IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA WEST, KRISTINE HOLLANDER, JENNIFER ZIMMERMAN, MARY ROMAN, MARIE ESPOSITO, and MICHELLE BALLON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Case No. 1:15-cv-05569
v.	)	Judge Samuel Der-Yeghiayan
ACT II JEWELRY, LLC, a Delaware limited liability corporation d/b/a lia sophia, and VICTOR K. KIAM, III,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Submitted by:

Joseph J. Siprut
jsiprut@siprut.com
Todd L. McLawhorn
tmclawhorn@siprut.com
Ke Liu
kliu@siprut.com
SIPRUT PC
17 N. State Street
Suite 1600
Chicago, Illinois 60602
Phone: 312.236.0000
Fax: 312.878.1342

Counsel for Plaintiffs and the Proposed Settlement Classes

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

EXHIBIT LIST

Pursuant to Fed. R. Civ. P. 23, Plaintiffs Cynthia West ("West"), Kristine Hollander ("Hollander"), Jennifer Zimmerman ("Zimmerman"), Mary Roman ("Roman"), Marie Esposito ("Esposito"), and Michelle Ballon ("Ballon") (collectively, the "Plaintiffs"), by their counsel, respectfully submit the following Memorandum In Support Of Motion For Preliminary Approval Of Class Action Settlement, and move for an Order: (1) preliminarily approving the Agreement[1] as being fair, reasonable, and adequate; (2) preliminarily approving the form, manner, and content of the Class Notice; (3) setting the date and time of the Final Approval for no earlier than 180 days from the date preliminary approval is granted; (4) provisionally certifying the proposed Settlement Classes under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only; (5) provisionally appointing Plaintiffs as representatives of the Classes; and (6) provisionally appointing Joseph J. Siprut, Todd L. McLawhorn and Siprut PC as Class Counsel.

INTRODUCTION

Defendants Act II Jewelry, LLC ("Act II") and Victor K. Kiam, III ("Victor Kiam") (collectively, the "Defendants") and Plaintiffs have entered into a Settlement Agreement (the "Settlement Agreement" or "Settlement" or "Agreement") in the above-referenced matter (attached hereto as Exhibit 1). The Settlement Agreement—a product of over two years of litigation, extensive discovery, and four mediations—settles the dispute relating to Plaintiffs' claims of Defendants' breach of contract, violation of the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), fraud and unjust enrichment.

The cornerstone of the Settlement is the substantial, concrete monetary relief it provides for Settlement Class Members. The relief achieved by the Settlement is an "all-in," non-reversionary, common fund in the amount of ***$6,700,000***—cash (the "Settlement Fund"). All

[1] Unless otherwise stated herein, capitalized terms shall have the same meaning as provided in the Parties' Settlement Agreement, attached hereto as Exhibit 1.

Class Members who submit an Approved Claim will be paid cash out of the Settlement Fund. The Settlement encompasses three Settlement Classes, all of which will receive monetary payments as detailed *infra*. The Settlement provides that the best practicable notice be provided to Class Members, and calls for the designation of a reputable and competent professional Settlement Administrator, Heffler Claims Group LLC, to disseminate notice of and administer the Settlement.

The Parties reached the Settlement after voluminous discovery and *four* mediations, including two separate sessions with the respected and experienced JAMS mediator, the Hon. James F. Holderman (Ret.). Defendants raised a number of potential defenses to Plaintiffs' substantive claims and arguments in opposition to Plaintiffs' request for class certification. While Plaintiffs believe that, if litigation were to continue, they could overcome Defendants' asserted defenses, Plaintiffs nevertheless recognize the risk to them and, more importantly, the Classes if Plaintiffs were unsuccessful. Plaintiffs also recognize the significant risk concerning collectability of any judgment, given that Defendant Act II in early 2015 terminated its direct selling business and entered into an asset foreclosure with a creditor to whom Act II still owes an eight figure debt.

In sum, although both sides believe their respective positions in the action are meritorious, they have concluded that, due to the uncertainties and expense of protracted litigation, it is in the best interest of Plaintiffs, the putative Classes, and Defendants to resolve this action on the terms provided in the attached Agreement. Accordingly, and for reasons further detailed below, Plaintiffs and Class Counsel request that this Court enter an order preliminarily approving this Settlement.

BACKGROUND

Act II did business as lia sophia, and sold costume jewelry to consumers through a party planning method that utilized sales advisors who sold jewelry at parties hosted for that purpose, similar to the method used by Avon and Tupperware. Act II generally sold its full-price jewelry with a lifetime replacement guarantee. On December 1, 2014, Act II announced that it would wind down its direct sales business, including fulfillment of claims under the lifetime replacement guarantee, by the end of the year.

