columbia filed it in violation of Local Rules and the Court's briefing schedule. Dkt. 91. On April 24, 2017, the Court struck Columbia's motion on the ground that Columbia failed to seek authorization to file it, as well as portions of a Statement of Recent Decision submitted by Plaintiffs. Dkt. 94.

After hearing argument from the parties on Plaintiffs' motion for class certification, and Columbia's motion for summary judgment, the Court certified the following Rule 23(b)(2) class for injunctive relief:

> All consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action.

Dkts. 101, 104. The Court appointed the law firms of Tycko & Zavareei LLP, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert as Class Counsel. The Court appointed Plaintiffs as Class Representatives. The Court, however, denied Plaintiffs' request to certify a Rule 23(b)(3) class for monetary relief. In the same order, the Court also largely denied Columbia's motion for summary judgment, but granted it with respect to Plaintiffs' claims for monetary relief, and the products the Plaintiffs purchased after they filed the initial complaint. Finally, the Court denied Columbia's motion to exclude Ms. Goldaper's expert declaration, and largely denied Columbia's motion to exclude Dr. Compeau's expert report.

Since a class had been certified, and Columbia's motion for summary judgment had been denied in part, the parties began preparation for trial. Plaintiffs submitted a trial plan, prepared trial

calendars, and submitted a partial motion for summary judgment to limit the issues at trial. Dkts. 107, 123.

To avoid the risk, burden, and expense of trial, the parties agreed to private mediation with retired United States Magistrate Judge Edward Infante. The parties agreed during their all-day meeting with Judge Infante on August 14, 2017 to the injunctive relief, and then continued working with Judge Infante to reach agreement on attorney's fees. On September 22, 2017, the parties executed a term sheet and submitted a joint stipulation to stay the action. Dkt. 125. While the parties were able to reach agreement on the injunctive relief provided to the class, the parties were unable to reach agreement on the amount of Plaintiffs' attorney's fees, or Plaintiffs' service awards. *See* Zavareei Decl. ¶ 5; N. Stathakos Decl. in Support of Settlement ¶¶ 1-2, Exhibit B (approving settlement); J. Stathakos Decl. in Support of Settlement ¶¶ 1-2, Exhibit C (same).

III. THE TERMS OF THE PROPOSED SETTLEMENT

A. The Benefit to Class Members – Stipulated Injunction

The negotiated injunctive relief is comprehensive and thorough. The terms of the parties' Agreement require that Columbia modify its sales practices to change the manner and method of how it presents pricing on the price tags of Outlet SMU Builds. Agreement, Zavareei Decl. Ex. A, at § III. The injunction is designed to ensure that consumers understand Columbia's reference prices by describing what Columbia means by those reference prices. Stated otherwise, the carefully selected qualifier terms that Columbia has agreed to use on its tags make clear that the higher reference price on Columbia Outlet SMU Build products does not refer to a former price of the same item. Specifically, Columbia agreed to stop using its current price tag format, and, to the extent it elects to utilize comparison price tactics in the future, to either (1) use seven[3] terms approved by Plaintiffs or (2) supplement any term it chooses with in-store signage explaining what Columbia means by whatever term it opts to use. *Id.* at § III.B.1. Further, as an additional layer of protection for consumers, while Columbia is in the process of complying with the stipulated injunction it will

[3] The seven agreed upon reference price terms are Comparable Value, Comp. Value, Comparable Item, Comp. Item, Comparable Style, or Comp. Style. Agreement, Zavareei Decl. Ex. A, at § III.B.1(a). These terms clearly inform customers that the advertised higher price is from a comparable item, not the identical item.

place legible notices at the point of sale, which state the following: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product was offered in any of those channels." *Id.* at § III.C-D.

B. The Release and Discharge of Claims

The Agreement only releases claims for injunctive relief or other similar equitable relief on behalf of the class. Agreement, Zavareei Decl. Ex. A, at § V. It does not release any claims on behalf of the Settlement Class for monetary damages. *Id.* at § V.B ("Releasing Parties specifically preserve and do not release their monetary claims."). Plaintiffs, on the other hand, are releasing both their claims for injunctive and any claim for individual damages. *See id.* at § V.A. The proposed recovery to the class is in all other requests identical to the recovery to the individual Plaintiffs.

C. The Settlement Class Definition

The terms of the parties Settlement Agreement specify that the Settlement Class is the one the Court certified in this Action ("Settlement Class," the members of which are referred to as the "class members"):

> All consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action.

See id. at § II.A. Class Counsel is the counsel that the Court appointed to represent the Rule 23(b)(2) class: Tycko & Zavareei LLP and Kopelowitz Ostrow Ferguson Weiselberg Gilbert ("Class Counsel"). *See id.* at § II.B. The Class Representatives are the Plaintiffs, whom the Court appointed to represent the Rule 23(b)(2) class. *See id.* at § II.C.

Importantly, where, as here, the Court has previously certified a class under Fed. R. Civ. P. Rule 23, the Court need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate and reasonable. *See Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 974 (E.D. Cal. 2012); *Harris v. Vector Mktg. Corp.*, 2012 WL 381202, at *3 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the

requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable."); *In re Apollo Group Inc. Securities Litigation*, 2012 WL 1378677 at *4 (D.Ariz. Apr. 20, 2012) ("The Court has previously certified, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and hereby reconfirms its order certifying a class."); *Dei Rossi v. Whirlpool Corp.*, 2016 WL 3519306 (E.D. Cal. June 28, 2016).

IV. NOTICE AND PRELIMINARY APPROVAL ARE NOT REQUIRED

A. Notice Is Not Required

Unlike a Rule 23(b)(3) class where notice is mandatory, Rule 23(c)(2) states that, "[f]or any class certified under Rule 23(b)(1) or (b)(2), the court *may* direct appropriate notice to the class." Fed. R. Civ. P. 23(c)(2) (emphasis added). Because of this, "[c]ourts typically require less notice in Rule 23(b)(2) actions, as their outcomes do not truly bind class members" and there is no option for class members to opt out. *Lilly v. Jamba Juice Co.*, 2015 WL 1248027, *8-9 (N.D. Cal. Mar. 18, 2015) (Tigar, J.) (holding that because the settlement class would not have the right to opt out from the injunctive settlement and the settlement does not release the monetary claims of class members, class notice is not necessary); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2558, 180 L. Ed. 2d 374 (2011) (Rule 23 "provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action.").

In fact, in injunctive relief only class actions certified under Rule 23(b)(2), federal courts across the country have uniformly held that notice is not required. *See, e.g., Jermyn v. Best Buy Stores*, 2012 WL 2505644, *12 (S.D.N.Y. June 27, 2012) ("Because this injunctive settlement specifically preserves and does not release the class members' monetary claims, notice to the class members is not required"); *Foti, et al. v. NCO Financial Systems, Inc.*, Case No. 04 Civ. 00707, 2008 U.S. Dist. LEXIS 16511, at *13 (S.D.N.Y. Feb. 19, 2008) ("Because the Agreement explicitly preserves the individual rights of class members to pursue statutory damages against the defendant, and because the relief in this Rule 23(b)(2) class is injunctive in nature, notice was not required."); *Green v. Am. Express Co.*, 200 F.R.D. 211, 212-13 (S.D.N.Y. 2001) (no notice is required under several circumstances, such as "when the settlement provides for only injunctive relief, and

therefore, there is no potential for the named plaintiffs to benefit at the expense of the rest of the class"); *Penland v. Warren Cnty. Jail*, 797 F.2d 332, 334 (6th Cir. 1986) ("this court has specifically held that notice to class members is not required in all F.R.C.P. 23(b)(2) class actions"); *DL v. District of Columbia*, Case No. 05-cv-1437, 2013 WL 6913117 at *11 (D.D.C. Nov. 8, 2013) ("the district courts within these circuits that have directly considered the issue have applied the requirement 'more flexibly in situations where individual notice to class members is not required, such as suits for equitable relief'"); *Linquist v. Bowen*, 633 F. Supp. 846, 862 (W.D. Mo. Jan 31, 1986) ("When a class is certified pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure, notice to the class members is not required.") (internal citations omitted); *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563, 572 (S.D. Ohio Sep. 7, 1983) ("This Court has certified this action as a class action under Rule 23(b)(2), and, as such, notice to class members is not required under Rule 23(c)(2)").

Here, the terms of the Settlement Agreement provide for injunctive relief only and further expressly preserves the rights of the class to bring claims for monetary relief. Agreement, Zavareei Decl. Ex. A, at §§ III (Settlement of Injunctive Class), V (Release of Claims). Further, even if notice was sent, class members would not have the right to opt out. *See Lilly* 2015 2015 WL 1248027, at *9.

Additionally, in exercising its discretion with respect to notice, the Court should consider that "the cost of notice would risk eviscerating the settlement agreement." *Green*, 200 F.R.D. at 212 ("[C]ourts have recognized that when notice to class members would not serve the purpose of ensuring that the settlement is fair and would, in fact jeopardize the settlement, that the court may opt to forego notice."). Notably, here, the terms of the parties' Settlement Agreement provide that the parties agree that "no notice to the class is required." Agreement, Zavareei Decl. Ex. A, at § IV.A. In addition, the parties agreed that Defendant could vitiate the Settlement Agreement if the Court ordered notice that would cost more than $30,000:

> To the extent the Court requires that notice be provided to the Class for approval to be ordered, the Parties and their respective counsel will cooperate with each other and do all things reasonably necessary to effectuate that notice. Columbia will bear the costs of providing any court-required notice. However, to the extent that the Court-required notice is anticipated to cost more than $30,000, Columbia has the right to withdraw from and

> terminate this Agreement. If Columbia withdraws from and terminates this Agreement, then the Agreement will be rescinded and will be without further legal effect.

Id. at § IV.B. Thus, notice costs in excess of $30,000 would seriously jeopardize the benefit to the class members. *See Green,* 200 F.R.D. at 212.

Finally, aside from the cost, notice in this case would not serve the class. Instead, it would substantially delay the implementation of the injunctive relief benefit to the class. The implementation of changes to product labeling and pricing takes time. Even assuming that the Court concludes that notice is not required, the Spring of 2019 product release is the soonest that the labeling changes can be guaranteed to be implemented. *See* Agreement, Zavareei Decl. Ex. A, at §§ III.B (Implementation Period).[4] Accordingly, Plaintiffs respectfully request that the Court find that notice is unnecessary and not required.[5]

B. Since Notice Is Not Required, Preliminary Approval Is Not Required

The purpose of the preliminary approval procedure is to evaluate whether a settlement is within the range of reasonableness to determine whether a court should send notice to the class members. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2012) (quoting Manual for Complex Litigation, Second § 30.44 (1985): "If the proposed settlement … falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing"); *Lounibos v. Keypoint Government Solutions Inc.*, 2014 WL 558675, *5 (N.D. Cal. 2014) ("Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement … falls with the range of possible approval.") (citations omitted).

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[4] The Settlement Agreement also contemplates in-store signage during the implementation period that states the following: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product was offered in any of those channels." Agreement, Zavareei Decl. Ex. A, at § III.D.

[5] Although notice to class members is not required, the Class Action Fairness Act ("CAFA") requires that notice be given to state and federal authorities. 28 U.S.C. § 1715. The CAFA provides that "no later than ten days after a proposed settlement of a class is filed in court, each defendant shall serve upon the appropriate state official of each state in which a class member resides a notice of the proposed settlement and specified supporting documentation." *Id.* at § 1715(b). Columbia has indicated that it will send CAFA notice 10 days after October 6, 2017, Plaintiffs' deadline to file the instant motion for settlement approval.

Here, since notice is not required, no such preliminary determination is required. Stated otherwise, unlike cases involving the release of claims for monetary relief, all of the applicable settlement approval factors applicable to the parties Rule 23(b)(2) injunctive settlement can be evaluated now without a preliminary step to gauge the reaction of class members. *Compare Jermyn*, 2012 WL 2505644 at *6 (finally approving settlement without preliminary approval and noting that the reaction of the class members was inapplicable to injunctive relief-only settlement where no notice was required) *with Erickson v. Corinthian Colleges, Inc.*, 2015 WL 12001275, at *1 (C.D. Cal. Dec. 22, 2015) ("Because some of [the final approval] factors cannot be fully assessed at the preliminary approval stage, we look to the applicable factors to determine whether the proposed settlement is within the range of possible approval such that notice should be sent to Class Members who can further weigh in on the fairness of the proposed settlement."); *see also Lilly v. Jamba Juice Co.*, 2015 WL 2062858, at *4 (N.D. Cal. May 4, 2015) (Tigar, J.) (explaining that "the reaction of the class is not considered in weighing the fairness factors" where the court previously concluded that notice was not necessary); *Kim v. Space Pencil, Inc.*, 2012 WL 5948951, *6 (N.D. Cal. Nov. 28, 2012) ("the reaction of class members is not relevant here because notice [is] not required under Federal Rule of Civil Procedure 23(e) and there is no binding effect on the class nor is there a release being provided.").

Accordingly, to preserve the resources of the parties, to serve judicial economy, and to avoid delays with the implementation of the Settlement, the parties agreed that Plaintiffs should seek one final settlement approval. Agreement, Zavareei Decl. Ex. A, at § IV.A ("Because this Agreement settles an injunctive-only, Rule 23(b)(2) class as above defined, and class members are not entitled to opt-out of such a settlement, the parties agree that no notice to the class is required, and therefore the Court can preliminarily and finally approve the Agreement at the same time."). Thus, Plaintiffs request that the Court proceed to evaluating whether the settlement merits final approval. *See Jermyn*, 2012 WL 2505644, at *13 (explaining that since a non-collusive settlement provided only for injunctive relief to certified Rule 23(b)(2) class, and preserved class members' rights to pursue damages "the Court may provide final approval to this settlement without ordering notice to issue");

Green, 200 F.R.D. at 213 (finally approving settlement without a preliminary approval procedural-step based on finding that notice was not required); *Access Now, Inc. v. v. AMH CGH, Inc.*, 2001 WL 1005593 (S.D. Fla. May 11, 2001) (entering final judgment without notice where a consent decree provided injunctive relief only to Rule 23(b)(2) class that had been certified for settlement purposes); *Kim*, 2012 WL 5948951, at *5 (proceeding to evaluate the final approval factors without a preliminary step where the court concluded that no notice was required).

V. THE FINAL APPROVAL STANDARD

In the class action context, district courts must evaluate whether a proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Hanlon v. Chrysler*, 150 F.3d 1011, 1026 (9th Cir. 1998)). In reviewing the proposed settlement, the Court need not address whether the settlement is ideal or the best outcome, but determines only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted). Each of settlement approval factors applicable to this case show that the parties' proposed settlement should be given approval.

A. The Injunctive Relief Provided to Class Members Shows That the Settlement Is Fair Adequate and Reasonable

With only a Rule 23(b)(2) class certified and no claim for damages, the best result Plaintiffs could have achieved at trial would have been an injunction designed to remedy Columbia's allegedly deceptive use of reference prices on Columbia Outlet SMU Build tags. As such, the injunction Plaintiffs secured, the crux of the Settlement, is fair, adequate and reasonable. Plaintiffs allege that, prior to the litigation, Columbia deceptively advertised illusory "former prices" on the Outlet SMU Builds. Notably, it is impossible for consumers to identify the Outlet SMU Products, and therefore,

impossible to determine if and when Columbia is truthfully advertising former prices at its Columbia Outlet stores. The parties' injunctive relief settlement "stops the allegedly unlawful practices, bars Defendant from similar practices in the future, and does not prevent class members from seeking [monetary] legal recourse." *Grant v. Capital Management Servs., L.P.*, 2014 WL 888665, *4 (S.D. Cal. Mar. 5, 2014).

Specifically, Columbia will stop using its current price tag format, and, to the extent it elects to utilize comparison price tactics in the future, will either (1) use seven terms approved by Plaintiffs or (2) supplement any term it chooses with in-store signage explaining what Columbia means by whatever term it opts to use. *Id.* at § III.B.1. Regardless of which option it chooses, the Settlement Class will be informed regarding the meaning of the higher reference price on Columbia Outlet SMU Build tags. Zavareei Decl. ¶ 6. The seven terms identified in the Settlement Agreement are designed to clarify that the higher reference price on the tag refers to the price of a similar item or style, and not to a former price of the same item. *Id.* Further, if Columbia elects to use a term not previously approved by Plaintiffs, the in-store displays Columbia is required to display will educate consumers as to what exactly the reference price refers to. Obtaining this benefit for the Settlement Class is a huge victory for the Plaintiffs because these changes to Columbia's outlet store pricing practices will address and eliminate the consumer perception that the Outlet SMU Build item was marked down from the higher reference price on the tag—the basis for Plaintiffs' claims that the tags were misleading to consumers. *Id.*; *see also Gattinella v. Kors*, No. 14CV5731, 2016 WL 690877, at *1 (S.D.N.Y. Feb. 9, 2016) (in a similar false reference pricing, the court that the defendant's agreement to "change the manner and method in which it markets and labels various price tags," in a manner similar to what Columbia has agreed to was "fair reasonable and adequate[.]").

Additionally, to ensure that the class will receive benefits of the stipulated injunction quickly, while Columbia is in the process of complying with the stipulated injunction, it will place legible notices at the point of sale, which state the following: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product

was offered in any of those channels." Agreement, Zavareei Decl. Ex. A, at § III.D. Accordingly, this factor weighs in favor of granting final approval. *See Lilly*, 2015 WL 2062858 (approving of a settlement providing solely injunctive relief where only Rule 23(b)(2) class was certified); *Goldkorn v. Cnty of San Bernardino*, 2012 WL 476279, at *6-7 (C.D. Cal. Feb. 13, 2012) (approving settlement providing solely injunctive relief, attorneys' fees, costs, and damages to named plaintiffs); *In re Lifelock, Inc. Mktg and Sales Practices Litig.*, 2010 WL 3715138 (D. Ariz. Aug. 31, 2010) (same); *Kim*, 2012 WL 5948951 at *10 (same).

B. The Strength of Plaintiffs' Case and the Specific Risks of This Litigation

Although Plaintiffs continue to believe that they could prove to a jury that Columbia's advertising of illusory former prices was false and misleading, Plaintiffs also understand that proceeding to trial poses serious risks. Indeed, Plaintiffs have already lost the monetary relief portion of their case at summary judgment, and are left only with a potential appeal as a result. A liability verdict could also not be guaranteed for the certified Rule 23(b)(2) class. There is no guarantee that a jury would have been more persuaded by Plaintiffs' experts than by Columbia's expert. There is no guarantee that Plaintiffs would have persuaded the jury that they relied on the pricing at issue. Further, Defendants' "liability in this case would hinge on a factual determination of whether reasonable consumers were likely to be deceived." *See Lilly*, 2015 WL 2062858, at *3 (citations omitted). Thus, Plaintiffs acknowledge the risks of a no-liability jury finding "as any time that liability hinges on reasonableness, a favorable verdict cannot be certain." *See id.* By settling, Plaintiffs avoid the risks of trial and guarantee a change in Columbia's pricing practices. Since the risks of proceeding to trial are substantial, this bird in the hand is worth two in the bush, and the settlement warrants approval. *See e.g., Nat'l Rural Telecomms. Coop. v. DIREC-TV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, 'It has been held proper to take the bird in hand instead of a prospective flock in the bush.'" (citations omitted)).

C. The Extent of Discovery and the Status of the Proceedings

Under this factor, courts evaluate whether Class Counsel had sufficient information to make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). The Settlement was reached on the eve of trial, after almost two years of litigation, during which time, Plaintiffs completed extensive discovery. Given the procedural history of this case, there can be no doubt that Class Counsel had sufficient information to make an informed decision about the merits of this case as compared to the benefit provided by the proposed settlement. *See supra* § II. Additionally, substantial settlement negotiations have taken place between the parties. Notably, when a settlement is negotiated at arm's-length by experienced counsel, there is a presumption that it is fair and reasonable. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). The parties also worked closely with Judge Infante, an experienced mediator who ultimately led the parties to resolution. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) ("[The] presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.").

D. The Experience and Views of Class Counsel

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re American Apparel, Inc. v. S'holder Litig.*, 2014 WL 10212865, at *14 (C.D. Cal. July 28, 2014) (citation omitted); *accord In re Omnivision Techns., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *Hanlon*, 150 F.3d at 1027. Deference to Class Counsel's evaluation of the settlement is appropriate because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Rodriguez*, 563 F.3d 645, 967 (9th Cir 2012). Here, the settlement was negotiated by counsel with extensive experience in deceptive retail pricing cases and general consumer class action litigation. *See* Zavareei Decl. Exs. B, C (firm resumes); Zavareei Decl. ¶ 7. Tycko & Zavareei, LLP and Kopelowitz Ostrow Ferguson Weiselberg Gilbert are national, plaintiff side, consumer protection firms based in Washington, D.C., and South Florida, respectively, and have each been appointed class counsel in numerous consumer protection class actions across the country, including in the Northern District of California. *See generally id.* The firms' attorneys have extensive experience and

knowledge of California consumer protection law, and practical experience bringing class action cases to trial in federal court. *Id.* Accordingly, Plaintiffs' counsel has the requisite resources and experience to litigate a federal consumer protection class action through trial, and are well informed of the risks of continued litigation in this case. *Id.* Additionally, Class Counsel have litigated cases involving reference pricing on products sold by Michael Kors, Levi's, Nordstrom, Guess, and DSW. *Id.* As a result, Class Counsel is uniquely qualified to understand the relative strengths and weaknesses of deceptive pricing cases in general, and to apply those learnings to the particular facts of this case. *Id.* Based on their experience and reasoned judgment, the information learned through extensive fact and expert discovery, and legal research for this and similar cases, Class Counsel concluded that the Settlement provides exceptional results for the Settlement Class while sparing the Settlement Class from the uncertainties of continued and protracted litigation. *Id.*

E. Government Participant and Reaction of the Class

Here, "no government participant is involved, so the court does not weigh this factor." *See Lilly*, 2015 WL 2062858, at *3. Similarly, because notice is "not necessary, the reaction of the class is not considered in weighing the fairness factors." *See id.*; *Jermyn*, 2012 WL 2505644, at *6 ("[B]ecause class members' monetary claims are not being released and instead remain intact, no notice is required. Therefore, this factor is not relevant to the settlement approval analysis."); *Kim*, 2012 WL 5948951, at *6 ("the reaction of class members is not relevant here because notice [is] not required under Federal Rule of Civil Procedure 23(e) and there is no binding effect on the class nor is there a release being provided.").