On June 23, 2015, Plaintiffs West and Hollander brought a putative class action against Act II, Kiam Equities Corporation ("Kiam Equities"), Victor K. Kiam, III, and Elena Kiam, in the United States District Court for the Northern District of Illinois (the "Court"), case number 15-cv-5569. (Dkt. No. 1.) Plaintiffs West and Hollander alleged causes of action of breach of contract, violation of the Illinois Consumer Fraud Act, common law fraud, and unjust enrichment against these Defendants for purportedly revoking the lifetime warranties on their jewelry, and for purportedly making material misrepresentations or omissions to its sales advisors by inducing them to continue working as sales advisors, which included the purchase of supplies and jewelry from the Defendants, even though the Defendants knew the sales advisors would not be able to recoup those expenditures because Defendants had planned to close the business at least six months prior to making the announcement. (*Id.* at ¶¶72-128.)

On October 19, 2015, the Parties held a mediation with Retired District Judge James F. Holderman in Chicago, Illinois. (Declaration of Todd L. McLawhorn ("McLawhorn Decl."), attached hereto as Exhibit 2, ¶5.) Prior to the mediation, the Parties engaged in limited discovery and exchanged written mediation statements summarizing their respective positions concerning the factual and legal issues in the litigation. (*Id.*) This mediation did not result in settlement. (*Id.*)

Following the mediation, the Defendants moved to dismiss the complaint on multiple grounds. (Dkt. No. 35.) After full briefing before the Court, on March 18, 2016, the Court denied Act II's motion but granted the remaining Defendants' motion, dismissing Kiam Equities Corporation, Victor Kiam, and Elena Kiam from the Litigation (Dkt. No. 58). Act II filed an answer denying all material allegations, along with affirmative defenses, including that the claims were barred by the statute of limitations. (Dkt. No. 34.)

Between April 2016 and April 2017, the Parties engaged in multiple rounds of written and electronic discovery regarding the claims and defenses in this litigation. (McLawhorn Decl. ¶7.) Although the parties produced and analyzed a substantial number of documents, discovery in the case was significantly complicated by the wind-down of Act II's active business. For example, much of the data regarding Act II's business transactions records are contained in two large databases that exist only as SQL back-ends with no front-end user interface due to a business dispute with an information technology vendor and that vendor's subsequent bankruptcy. Nevertheless, discovery was extensive, as it involved: (a) review of approximately 12,267 pages of documents produced by Plaintiffs; (b) review of 20,111 pages of documents produced by Act II; (c) review of approximately 345 pages of documents produced by Victor Kiam; (d) review of approximately 6 pages of documents produced by Kiam Equities; (e) review of approximately 203 pages of documents produced by Elena Kiam; (f) review of approximately 963 pages of documents produced by additional third parties in addition to computer media provided by those third parties; (g) the preparation for taking and/or defending the depositions of approximately ten fact witnesses from Act II and various third-parties; and (h) the preparation for taking and/or defending the depositions of the six Class Representatives. (*Id.*)

While discovery was ongoing, on November 30, 2016, Plaintiffs filed their First Amended Class Action Complaint (the "First Amended Complaint"), alleging claims for breach of contract, violation of the ICFA, fraud and unjust enrichment. (Dkt. No. 75.) Plaintiffs West and Hollander, now joined by Plaintiffs Zimmerman, Roman, Esposito, and Ballon, sought to represent three classes: (a) all individuals who purchased jewelry from Act II; (b) all individuals who sold jewelry for Act II; and (c) all individuals who joined Act II as sales advisors in 2014 and who purchased initial starter kits after May 31, 2014. (*Id.* at ¶¶130-132.) Plaintiffs' First Amended Complaint also re-named Victor Kiam as a co-Defendant. (Dkt. No. 75.) On December 20, 2016, Defendants filed their Answer to Plaintiffs' First Amended Complaint and denied all material allegations. (Dkt. No. 77.)