VI. THE PROCEDURE FOR DETERMINING ATTORNEY'S FEES AND CLASS REPRESENTATIVE SERVICE AWARDS

Plaintiffs will file a petition for attorneys' fees and expenses and for service awards after final approval of the agreement. Agreement, Zavareei Decl. Ex. A, § VII A-B. Columbia will not contest Plaintiffs' entitlement to attorneys' fees and expenses or Plaintiffs' entitlement to a service award, but may oppose the amount for both. *Id.* The parties have agreed upon and jointly propose the following schedule for the briefing of Plaintiffs' petition for attorneys' fees and expenses and for service awards:

1. Plaintiffs shall file their petition for fees and expenses no later than ten days after the Court rules on this Motion.

2. Defendants shall file its response no later than 60 days after Plaintiffs file their petition for fees.

3. Plaintiffs shall file their reply no later than 30 days after Defendant files its response.

The parties have reserved their rights to take discovery relating to the fee petition. In the event that there is any irreconcilable dispute regarding that discovery, the parties will follow the Court's rules governing discovery disputes.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the settlement set forth in the parties' Settlement Agreement, and approve the proposed plan for Plaintiffs to seek attorney's fees and service awards.

Dated: October 6, 2017

Respectfully submitted,

By: */s/ Hassan A. Zavareei*
Hassan A. Zavareei

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE and NICOLAS STATHAKOS, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

DECLARATION OF HASSAN A. ZAVAREEI IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

Hearing Date: November 14, 2017
Courtroom: 1, 4th Floor, Oakland Courthouse

I, Hassan A. Zavareei, declare as follows:

1. I am an attorney at law licensed to practice in the State of California. I am also a member of the bar of this Court and a partner at Tycko & Zavareei LLP, counsel of record for Plaintiffs. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would competently testify thereto under oath.

2. Attached hereto as **Exhibit A** is a true and correct copy of the parties' Settlement Agreement.

3. Attached hereto as **Exhibit B** is a true and correct copy of Tycko & Zavareei LLP's firm resume.

4. Attached hereto as **Exhibit C** is a true and correct copy of Kopelowitz & Ostrow P.A.'s firm resume.

5. While the parties were able to reach agreement on the injunctive relief provided to the class, the parties were unable to reach agreement on the amount of Plaintiffs' attorney's fees, or Plaintiffs' service awards.

6. After the injunction takes effect, the Settlement Class will be informed regarding the meaning of the higher reference price on Columbia Outlet SMU Build tags. The seven terms identified in the Settlement Agreement are designed to clarify that the higher reference price on the tag refers to the price of a similar item or style, and not to a former price of the same item. Further, if Columbia elects to use a term not previously approved by Plaintiffs, the in-store displays Columbia is required to display will educate consumers as to what exactly the reference price refers to. Obtaining this benefit for the Settlement Class is a huge victory for the Plaintiffs because these changes to Columbia's outlet store pricing practices will address and eliminate the consumer perception that the Outlet SMU Build item was marked down from the higher reference price on the tag—the basis for Plaintiffs' claims that the tags were misleading to consumers.

7. Class Counsel has extensive experience in deceptive retail pricing cases and general consumer class action litigation. Tycko & Zavareei, LLP and Kopelowitz Ostrow Ferguson Weiselberg Gilbert are national, plaintiff side, consumer protection firms based in Washington, D.C.,

and South Florida, respectively, and have each been appointed class counsel in numerous consumer protection class actions across the country, including in the Northern District of California. The firms' attorneys have extensive experience and knowledge of California consumer protection law, and practical experience bringing class action cases to trial in federal court. Accordingly, Plaintiffs' counsel has the requisite resources and experience to litigate a federal consumer protection class action through trial, and are well informed of the risks of continued litigation in this case. Additionally, Class Counsel have litigated cases involving reference pricing on products sold by Michael Kors, Levi's, Nordstrom, Guess, and DSW. As a result, Class Counsel is uniquely qualified to understand the relative strengths and weaknesses of deceptive pricing cases in general, and to apply those learnings to particular facts of this case. Based on their experience and reasoned judgment, the information learned through extensive fact and expert discovery, and legal research for this and similar cases, Class Counsel concluded that the Settlement provides exceptional results for the Settlement Class while sparing the Settlement Class from the uncertainties of continued and protracted litigation.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 6th day of October 2017, in Washington, DC.

/s/ *Hassan A. Zavareei*

Hassan A. Zavareei

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the "Agreement") is entered into as of September 29, 2017 (the "Effective Date") between plaintiffs Jeanne and Nicolas Stathakos ("Plaintiffs"), individually and as class representatives of the Class defined in Section II below, and defendants Columbia Sportswear Company and Columbia Brands USA, LLC (f.k.a. Columbia Sportswear USA Corporation) (collectively, "Columbia"). Plaintiffs and Columbia are referred to jointly as the "Parties," and individually as "Party."

I. RECITALS

A. On October 2, 2015, Plaintiffs filed a complaint in the United States District Court for the Northern District of California titled *Stathakos v. Columbia Sportswear Company*, Case No. 4:15-cv-04543-YGR (the "Lawsuit"). On March 7, 2016, Plaintiffs filed a Third Amended Complaint in the Lawsuit (the "TAC"). The TAC alleges claims for violation of California's Unfair Competition Law, violation of California's False Advertising Law, and violation of California's Consumers Legal Remedies Act.

B. On May 11, 2017, the Court issued an Order Granting in Part Motions to Strike Experts; Granting in Part Defendants' Motion for Summary Judgment; Granting in Part Plaintiffs' Motion for Class Certification, ECF Dkt. No. 101 (the "Order"). In the Order, the Court conditionally certified a Rule 23(b)(2) class and denied certification of a Rule 23(b)(3) class. Thereafter, on May 26, 2017, pursuant to a further order, ECF Dkt. No. 104, the Court finally certified the 23(b)(2) class only. The certified class was: "All consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action."

C. On August 14, 2017, the Parties attended a full-day mediation session before retired United States Magistrate Judge Edward Infante. Following the mediation, the Parties reached a tentative agreement, executed a Confidential Settlement Term Sheet, and now this Agreement memorializes the Parties' settlement. At all times, the settlement negotiations were adversarial, non-collusive, and conducted at arm's-length.

D. This Settlement represents a compromise of disputed claims. Columbia denies any and all allegations of liability, fault, or wrongdoing asserted in the Lawsuit and denies that any claims alleged in the Lawsuit are suitable for class certification other than for purposes of this Agreement.

II. SETTLEMENT CLASS DEFINITION

A. For purposes of this Agreement, the Settlement Class is the one the Court certified in this Action ("Class," the members of which are referred to as the "Class Members"):

> All consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action.

B. For purposes of this Agreement, Class Counsel is the counsel that the Court appointed to represent the Rule 23(b)(2) Class: Tycko & Zavareei LLP and Kopelowitz Ostrow Ferguson Weiselberg Gilbert ("Class Counsel").

C. For purposes of this Agreement, the Class Representatives are the Plaintiffs, whom the Court appointed to represent the Rule 23(b)(2) Class.

III. SETTLEMENT OF INJUNCTIVE CLASS

A. Columbia agrees that it will not use its current price tag format for Outlet SMU Builds in its California Outlet Stores, except as permitted during the implementation period described below in Section III.C.

B. To the extent Columbia uses a comparison price (*i.e.*, dual pricing) on the price tags for its Outlet SMU Builds (which is defined to include only those items that are sold exclusively at Columbia's outlets) in its outlet stores located in California, Columbia agrees for a period of three years following the Final Approval Date (as defined below in Section IV) as follows:

1. Columbia may either:

(a) Include a label on its price tags describing the comparison prices as one of the following: Comparable Value, Comp. Value, Comparable Item, Comp. Item, Comparable Style, or Comp. Style; or

(b) If Columbia does not use one of the terms identified in Section III.B.1.(a), Columbia can include a label on its price tags describing the comparison prices with a different word or phrase, except that, in addition, Columbia must also post in-store signage explaining what Columbia means by whatever term it opts to use, including that the product to which the Outlet SMU Build is being compared to may not be identical to the Outlet SMU Build. Such use shall be based on Columbia's reasonable belief as to prices at which the compared to item has actually sold at other stores. The signage shall include language consistent with the language agreed to pursuant to Section III.D. below.

C. Implementation Period. Columbia will comply with the above terms for Spring 2019 products being shipped to stores beginning in January 2019 and for all Outlet SMU Build

products within the stores by the later of July of 2019 or the date when Fall 2019 products begin shipping to stores.

D. Signage During Implementation. Until Columbia's compliance with the above terms is completed as set forth in Section III.C., Columbia will place a legible sign under the plexiglass at each cashwrap in its California outlet stores such that it can reasonably be viewed by an average consumer utilizing the cash register. If the plexiglass placement is not feasible at any location, Columbia may substitute the same signage in a standing placard. Once Columbia is in compliance with the above terms, Columbia will have no further obligation to present this signage. The signage shall state: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product was offered in any of those channels."

IV. APPROVAL PROCEDURES, CLASS NOTICE, AND COLUMBIA'S RIGHT TO WITHDRAW

A. Preliminary and final Court approvals of this Agreement are contemplated by the Parties and are express conditions precedent to this Agreement. If such approvals are not given, this Agreement shall be null and void. Because this Agreement settles an injunctive-only, Rule 23(b)(2) class as above defined, and class members are not entitled to opt-out of such a settlement, the Parties agree that no notice to the class is required, and therefore the Court can preliminarily and finally approve the Agreement at the same time. Accordingly, as soon as practicable after the signing of this Agreement, the Plaintiffs shall file an application asking the court to preliminarily and finally approve this Agreement as fair, reasonable, and adequate. The date on which the Court finally approves this Agreement shall be referred to as the "Final Approval Date."

B. To the extent the Court requires that notice be provided to the Class for approval to be ordered, the Parties and their respective counsel will cooperate with each other and do all things reasonably necessary to effectuate that notice. Columbia will bear the costs of providing any court-required notice. However, to the extent that the Court-required notice is anticipated to cost more than $30,000, Columbia has the right to withdraw from and terminate this Agreement. If Columbia withdraws from and terminates this Agreement, then the Agreement will be rescinded and will be without further legal effect.

C. Whether Notice is ordered or not, in no event shall Plaintiffs or Class Counsel be entitled to receive or review any identifying or contact information for Class Members.

D. The Parties and their respective counsel will cooperate with each other and do all things reasonably necessary to obtain final approval of the Agreement, protect and support the Agreement if an appeal is taken or any other form of judicial review is sought, and otherwise ensure that this Agreement is finally approved by the Court, subject to Section IV.B.

E. In the event the Agreement does not receive final approval (including in the event that Columbia withdraws from and terminates the Agreement as set forth in Section IV.B.), or a final approval order is reversed on an appeal by an objector, then this Agreement and any preceding Settlement Term Sheet shall be of no force or effect and, in such event, the Parties agree that the Agreement and any preceding Settlement Term Sheet, and any and all negotiations, documents and discussions associated with them, shall be without prejudice to the rights of any Party, and shall not be deemed or construed to be an admission or evidence of any violation of any statute, law or regulation or of any liability or wrongdoing by Columbia or of the truth of any of the claims or allegations made by Plaintiffs in the Lawsuit. All Parties expressly reserve all of their rights if the Agreement is not finally approved, including but not limited to the right to oppose class

certification or to seek to decertify the class. If the Agreement does not receive final and non-appealable Court approval, Columbia shall not be obligated to make any payments or provide any other monetary or non-monetary relief to Plaintiffs or the Settlement Class members, any attorneys' fees or expenses to Class Counsel, or any service award ("Service Award") to the Plaintiff.

V. RELEASE OF CLAIMS

A. Provided that this Agreement is finally approved by the Court, Plaintiffs, on behalf of themselves and their heirs, representatives, successors, assigns, trusts, executors, and attorneys, hereby release and discharge Columbia, and each of Columbia's respective past and present officers, directors, employees, shareholders, members, partners, agents, representatives, predecessors, successors, parents, subsidiaries, affiliates, assigns, insurance companies, and attorneys, from any and all liabilities, claims, causes of action, damages (whether actual, compensatory, statutory, punitive or of any other type), penalties, losses, or demands, whether known or unknown, existing or suspected or unsuspected, that Plaintiffs have or might have against them as of the date of this Agreement. Nothing in this release affects Plaintiffs' rights under this Agreement to file an application for attorneys' fees and costs and for a Service Award, as set forth below in Section VII.

B. Provided that this Agreement is finally approved by the Court, the Class Members other than Plaintiffs (the "Releasing Parties"), on behalf of themselves, and each of their respective heirs, representatives, successors, assigns, trusts, executors, and attorneys, hereby release and discharge Columbia, and each of Columbia's respective past and present officers, directors, employees, shareholders, members, partners, agents, representatives, predecessors, successors, parents, subsidiaries, affiliates, assigns, insurance companies, and attorneys, from any and all claims for injunctive relief, other similar equitable relief or any relief available under Rule 23(b)(2),

whether known or unknown, existing or suspected or unsuspected, that were or reasonably could have been asserted based on the factual allegations in this Lawsuit (collectively, the "Released Claims") that occurred during the Class Period. Releasing Parties specifically preserve and do not release their monetary claims.

C. Plaintiffs knowingly and voluntarily waive the protections of Civil Code section 1542, and each Releasing Party is deemed to waive the protections of Section 1542 to the extent that Section 1542 applies to the release given by the Releasing Party. Section 1542 provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

VI. ACKNOWLEDGMENT AND STATEMENT OF PRESENT INTENT

Columbia represents that it would not enter into this Agreement without assurances that Class Counsel and each of Plaintiffs' counsel of record herein have no current intention to resume litigation over the same or similar issues. Class Counsel and Plaintiffs' counsel of record herein represent and warrant that they do not currently intend to bring any further claims against Columbia or any of the released parties based on the allegations in the Lawsuit, and they, along with Plaintiffs, are aware of no persons who have a currently expressed intent to assert or file claims against Columbia or any of the released parties related to the allegations in the Lawsuit. Further, Class Counsel, Plaintiffs' counsel of record herein, and Plaintiffs do not currently intend to solicit or actively seek clients, or advertise availability for representation of any person or entity, seeking relief against Columbia or any of the released parties with respect to the allegations in the Lawsuit.

VII. PROCEDURE FOR ATTORNEYS' FEES AND SERVICE AWARD

A. After final approval of the Agreement, Plaintiffs may file a petition for attorneys' fees and expenses with the Court. Columbia will not contest Plaintiffs' entitlement to some attorneys' fees and expenses, but Columbia may oppose the amount of fees and expenses that Plaintiffs may seek. Plaintiff will not seek to recover fees and expenses incurred in connection with their Motion for Partial Summary Judgment filed on August 21, 2017. The Parties retain full rights to any discovery they might be entitled to under the Local Rules of this Court and the Federal Rules of Civil Procedure in connection with such petition for attorneys' fees and expenses or any opposition thereto, and further retain full right to any evidentiary submissions in connection with the same. The Parties also reserve all rights to appeal the Court's decision on Plaintiffs' anticipated petition for attorneys' fees and expenses.

B. Plaintiffs may also file a petition for a Service Award. Columbia will not contest Plaintiffs' entitlement to some Service Award, but Columbia may oppose the amount of the Service Award Plaintiffs seek. The Parties reserve the right to appeal the Court's decision on Plaintiffs' petition for a Service Award.

C. With respect to each of the foregoing, the Parties will work with the Court to determine an appropriate briefing schedule on Plaintiffs' anticipated petitions. In no event, however, shall Columbia's opposition to any such petition be due less than 60 days after submission of Plaintiffs' petition.

VIII. EXTENSIONS OF TIME

Unless otherwise ordered by the Court, the Parties may jointly agree in writing to reasonable extensions of time to carry out any provisions of this Agreement.

IX. MISCELLANEOUS

A. Nothing in this Agreement constitutes an admission by any Party as to the validity of any claim or defense asserted in the Lawsuit or as to the propriety of class certification of any claims raised in the Lawsuit other than for purposes of this Agreement.

B. This Agreement may be modified only by a writing signed by the Parties.

C. This Agreement, including any exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party, except as specifically set forth in this Agreement. All prior discussion and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement and exhibits will be construed each as a whole, and with reference to one another, according to their fair meaning and intent. The Parties agree that the rule of construction that ambiguities in agreements must be construed against the drafting party will not apply in interpreting this Agreement.

D. The Parties have each received independent legal advice from attorneys of their choice with respect to the advisability of making the settlement and release provided in this Agreement, and with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by each Party, that Party's attorney reviewed this Agreement at length, made negotiated changes, and signed this Agreement to indicate that the attorney approved this Agreement as to form and substance.

E. Except as expressly stated in this Agreement, no Party has made any statement or representation to any other Party regarding any fact relied upon by any other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation, or

promise of any other Party in executing this Agreement, or in making the settlement provided for in this Agreement, except as expressly stated in this Agreement. There have been no other agreements or understandings between the Parties to this Agreement, or any of them, relating to the disputes referred to in this Agreement, except as expressly stated in this Agreement.

F. Each individual signing this Agreement warrants that he or she has the authority to sign the Agreement on behalf of the Party for which he or she signs. Columbia warrants that it has obtained all necessary authorizations under its organizational documents and under the law to make this Agreement binding on it.

G. Plaintiffs represent and warrant that they are the sole and lawful owner of all right, title and interest in and to every claim and other matter which they purport to release through this Agreement, and they have not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claim or other matters released in this Agreement.

H. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

I. The Parties agree that this Agreement, and any and all disputes that arise from or in any way relate to this Agreement, will be governed by California law.

J. This Agreement may be executed in counterparts.

K. Each of the Parties 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 the Party's obligations under this Agreement to carry out the express intent of the Parties to the Agreement.

L. Except as otherwise specifically provided for herein, each Party will bear its own attorneys' fees, costs and expenses.

M. The United States District Court for the Northern District of California will retain continuing jurisdiction to interpret and enforce this Agreement.

IN WITNESS WHEREOF, the Parties accept and agree to this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Dated: 9/29/2017, 2017

DocuSigned by:
A337B7C73ED4439...
JEANNE STATHAKOS

Dated: 9/29/2017, 2017

DocuSigned by:
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NICOLAS STATHAKOS

Dated: 9/29, 2017

COLUMBIA SPORTSWEAR COMPANY and COLUMBIA BRANDS USA, LLC

By: Lindsey Kantawee

APPROVED AS TO FORM:

Dated: 9/29, 2017

TYCKO & ZAVAREEI LLP

HASSAN ZAVAREEI
Attorneys for Plaintiffs

Dated: 9/29, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

CRAIG CARDON
Attorneys for Defendants

EXHIBIT B

TYCKO & ZAVAREEI LLP

TYCKO & ZAVAREEI LLP

HISTORY

Our firm was founded in 2002, when Jonathan Tycko and Hassan Zavareei left the large national firm at which they both worked to start a new kind of practice. Since then, a wide range of clients have trusted us with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

Our practice is focused in a few select areas: consumer class action litigation, employment litigation, appellate litigation, whistleblower *qui tam* litigation, intellectual property litigation, First Amendment litigation, and business litigation.

EXPERIENCE

Our firm's practice focuses on complex litigation. This includes representation of plaintiffs in class action litigation. Since the founding of our firm, we have been plaintiff's counsel in dozens of separate lawsuits brought as class actions. In addition to this work on class actions, our practice also involves representing businesses in unfair competition and antitrust litigation, representing employees in employment litigation, and representing whistleblowers in *qui tam* litigation brought under the False Claims Act and other similar whistleblower statutes..

PRACTICE AREAS

CONSUMER CLASS ACTIONS

Our attorneys have a wealth of experience litigating consumer and other types of class actions. We primarily represent consumers who have been the victims of corporate wrongdoing. Our attorneys bring a unique perspective to such litigation because each of our partners trained at major national law firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables us to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation.

In addition, because class actions present such high-stakes litigation for corporate defendants, our ability to skillfully oppose motions to dismiss the case at an early stage of the litigation before the class has a chance to have a judge or jury consider the merits of its claims is critical to obtaining relief for our clients. Our attorneys have successfully obtained class certification, the most critical step in winning a class action, and obtained approval of class action settlements with common funds collectively amounting to over $250 million.

EMPLOYMENT LITIGATION

Our attorneys have substantial experience representing employees and employers in employment disputes. In most of the employment litigation that we handle, however, we represent groups of plaintiffs who are challenging systemic unlawful employment practices. For instance we successfully represented seven women in their claims of systemic discrimination and sexual harassment by Hooters restaurants in West Virginia, and we represented a group of women seeking class treatment of their allegations of sexual discrimination by Ruth's Chris.

APPELLATE

Our attorneys have substantial experience in analyzing, briefing and arguing appeals. We have handled appeals in courts around the country, including the U.S. Supreme Court, the U.S. Circuit Courts, and the District of Columbia Court of Appeals.

QUI TAM AND FALSE CLAIMS ACT

Our firm represents whistleblowers who courageously expose fraud by government contractors, healthcare providers, and other companies doing business with the government through litigation under the False Claims Act. We also represent whistleblowers who expose tax fraud through the IRS Whistleblower Office program, whistleblowers who expose violations of the securities laws through the SEC Whistleblower Office program, and banking industry whistleblowers through the Department of Justice's FIRREA program.

INTELLECTUAL PROPERTY

Our attorneys have substantial experience litigating cutting-edge intellectual property cases in state and federal courts. Proper handling of intellectual property controversies requires substantive knowledge of the relevant body of law, together with strong litigation experience and skill. We bring these elements together to effectively represent our clients in complex trademark and copyright lawsuits.

We have litigated copyright infringement cases on behalf of corporations and associations, including submitting an amicus brief on behalf of three technology companies in the United States Supreme Court on Internet file sharing in the *MGM, et al. v. Grokster, et al.* case. We have also counseled clients on copyright matters, and written and presented on important copyright issues, such as the intersection of technology, copyright and the First Amendment. The firm briefed and argued an appeal to the Fifth Circuit Court of Appeals on a novel issue of law in a dispute over the competing trademark rights of two test preparation companies operating in the same markets, using the same trade name.

FIRST AMENDMENT

Partner Hassan Zavareei represented the plaintiff in one of the most important cases of media defamation handled recently by the courts, namely, the case brought by Dr. Steven Hatfill

against Condé Nast Publications (the publisher of Vanity Fair magazine) and Reader's Digest for articles that falsely accused Dr. Hatfill of perpetrating the Anthrax murders that occurred in the fall of 2001.

Further, our firm has represented a number of employees who have fought back against former employers for defamatory statements. Our lawyers have obtained very substantial settlements on behalf of our clients. Also, our firm has represented businesses seeking to protect their hard-earned reputations against such defamation by their competitors.

Our attorneys also have experience in other types of First Amendment litigation. For example, partner Jonathan Tycko represented a consortium of media clients in a series of lawsuits to gain access to the sealed proceedings in the Independent Counsel investigation of and impeachment proceedings against President Bill Clinton. And partner Hassan Zavareei successfully challenged a district court injunction that violated our client's First Amendment guarantees to free speech and rights to petition the government.

BUSINESS DISPUTES

We represent businesses, large and small, in their most significant business disputes. Indeed, prior to the founding of Tycko & Zavareei LLP, our partners spent many years at a large law firm specialized in representing business interests. We have represented some of the largest, publicly-traded corporations in the world, but also have represented small and medium size businesses.

JONATHAN K. TYCKO
PARTNER

In 2002, Jonathan K. Tycko helped found Tycko & Zavareei LLP. Prior to that, Mr. Tycko was with Gibson, Dunn & Crutcher LLP, one of the nation's top law firms. He received his law degree in 1992 from Columbia University Law School, where he was a Stone Scholar, and earned a B.A. degree, with honors, in 1989 from The Johns Hopkins University.

After graduating from law school, Mr. Tycko served for two years as law clerk to Judge Alexander Harvey, II, of the United States District Court for the District of Maryland.

Mr. Tycko's practice has focused primarily on civil litigation. He has extensive trial and appellate experience in real estate, housing, employment, False Claims Act, environmental, consumer class action, media, and professional malpractice litigation. Mr. Tycko has represented a wide range of clients, including Fortune 500 companies, privately-held business, non-profit associations, and individuals.

In addition, Mr. Tycko has handled many pro bono cases in the area of human rights law, including representation of political refugees seeking asylum, and preparation of amicus briefs on behalf of the Lawyers Committee for Human Rights (now known as Human Rights First) and other organizations and individuals in various appellate matters, including matters before the Supreme Court.

For two years, from 2002 through 2004, Mr. Tycko taught as an Adjunct Professor at the George Washington University Law School.

He is admitted to practice before the courts of the District of Columbia, Maryland and New York, as well as before numerous federal courts, including the Supreme Court, the Circuit Courts for the D.C. Circuit, Third Circuit, Fourth Circuit, Ninth Circuit and Federal Circuit, the District Courts for the District of Columbia, the District of Maryland, the Northern and Southern Districts of New York, and the Court of Federal Claims.

HASSAN A. ZAVAREEI
PARTNER

Hassan Zavareei graduated *cum laude* from Duke University in 1990, with degrees in Comparative Area Studies and Russian. Upon graduation from Duke, Mr. Zavareei worked as a Russian-speaking flight attendant for Delta Air Lines for two years. He later earned his law degree from the University of California, Berkeley School of Law in 1995, where he graduated as a member of the Order of the Coif. After graduation from Berkeley, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. In April of 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner, Jonathan Tycko.

Mr. Zavareei has handled numerous trials in state and federal courts across the nation in a wide range of practice areas. In his most recent jury trial, Mr. Zavareei prevailed on behalf of his client after a four month trial in the Los Angeles Superior Court. That jury verdict came after years of hard-fought litigation, including an award of almost $2 million in sanctions against the opposing party due to revelations of discovery misconduct uncovered through electronic discovery.

Although he is a general litigator, Mr. Zavareei devotes most of his practice to class action litigation. While at Gibson Dunn, Mr. Zavareei managed the defense of a nationwide class action brought against a major insurance carrier. In recent years, Mr. Zavareei's class action practice has focused on the representation of plaintiffs in consumer fraud cases, primarily relating to the financial services industry. For instance, Mr. Zavareei was class counsel in over a dozen cases against banks across the country regarding their practices of charging unlawful overdraft fees for debit card transactions. Those cases haves returned hundreds of millions of dollars to consumers. Mr. Zavareei also served as Lead Counsel in Multi-District Litigation against a financial services company that provided debit cards to college students. That case also resulted in the return of millions of dollars to consumers. He is currently lead counsel or co-lead counsel in numerous class actions and putative class actions.

In his civil rights practice, Mr. Zavareei has represented individuals, groups of employees, and tenant associations in employment and fair housing litigation. Mr. Zavareei has obtained substantial judgments and settlements for his civil rights clients.

As a general litigator, Mr. Zavareei has been involved in numerous high profile cases. For example, Mr. Zavareei represented Christian Laettner *pro bono* in a successful battle with investors and rogue business partners to stabilize Mr. Laettner's historic development of downtown Durham, North Carolina. Mr. Zavareei also represented Dr. Steven Hatfill, who was wrongfully accused by the media and the FBI of perpetrating the Anthrax attacks of 2001. Mr. Zavareei successfully represented Dr. Hatfill in defamation litigation against *Vanity Fair* and *The Reader's Digest*.

Mr. Zavareei is an accomplished appellate lawyer, having argued cases before the D.C. Circuit, the Fifth Circuit, the Fourth Circuit, and the Ohio Court of Appeals.

Mr. Zavareei is admitted to the State Bar of California, the Bar of the District of Columbia and the Bar of the State of Maryland. Mr. Zavareei is admitted to practice before the federal district courts of the District of Columbia, Maryland, the Northern District of California, the Central District of California, the Southern District of California, and the Eastern District of Michigan. He is also admitted to the Supreme Court Bar and to the Circuit Courts of the District of Columbia, the Ninth Circuit, the Fourth Circuit and the Fifth Circuit.

Mr. Zavareei is married to Dr. Natalie Zavareei and has three daughters, Hayden, Jordan and Isabella. He is a member of the Board of Directors of Public Justice and is the President of Hayden's Journey of Inspiration, a non-profit that provides housing to families of pediatric stem cell transplant recipients.

ANDREA R. GOLD
PARTNER

Andrea Gold, a two-time graduate of the University of Michigan, has spent her legal career advocating for consumers, employees, and whistleblowers. Ms. Gold has deftly litigated numerous complex cases, including through trial. Her extensive litigation experience benefits the firm's clients in both national class action cases as well as in qui tam whistleblower litigation.

She has served as trial counsel in two lengthy jury trials. First, she was second-chair in a four month civil jury trial in state court in California. She more recently served as second-chair in a multi-week jury trial in Maryland.

In her class action practice, Ms. Gold has successfully defended dispositive motions, navigated complex discovery, worked closely with leading experts, and obtained contested class certification. Her class action cases have involved, amongst other things, unlawful bank fees, product defects, violations of the Telephone Consumer Protection Act, and deceptive advertising and sales practices. Ms. Gold's tireless efforts have resulted in millions of dollars in recovery for consumers.

Ms. Gold also has significant civil rights experience. She has represented individuals and groups of employees in employment litigation, obtaining substantial recoveries for employees who have faced discrimination, harassment, and other wrongful conduct. In addition, Ms. Gold has appellate experience in both state and federal court.

Prior to joining Tycko & Zavareei, Ms. Gold was a Skadden fellow. The Skadden Fellowship Foundation was created by Skadden, Arps, Slate, Meagher & Flom, LLP, one of the nation's top law firms, to support the work of new attorneys at public interest organizations around the country. The Skadden Fellowship Foundation receives hundreds of applications each year, but only a very small number of Skadden fellows are selected. Ms. Gold was awarded this prestigious fellowship in 2004 and, for two years, she represented survivors of domestic violence in family law and employment matters. Ms. Gold also provided legal counsel to clients, members of the legal community, and social service providers regarding the Illinois Victim's Safety and Security Act (VESSA), a state law protecting survivors of abuse from employment discrimination and providing for unpaid leave.

Ms. Gold earned her law degree from the University of Michigan Law School, where she was an associate editor of the Journal of Law Reform, co-President of the Law Students for Reproductive Choice, and a student attorney at the Family Law Project clinical program. Ms. Gold graduated with high distinction from the University of Michigan Ross School of Business in 2001, concentrating her studies in Finance and Marketing.

Ms. Gold is admitted to practice before the courts of the District of Columbia, Illinois, and Maryland, as well as numerous federal courts including the U.S. District Court for the District of Columbia, the U.S. District Court for the District of Maryland, and the U.S. Court of Appeals for the District of Columbia Circuit.

LORENZO B. CELLINI
PARTNER

Lorenzo Cellini graduated magna cum laude from the University of Arizona, James E. Rogers College of Law in 2004. In law school he was a member of the moot court board, a legal writing fellow and the recipient of the E. Thomas Sullivan Antitrust Award. He also received his B.A. from the University of Arizona, graduating magna cum laude and as a member of Phi Beta Kappa.

Before joining Tycko & Zavareei LLP, Mr. Cellini practiced law in Tucson, Arizona. He specialized in commercial litigation, with an emphasis on contract disputes, real estate, intellectual property and bankruptcy. Additional practice areas included real estate and business transactions, appellate, employment and civil rights law. Representative clients included large biomedical engineering, technology and real estate development firms, as well as local restaurants, banks and individuals.

Mr. Cellini also has substantial experience in antitrust law. While in law school, he served as a law clerk in the Antitrust Division of the U.S. Department of Justice, where he assisted in investigations of anticompetitive conduct and proposed mergers. Before attending law school, he worked in the Federal Trade Commission's Bureau of Competition.

Other legal experience includes externships with the University of Arizona Student Legal Services and Judge Raner Collins of the U.S. District Court for the District of Arizona.

Mr. Cellini is a member of the District of Columbia Bar, and also is admitted to practice before the Supreme Court of Arizona, U.S. District Court for the Districts of Arizona and Maryland and the U.S. Court of Appeals for the Federal Circuit.

JEFFREY D. KALIEL
PARTNER

Jeffrey Kaliel earned his law degree from Yale Law School in 2005. Mr. Kaliel graduated from Amherst College summa cum laude in 2000 with a degree in Political Science. He spent one year studying Philosophy at Robinson College, Cambridge University, England.

Mr. Kaliel has substantial class action experience. He has been appointed Class Counsel in numerous actions and has served as co-counsel in numerous other class actions. In those cases, Mr. Kaliel has defended several dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts. Mr. Kaliel has also successfully resolved numerous class actions by settlement, resulting in relief for millions of class members. Mr. Kaliel is actively litigating several national class action cases, including several actions against financial services entities.

Prior to joining Tycko & Zavareei, Mr. Kaliel was in the Honors Program at the Department of Homeland Security, where he worked on some the Department's appellate litigation. Mr. Kaliel also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry.

Mr. Kaliel has also served as a Special Assistant US Attorney in the Southern District of California, prosecuting drug and border crimes.

In 2008, Mr. Kaliel worked in Namibia with Lawyers Without Borders on the observation of a 400-defendant treason trial arising from a 1998 armed rebellion.

Mr. Kaliel is a former Staff Sergeant in the Army Reserve and a veteran of the second Iraq war, having served in Iraq in 2003. His publications include contributions to Homeland Security Today and American Bar Association's Homeland Security Handbook.

Mr. Kaliel is admitted to practice in California and Washington, DC. He is also admitted to the U.S. District Court for the District of Columbia, the Southern, Central, and Northern Districts of California, and the Northern District of Illinois.

KRISTEN L. SAGAFI
PARTNER

Kristen Law Sagafi is a 2002 graduate of the University of California, Berkeley School of Law, where she served as articles editor for Ecology Law Quarterly and a student law clerk to the Hopi Appellate Court in Keams Canyon, Arizona. After graduating from law school, Ms. Sagafi joined the San Francisco office of Lieff Cabraser Heimann & Bernstein, LLP, one of the nation's premier class action firms. Ms. Sagafi was recognized as a "Rising Star for Northern California" by Super Lawyers every year between 2009 and 2014, before being named as a "Super Lawyer" in 2015.

Ms. Sagafi focuses her practice on consumer fraud cases, including matters involving false advertising and unfair competition. In 2014, Ms. Sagafi drafted and advanced a bill to strengthen the protections afforded to consumers under California's Consumers Legal Remedies Act, an effort that included presenting testimony to the California State Senate Judiciary Committee. Beyond her consumer protection practice, Ms. Sagafi has received more than 40 hours of accredited mediation training and has served as a volunteer mediator at Contra Costa Superior Court, successfully mediating small claims and landlord-tenant cases.

In addition, Ms. Sagafi has been a guest lecturer on class action law at UC Berkeley and law firm management at UC Hastings. Since 2010, she has been co-chair of the Berkeley Consumer Law Alumni Group. Ms. Sagafi currently sits on the Board of the Justice and Diversity Center of the Bar Association of San Francisco, which advances fairness and equality by providing pro bono legal services to low-income people and educational programs that foster diversity in the legal profession. From 2009-2014, Ms. Sagafi served on the Board of Governors of California Women Lawyers, where she was a member of the executive committee and co-chair of the membership committee.

ANNA C. HAAC
PARTNER

Anna C. Haac is a Partner in Tycko & Zavareei's Washington, D.C. office. She focuses her practice on consumer protection class actions and whistleblower litigation. Her prior experience at Covington & Burling LLP, one of the nation's most prestigious defense-side law firms, gives her a unique advantage when representing plaintiffs against large companies in complex cases. During her time at Covington, Ms. Haac represented corporate clients in high stakes cases, focusing her practice on complex civil litigation, white collar defense work, and employment disputes. Among other matters, Ms. Haac represented Fortune 500 companies in government investigations into violations of federal laws and regulations, advised employers on applicable federal and state employment laws, and litigated on behalf of companies and individuals in patent, insurance, and other civil matters.

Since arriving at Tycko & Zavareei, Ms. Haac has represented consumers in a wide range of practice areas, including product liability, false labeling, deceptive and unfair trade practices, and predatory financial practices. She also serves as the D.C. Co-Chair of the National Association of Consumer Advocates. Her whistleblower practice involves claims for fraud on federal and state governments across an equally broad spectrum of industries, including health care fraud, customs fraud, and government contracting fraud. During her tenure at Tycko & Zavareei, Ms. Haac has helped secure multimillion dollar relief on behalf of the classes and whistleblowers she represents. In addition, she has been instrumental in securing key appellate victories, including a recent landmark decision by the U.S. Court of Appeals for the Third Circuit, which held as a matter of first impression that the evasion of customs duties for failing to mark imported goods with their foreign country of origin gives rise to a claim under the False Claims Act.

Ms. Haac earned her law degree cum laude from the University of Michigan Law School in 2006 and went on to clerk for the Honorable Catherine C. Blake of the United States District Court for the District of Maryland. Prior to law school, Ms. Haac graduated with a B.A. in political science with highest distinction from the Honors Program at the University of North Carolina at Chapel Hill.

Ms. Haac is a member of the District of Columbia and Maryland state bars. She is also admitted to the United States Court of Appeals for the Second, Third, and Fourth Circuits and the United States District Courts for the District of Columbia, District of Maryland, and the Eastern District of Michigan.

ANDREW J. SILVER
ASSOCIATE

Andrew J. Silver graduated magna cum laude as a member of the Order of the Coif from Boston College Law School in 2012. While in law school, he was an Articles Editor of the Boston College International & Comparative Law Review, for which he previously served as a Staff Writer. In 2007, Mr. Silver graduated from Tufts University with a B.A. in Economics and a concentration in Communication and Media Studies.

At Tycko & Zavareei LLP, Mr. Silver has worked on all aspects of complex civil litigation matters in federal and state courts, with a focus on consumer class action and qui tam litigation. The substantive issues in these cases have involved financial products, contracts, product labels, privacy, and product defects, and frequently touch on questions of statutory interpretation, federal regulations, and civil procedure. Mr. Silver is experienced in pre-complaint investigations, written discovery, deposition practice, all aspects of motion practice—including dispositive motions, class certification, and appeals—and has worked on multiple matters on which a court has granted a contested motion for class certification.

Prior to joining Tycko & Zavareei, Mr. Silver worked as a student-attorney at the Boston College Legal Assistance Bureau, practicing housing law, family law, and administrative law on behalf of indigent clients. During law school, he spent summers at the Appeals Bureau of the Manhattan District Attorney's Office and as a judicial intern for the Honorable Williams K. Sessions III at the United States District Court for the District of Vermont.

Prior to law school, Mr. Silver worked as a correspondent and desk assistant at The Boston Globe's Sports Department and additionally served as Managing Editor of The Tufts Daily, a daily student newspaper. He also worked as an administrator at Camp Bauercrest, a nonprofit residential camp in Massachusetts.

Mr. Silver is a member of the Massachusetts and District of Columbia bars and is admitted to practice before the United States District Court for the District of Columbia.

ANNICK M. PERSINGER
ASSOCIATE

Annick M. Persinger graduated magna cum laude as a member of the Order of the Coif from the University of California, Hastings College of the Law in 2010. While in law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated cum laude from the University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

Prior to joining Tycko & Zavareei LLP, Ms. Persinger was a litigation associate at Bursor & Fisher, P.A., a prestigious consumer class action firm. During her time at Bursor & Fisher, Ms. Persinger represented classes of purchasers of homeopathic products, mislabeled food products, mislabeled toothpaste products, and purchasers of large appliances that were mislabeled as Energy Star qualified. While working at Bursor & Fisher, Ms. Persinger developed cases for filing, drafted countless successful briefs in support of class certification, and defeated numerous motions to dismiss and motions for summary judgment. Ms. Persinger also routinely appeared in court, and regularly deposed and defended witnesses.

Following law school, Ms. Persinger also worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Since joining Tycko & Zavareei in 2017, Ms. Persinger has focused her practice on consumer class actions and other complex litigation.

Ms. Persinger is admitted to the State Bar of California and the bars of the United States District Courts for the Northern District of California, Central District of California, Eastern District of California, and Southern District of California.

SOPHIA J. GOREN
ASSOCIATE

Sophia Goren graduated from the University of California, Berkeley, School of Law in 2015. While in law school, Sophia was involved in the Berkeley Mock Trial Team and placed 1st in the prestigious Bales Mock Trial Competition. Sophia also participated in the California Asylum Representation Clinic and served as the student chair of the Faculty Appointments Committee. She received the Jurisprudence Award for Conflict of Laws.

Sophia spent her first summer in law school representing workers exposed to asbestos. In her second summer, Sophia was selected by the San Francisco Trial Lawyers' Association for the Trial Advocacy Fellowship, through which she split her summer between three San Francisco plaintiff-side firms.

Sophia graduated summa cum laude from Wake Forest University with a degree in Political Science.

DAVID W. LAWLER
OF COUNSEL

David Lawler received his law degree from Creighton University School of law in 1997. Mr. Lawler graduated from the University of California, Berkeley in 1989 with a degree in Political Science.

Mr. Lawler joined Tycko & Zavareei LLP in January 2012. He has over fifteen years of commercial litigation experience, including an expertise in eDiscovery and complex case management. At the firm Mr. Lawler has worked extensively on overdraft fee litigation and *In re Automotive Parts Antitrust litigation*.

Before joining Tycko & Zavareei LLP, Mr. Lawler was an attorney in the litigation departments at McKenna & Cuneo LLP and Swidler Berlin Shereff Friedman LLP.

Among Mr. Lawler's accomplishments include the co-drafting of appellate briefs which resulted in reversal and remand of lower court decision, US Court of Appeals for the Fourth Circuit.

Mr. Lawler is a member of the District of Columbia Bar, as well as numerous federal courts.

EXHIBIT C

KO LAWYERS
KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT
ONE WEST LAS OLAS BOULEVARD, SUITE 500
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE: 954.525.4100
FACSIMILE: 954.525.4300

OUR FIRM

For nearly two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 45 attorneys and over 20 support staff have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

Who We Are

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include: being listed among the "Legal Elite Attorneys" and as "Florida Super Lawyers"; achieving an AV® Preeminent™ rating by the Martindale-Hubbell peer review process; being Board Certified in their specialty; serving as in-house counsel for major corporations, as a city attorney handling government affairs, as a public defender, and as a prosecutor; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions, including Mayor of Broward County, Florida.

Our efficient staff is trained in the use of cutting edge case management technology, communication devices and computer programs, and is assisted by our in-

house programming staff who gives our firm an advantage in coordinating our class action suits. The firm has these significant resources at its disposal, and all of those resources will be committed as needed to the representation of the putative class in this litigation.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

Class Actions – Plaintiff

Since its founding, KO has initiated and serves as co-lead counsel and liaison counsel in many high profile class actions. Currently, the firm serves as liaison counsel in a multidistrict class action antitrust case against four of the largest contact lens manufacturers pending before Judge Schlesinger in the Middle District of Florida. *See* In Re: Disposable Contact Lens Antitrust Litigation, MDL 2626. Further, the firm serves as lead or co-lead counsel in over a dozen certified and/or proposed class actions against national and regional banks involving the unlawful re-sequencing of debit and ATM transactions resulting in manufactured overdraft fees. The complaints are pending in various federal and state jurisdictions throughout the country, including some in multidistrict litigation pending in the Southern District of Florida and others in state courts dispersed throughout the country. In connection with these cases, the firm's attorneys are admitted in many federal and state courts to properly litigate these cases. KO's substantial knowledge and experience litigating overdraft class actions and analyzing overdraft damage data has enabled the firm to obtain about 15 multi-million dollar settlements (in excess of $300 million) for the classes KO represents. In fact, KO recently secured a $27.5 million dollar settlement against Bank of America in connection with their debit hold practice resulting in deceptive overdraft charges for consumers.

Additionally, the firm is currently or has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, payday lenders for deceptive and predatory loans and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and

factory stores.

Class Action - Defense

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, an aircraft maker and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

Mass Tort Litigation

The firm also has extensive experience in mass tort litigation, including the handling of cases against Bausch & Lomb in connection with its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained millions in recoveries for its clients.

Other Areas of Practice

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

More about KO

To learn more about KO, or any of the other firm's attorneys, please visit www.kolawyers.com.

CLASS COUNSEL APPOINTMENTS

Orallo v. Bank of the West, 1:09-MD-202036 (S.D. Fla. 2012) - $18.0 million – Class Counsel

LaCour v. Whitney Bank, 8:11-CV-1896 (M.D. Fla. 20120 - $6.8 million – Class Counsel

Mello v. Susquehanna Bank, 1:09-MD-02046 (S.D. Fla. 2014) – 3.68 million – Class Counsel

Wolfgeher Commerce Bank, 1:09-MD-02036 (S.D. Fla. 2013) - $18.3 million – Class Counsel

Harris v. Associated Bank, 1:09-MD-02036 (S.D. Fla. 2012) - $13.0 million – Class Counsel

Blahut v. Harris Bank, 1:09-MD-02036 (S.D. Fla. 2013) - $9.4 million – Class Counsel

McKinley v. Great Western Bank, 1:09-MD-02036 (S.D. Fla. 2013) - $2.2 million – Class Counsel

Nelson v. Rabobank, RIC 1101391 (Riverside County, CA 2012) - $2.4 million – Class Counsel

Trevino v. Westamerica, CIV 1003690 (Marin County, CA 2010) - $2.0 million – Class Counsel

Johnson v. Community Bank, 3:11-CV-01405 (M.D.PA. 2013) - $1.5 million – Class Counsel

Simpson v. Citizens Bank, 2:12-CV-10267 (E.D.MI. 2012) - $2.0 million – Class Counsel

Hawthorne v. Umpqua Bank, 3:11-CV-06700 (N.D.Ca. 2012) – $2.9 million Settlement – Class Counsel

Case v. Bank of Oklahoma, 09-MD-02036 (S.D. Fla.. 2012) - $19.0 million Settlement – Class Counsel

Taulava v. Bank of Hawaii, 11-1-0337-02 (1st Cir. Hawaii 2011) - $9.0 million – Class Counsel

Swift. v. Bancorpsouth, 1:10-CV-00090 (N.D. Fla. 2016) - $24.0 million – Class Counsel, Litigation Class Certified

Payne v. Old National Bank, 82Co1-1406 (Cir. Ct. Vanderburgh) – Class Counsel, Litigation Class Certified

Bodnar v. Bank of America, N.A., 5:14-cv-03224-EGS (E.D. Pennsylvania 2015) – $27.5 million, Class Counsel

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Jeffrey M. Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice immediately upon graduation from law school in 1997, co-founded the current firm in 2001, and has since grown it to over 40 attorneys in 3 offices throughout South Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, commercial litigation, business counseling, and sports agency law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He currently represents multiple Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Seattle Times, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, CBS, FoxNews, ESPN, and other major national television networks in connection with his cases, which often involve athletes in the NFL, NBA, and MLB.

Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying cases to verdict in numerous cases involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over $250,000,000 for millions of bank customers, as well as monumental changes in the way banks assess fees. In addition, Mr. Ostrow has litigated consumer class actions against some of the world's largest clothing retailers, health insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

He is also the President of ProPlayer Sports LLC, a full service sports agency and marketing firm. Mr. Ostrow is licensed by both the NFL Players Association and the NBA Players Association as a Contract Agent certified to represent NFL and NBA professional athletes in connection with their football and basketball contract negotiations. At the agency, Mr. Ostrow handles all player-team negotiations of agreements, represents his clients in legal proceedings, and oversees all marketing engagements. His clientele represents nearly every major professional sport.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida and Juris Doctorate from Nova Southeastern University. He is a member of The Florida Bar and is fully admitted to practice before the U.S. Supreme Court, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Eastern District of Michigan, Northern District of Illinois, Western District of Tennessee, Western District of Wisconsin, and the U.S. Court of Appeals for the Eleventh Circuit. Mr. Ostrow is a also member of the American Bar Association and the founder and President of Class Action Lawyers of America.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have won multi-million dollar verdicts. Additionally, he has been named as one of the top lawyers in Florida by Super Lawyers® for several years running, honored as one of Florida's Legal Elite Attorneys, recognized as a Leader in Law by the Lifestyle Media Group®, and nominated by the South Florida Business Journal® as a finalist for its Key Partners Award. Mr. Ostrow is a recipient of the University of Florida's Warrington College of Business Administration *Gator 100* award for the fastest growing University of Florida alumni-owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale and the Managing Member of TKSF Management Group LLC, a company that operates a chain of Tilted Kilt Pub & Eatery® restaurants throughout

South Florida. He has also previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive *Dream Trips* to destinations of their choice.

Primary Practice Area
Class Action Litigation

Secondary Practice Area
Business & Sports Agency Law

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE and NICOLAS STATHAKOS, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

DECLARATION OF NICOLAS STATHAKOS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

Hearing Date: November 14, 2017
Courtroom: 1, 4th Floor, Oakland Courthouse

I Nicolas Stathakos, declare as follows:

1. I approved of the settlement in this case. I think that the settlement is fair to class members because it means that Columbia will change its practices with respect to how it uses reference pricing on products that are only sold at outlets—so that consumers like me will not be confused or mislead in the future.

2. As we go through the settlement process, I am staying in touch with Class Counsel so that I know about the progress of the Court's review of the settlement.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 6th day of October 2017, in Oakland, CA.

DocuSigned by:

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Nicolas Stathakos

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE and NICOLAS STATHAKOS, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

DECLARATION OF JEANNE STATHAKOS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

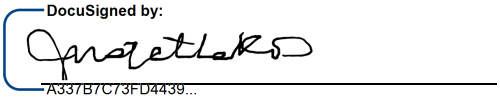
Hearing Date: November 14, 2017
Courtroom: 1, 4th Floor, Oakland Courthouse

I Jeanne Stathakos, declare as follows:

1. I approved of the settlement in this case because it changes the pricing of Columbia's outlet-exclusive products. I think that the settlement is fair to class members because it means that Columbia will stop using higher reference prices in a way that could mislead other California consumers like me.

2. As we go through the settlement process, I am staying in touch with Class Counsel so that I know about the progress of the Court's review of the settlement.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 6th day of October 2017, in Oakland, CA.

DocuSigned by:

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE and NICOLAS STATHAKOS, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

vs.

COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR USA CORPORATION,

DEFENDANTS.

Case No. 4:15-cv-04543-YGR

[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR SETTLEMENT APPROVAL

Hon. Yvonne Gonzalez Rogers

Hearing Date: November 14, 2017
Time: 2:00 p.m.
Courtroom: 1, 4th Floor, Oakland Courthouse

I. INTRODUCTION

Plaintiffs Jeanne Stathakos and Nicolas Stathakos bring this Federal Rule of Civil Procedure 23(b)(2) class action against defendants Columbia Sportswear Company and Columbia Sportswear USA Corporation (collectively, "Columbia") for alleged use of deceptive and misleading labeling and marketing of merchandise in its company-owned Columbia outlet stores. Plaintiffs bring five causes of action: three under each prong of the Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.* ("UCL") for (i) unlawful, (ii) unfair, and (iii) fraudulent business practices; the fourth for violation of the False Advertising Law, California Business & Professions Code §§ 17500, *et seq.*, (the "FAL"); and the fifth for violation of the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA").

Currently before the Court is Plaintiffs' Unopposed Motion for Approval of a Class Action Settlement. Having carefully reviewed the Agreement[1], and all papers, pleadings, records, and prior proceedings to date in this action, the Court grants Plaintiffs' Unopposed Motion for Settlement Approval. The Settlement set forth in the Parties' Agreement appears fair, reasonable, and adequate. The Parties' Agreement was reached as a result of extensive arm's length negotiations between the Parties with the assistance of a neutral mediator. Additionally, before entering into the Agreement, this action was on the eve of trial. Thus, Plaintiffs and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

II. BACKGROUND

On October 2, 2015, Plaintiffs Jeanne and Nicolas Stathakos commenced a proposed class action against Defendants. Dkt. 1. Plaintiffs asserted claims on behalf of themselves and a proposed California Class of purchasers who had purchased a Columbia Outlet Product with a price tag bearing a "Former Price." Plaintiffs alleged that Columbia deceptively advertised a "Former Price" on Columbia Products that were sold exclusively at Columbia Outlet stores ("Outlet SMU Builds").

On March 29, 2016, Columbia filed a motion to dismiss the operative Third Amended Complaint. Dkt. 38. On April 12, 2016, Plaintiffs opposed. Dkt. 39. On May 2, 2016, the Court

[1] The capitalized terms used herein are defined in and have the same meaning as used in the Settlement Agreement unless otherwise stated.

denied Columbia's motion in its entirety. Dkt. 41. On May 16, 2016, Columbia answered Plaintiffs' TAC, denying liability.

On November 18, 2016, Plaintiffs filed a motion for class certification. Dkt. 59. In support of that motion, Plaintiffs submitted expert reports from Professor Larry D. Compeau, an expert on the effects of reference pricing on consumer retail behavior, from Ms. Gabriele Goldaper, who had developed expertise in the fashion industry over a period of forty-five years, and from Arthur Olsen, an expert in data analysis, data development, and database support.

After deposing each of Plaintiffs' experts, on January 31, 2017, Columbia opposed Plaintiffs' motion, moved for summary judgment, and moved to exclude the opinions of Ms. Goldaper and Dr. Compeau. Dkts. 75-77. In support of their opposition to class certification, and their motion for summary judgment, Columbia submitted an expert report from Dr. Carol Scott in which she discussed a consumer survey that she had performed to evaluate the effect of reference prices.

Before filing their reply in support of certification, and opposition to summary judgment, Plaintiffs deposed Dr. Scott, and retained Hal Poret, a rebuttal expert to evaluate Dr. Scott's survey. On March 13, 2017, Plaintiffs opposed summary judgment, opposed Columbia's motion to exclude their experts, and submitted a reply in support of class certification. Dkts. 86-88.

After hearing argument from the Parties on Plaintiffs' motion for class certification, and Columbia's motion for summary judgment, the Court certified the following Rule 23(b)(2) class for injunctive relief:

> All consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action.

Dkts. 101, 104. The Court appointed the law firms of Tycko & Zavareei LLP, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert as Class Counsel. The Court appointed Plaintiffs as Class Representatives. The Court, however, denied Plaintiffs' request to certify a Rule 23(b)(3) class for monetary relief. In the same order, the Court also denied in part Columbia's motion for summary judgment, but granted it with respect to Plaintiffs' claims for damages, and the products the Plaintiffs purchased after they filed the initial complaint. Finally, the Court denied Columbia's

motion to exclude Ms. Goldaper's expert declaration, and granted in part and denied in part Columbia's motion to exclude Dr. Compeau's expert report.

While the parties began preparation for trial, they also agreed to private mediation with United States Magistrate Judge Edward Infante. Finally, on September 22, 2017, the Parties executed a term sheet and submitted a joint stipulation to stay the action. Dkt. 125.

III. SETTLEMENT AGREEMENT

The injunctive relief element of the Settlement is comprehensive. The terms of the Parties' Agreement require that Columbia modify its sales practices to change the manner and method of how it presents pricing on the price tags of Outlet SMU Builds. Agreement, Zavareei Decl. Ex. A, at § III. The injunction is designed to ensure that consumers understand Columbia's reference prices by describing what Columbia means by those reference prices. Specifically, Columbia agreed to stop using its current price tag format, and, to the extent it elects to utilize comparison price tactics in the future, to either (1) use seven terms approved by Plaintiffs or (2) supplement any term it chooses with in-store signage explaining what Columbia means by whatever term it opts to use. *Id.* at § III.B.1.[2] Further, as an additional layer of protection for consumers, while Columbia is in the process of complying with the stipulated injunction it will place legible notices at the point of sale, which state the following: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product was offered in any of those channels." *Id.* at § III.C-D.

The terms of the Agreement only release claims for injunctive relief or other similar equitable relief on behalf of the class. Settlement Agreement, Zavareei Decl. Ex. A, at § V. It does not release any claims on behalf of the class members for monetary damages. *Id.* at § V.B ("Releasing Parties specifically preserve and do not release their monetary claims."). Plaintiffs, on the other hand, are releasing both their claims for injunctive and any claim for individual damages.

[2] The seven agreed upon reference price terms are Comparable Value, Comp. Value, Comparable Item, Comp. Item, Comparable Style, or Comp. Style. Settlement Agreement, Zavareei Decl. Ex. A, at § III.B.1(a). These terms clearly inform customers that the advertised higher price is from a comparable item, not the identical item.

See id. § V.A. The proposed recovery to the class is in all other requests identical to the recovery to the individual Plaintiffs.

IV. THE CLASS

This Court takes note of its prior orders in which this Court certified a class of all consumers who have purchased an Outlet SMU Build at a Columbia Outlet store in the State of California since July 1, 2014 through the conclusion of this action. Dkts. 101, 104. In doing so, this Court considered the allegations, information, arguments, and authorities provided by the Parties and found as follows: that the requirements of numerosity, commonality, typicality, and adequacy had been established for a California Rule 23(b)(2) class; that the California class was ascertainable; and that questions of law and fact common to all Class Members predominated over questions affecting only individual members. The Court also appointed the law firms of Tycko & Zavareei LLP, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert as Class Counsel. The Court appointed Plaintiffs as Class Representatives.

V. NOTICE IS NOT REQUIRED

Unlike a Rule 23(b)(3) class where notice is mandatory, Rule 23(c)(2) states that, "[f]or any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class." Fed. R. Civ. P. 23(c)(2) (emphasis added). Because of this, "[c]ourts typically require less notice in Rule 23(b)(2) actions, as their outcomes do not truly bind class members" and there is no option for class members to opt out. *Lilly v. Jamba Juice Co.*, 2015 WL 1248027, *8-9 (N.D. Cal. Mar. 18, 2015) (Tigar, J.) (holding that because the settlement class would not have the right to opt out from the injunctive settlement and the settlement does not release the monetary claims of class members, class notice is not necessary); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2558, 180 L. Ed. 2d 374 (2011) (Rule 23 "provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action.").

In injunctive relief only class actions certified under Rule 23(b)(2), federal courts across the country have uniformly held that notice is not required. *Jermyn v. Best Buy Stores*, 2012 WL 2505644, *12 (S.D.N.Y. June 27, 2012) ("Because this injunctive settlement specifically preserves

and does not release the class members' monetary claims, notice to the class members is not required"); *Green v. Am. Express Co.*, 200 F.R.D. 211, 212-13 (S.D.N.Y. 2001) (no notice is required under several circumstances, such as "when the settlement provides for only injunctive relief, and therefore, there is no potential for the named plaintiffs to benefit at the expense of the rest of the class"); *Penland v. Warren Cnty. Jail*, 797 F.2d 332, 334 (6th Cir. 1986) ("this court has specifically held that notice to class members is not required in all F.R.C.P. 23(b)(2) class actions"); *DL v. District of Columbia*, Case No. 05-cv-1437, 2013 WL 6913117 at *11 (D.D.C. Nov. 8, 2013) ("the district courts within these circuits that have directly considered the issue have applied the requirement 'more flexibly in situations where individual notice to class members is not required, such as suits for equitable relief'"); *Linquist v. Bowen*, 633 F. Supp. 846, 862 (W.D. Mo. Jan 31, 1986) ("When a class is certified pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure, notice to the class members is not required.") (internal citations omitted); *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563, 572 (S.D. Ohio Sep. 7, 1983) ("This Court has certified this action as a class action under Rule 23(b)(2), and, as such, notice to class members is not required under Rule 23(c)(2)").

Here, the terms of the Agreement provide for injunctive relief only and further expressly preserves the rights of the class to bring claims for monetary relief. Settlement Agreement, Zavareei Decl. Ex. A, at §§ III (Settlement of Injunctive Class), V (Release of Claims). Further, even if notice was sent, class members would not have the right to opt out. *See Lilly* 2015 2015 WL 1248027, at *9. Accordingly, the Court concludes that notice to the Rule 23(b)(2) class is not required.

Although the Court determines that notice to class members is not necessary, the Class Action Fairness Act ("CAFA") requires that notice be given to state and federal authorities. 28 U.S.C. § 1715. The CAFA provides that "no later than ten days after a proposed settlement of a class action is filed in court, each defendant shall serve upon the appropriate state official of each state in which a class member resides a notice of the proposed settlement and specified supporting documentation." *Id.* § 1715(b). Because the Defendants complied with the statutory notice requirements under the CAFA, their obligations for adequate notice have been met.

VI. THE FINAL APPROVAL STANDARD

In the class action context, district courts must evaluate whether a proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Hanlon v. Chrysler*, 150 F.3d 1011, 1026 (9th Cir. 1998). In reviewing the proposed settlement, the Court need not address whether the settlement is ideal or the best outcome, but determines only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted). Each of settlement approval factors applicable to this case show that the parties' proposed settlement should be given approval.

A. The Injunctive Relief Provided to Class Members

The negotiated injunction is fair, adequate and reasonable. Plaintiffs alleged that Columbia deceptively advertised illusory "former prices" on the Outlet SMU Builds and that it it is impossible for consumers to identify the Outlet SMU Products, and therefore, impossible to determine if and when Columbia is truthfully advertising former prices at its Columbia Outlet stores. The parties' injunctive relief settlement "stops the allegedly unlawful practices, bars Defendant from similar practices in the future, and does not prevent class members from seeking [monetary] legal recourse." *Grant v. Capital Management Servs., L.P.*, 2014 WL 888665, *4 (S.D. Cal. Mar. 5, 2014). Additionally, to ensure the class will receive benefits of the stipulated injunction quickly, while Columbia is in the process of complying with the stipulated injunction it will place legible notices at the point of sale, which state the following: "The higher price on our price tags refers to either the price the same Columbia product was offered at by Columbia in its own stores, its own online properties, or at third party retailers, or the price at which a similar but not identical product was offered in any of those channels." Agreement, Zavareei Decl. Ex. A, at § III.D. Accordingly, this

factor weighs in favor of granting final approval. *See Goldkorn v. Cnty of San Bernardino*, 2012 WL 476279, at *6-7 (C.D. Cal. Feb. 13, 2012) (approving settlement providing solely injunctive relief, attorneys' fees, costs, and damages to named plaintiffs); *In re Lifelock, Inc. Mktg and Sales Practices Litig.*, 2010 WL 3715138 (D. Ariz. Aug. 31, 2010) (same); *Kim*, 2012 WL 5948951 at *10 (same).

B. Strength of Plaintiffs' Case

Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case. *Chun–Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 851 (N.D.Cal.2010). Generally, "fact-intensive inquiries and developing case law present significant risks to Plaintiffs' claims and potential recovery." *In re Wells Fargo Loan Processor Overtime Pay Litig.*, 2011 WL 3352460, at *5 (N.D. Cal. Aug. 2, 2011).

Defendants' liability in this case would hinge on a factual determination of whether reasonable consumers were likely to be deceived by the Defendants' pricing. Plaintiffs acknowledge the significant risk of non-recovery in this case, as any time that liability hinges on reasonableness, a favorable verdict cannot be certain. Because of the uncertainty of the recovery or injunctive relief after trial, this factor weighs in favor of approval. *Lilly v. Jamba Juice Co.*, 2015 WL 2062858, at *3 (N.D. Cal. May 4, 2015).

C. Risk of Continued Litigation

The risks, expense, complexity, and likely duration of litigation also weigh in favor of approving the settlement. *Lilly*, 2015 WL 2062858, at *3 (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir.2009)). These risks of continued litigation must be "balanced against the certainty and immediacy of recovery from the Settlement." *Kim*, 2012 WL 5948951, at *5 (citations omitted). "The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *Id.*

This factor supports final approval because, without a settlement, Plaintiffs would face further litigation and trial that would not be certain to result in injunctive relief. Because this

settlement will result in changing the challenged pricing representations, continued litigation could not result in any greater injunctive relief to the class and would only deprive the class of immediate relief. *Lilly*, 2015 WL 2062858, at *3-4.

D. Extent of Discovery and Stage of the Proceedings

Here, the Plaintiffs conducted an extensive amount of formal discovery prior to the settlement agreement. This case has already gone through a contested class certification, and motion for summary judgment. The Court finds that the extent of discovery completed and the state of the proceedings weigh in favor of final approval.

E. Counsel's Experience

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *See In re Omnivision*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (citation omitted). The reasons for this presumption is that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation[.]" *See Rodriquez*, 563 F.3d at 967. Here, Class Counsel has demonstrated their experience in litigating similar consumer class actions. They have also demonstrated that they are well informed of the facts, claims, and defenses in this action. Accordingly, Class Counsel's endorsement weighs in favor of approving the settlement. *See, e.g., In re Omnivision,* 559 F. Supp. 2d at 1043.

F. Government Participant and Reaction of the Class

Here, no government participant is involved, so the court does not weigh this factor. Similarly, because the Court has decided that notice was not necessary, the reaction of the class is not considered in weighing the fairness factors. *Lilly*, 2015 WL 2062858, at *4.

VII. CONCLUSION

As all relevant factors weigh favor of settlement, the Court will grant final approval of the class action settlement for injunctive relief, and enter the injunction agreed to by the parties. For the foregoing reasons, the Court hereby orders as follows:

1. For the reasons set forth in its earlier orders, the Court confirms its certification of the Rule 23(b)(2) class.

2. The Court grants final approval of the proposed settlement, and enters the injunction as defined in the Agreement.

3. Plaintiffs shall file their petition for fees and expenses no later than ten days after the Court rules on this Motion.

4. Defendant shall file its response no later than 60 days after Plaintiffs file their petition for fees.

5. Plaintiffs shall file their reply no later than 30 days after Defendant files its response.

6. The hearing on Plaintiffs' motion for fees and incentive awards shall be _____.

7. The parties have reserved their rights to take discovery relating to the fee petition. In the event that there is any irreconcilable dispute regarding that discovery, the parties will follow the Court's rules governing discovery disputes.

Dated: _____

_____
Hon. Yvonne Gonzalez Rogers
United States District Court Judge