Following the filing of the First Amended Complaint, the Parties continued to engage in discovery. In the spring of 2017, Defendants deposed three of the Class Representatives. (McLawhorn Decl. ¶9.) Following those depositions, the Parties resumed settlement discussions and engaged in three separate, extensive mediations over the course of approximately four months. (*Id.* at ¶10.) As a result of those continued discussions and mediations, on July 17, 2017, during a mediation before Judge Holderman (the fourth mediation in this litigation), the Parties agreed to a settlement in principal. (*Id.*) A Settlement Term Sheet was subsequently executed on August 1, 2017. (*Id.*)

During August and September 2017, the Parties worked extensively with the proposed Settlement Administrator, Heffler Claims Group LLC, to analyze confirmatory class data in order to: (a) finalize the terms of the Settlement; and (b) structure a notice plan consistent with Fed. R. Civ. P. 23(c)(2)(B). (*Id.* at ¶11.) In September 2017, after several exchanges of drafts and

edits, and numerous conference calls, the Parties agreed to the form and content of the Settlement Agreement. (*Id.*)

THE PROPOSED SETTLEMENT

The proposed Settlement provides the following:

A. Certification of the Proposed Settlement Classes.

Plaintiffs request that the Court, for the purposes of settlement, certify three Settlement Classes defined as:

1. ***Customer Class*** – All individuals in the United States who purchased jewelry from Defendant Act II Jewelry, LLC between June 23, 2011, and December 1, 2014.

2. ***Sales Advisor Class*** – All individuals in the United States who sold at least $250 of jewelry for Defendant Act II Jewelry, LLC between January 1, 2014, and August 17, 2014.

3. ***New Sales Advisor Class*** – All individuals in the United States who purchased initial starter kits from Defendant Act II Jewelry, LLC between August 1, 2014, and December 1, 2014.

   Specifically excluded from all three Classes are the following persons: (a) Defendants and their respective affiliates; (b) Class Counsel and their immediate family members; and (c) the judges who have presided over this litigation and their immediate family members.

Based on analysis of the discovery and confirmatory data provided by Defendants, the Customer Class is estimated to contain approximately 4.0 million individuals, the Sales Advisor Class is estimated to contain approximately 19,069 individuals, and the New Sales Advisor Class is estimated to contain approximately 2,709 individuals. (McLawhorn Decl. ¶12.) The Sales Advisor Class definition uses August 17, 2014, as a cut-off because reliable sales data from after that date is not reasonably accessible by the parties.

B. Class Relief.

The Settlement establishes an all-in, non-reversionary Settlement Fund of $6,700,000 ***cash***, to provide relief for the Class Members as well as pay for settlement administration expenses, Class Counsel's attorneys' fees and costs, and Plaintiffs' incentive awards. First, the Settlement Fund will be used to pay for settlement administration expenses, which, based on the Settlement Administrator's analysis of the confirmatory class data provided by Defendants, are estimated to be $1,300,000 (resulting in a remaining $5,400,000, the "Net Settlement Fund"). Class Counsel then intends to seek an attorneys' fees award not exceeding one-third of the Net Settlement Fund (approximately $1,800,000), and incentive awards for the Class Representatives ranging from $2,500 to $7,500, totaling approximately $25,000. This results in an estimated fund of $3,575,000 ***cash*** to provide relief for the Classes (the "Class Fund").

The Settlement establishes the following relief for Class Members:

- ***Customer Class.*** Fifty-seven percent (57%) of the Class Fund (approximately $2,037,750) is allocated to the Customer Class. Each Customer Class Member who submits a Valid Claim form shall be placed in one of three "Tiers" depending on the amount of jewelry they purchased from Act II between June 23, 2011, and December 1, 2014.

  Each Customer Class Member who submits a Valid Claim form and purchased less than $100 of jewelry will be placed into Tier One and will receive the same amount as each other Customer Class Member in Tier One – *i.e.* a *pro rata* distribution. Each Customer Class Member who submits a Valid Claim form and purchased between $100 and $299.99 of jewelry will be placed into Tier Two and will receive double the amount received by each Customer Class Member in Tier One. Each Customer Class Member who submits a Valid Claim form and purchased $300 or more in jewelry will be placed into Tier Three and will receive triple the amount received by each Customer Class Member in Tier One.

  The entire amount allocated to the Customer Class will be distributed to the Customer Class. The final cash payment to Customer Class Members will depend on the total number of Valid Claims filed by the Customer Class. The proposed Settlement Administrator has analyzed Act II's records and estimates the following recoveries based on claims rate:

Customer Class Claims Rate	Estimated Recovery (Tier One)	Estimated Recovery (Tier Two)	Estimated Recovery (Tier Three)
1%	$40.09	$80.18	$120.27
3%	$13.36	$26.72	$40.08
5%	$8.01	$16.02	$24.03

Customer Class Members who receive direct notice (via email or mail) will be informed of which Tier the Settlement Administrator has designated their claim to fall in. The Settlement Administrator shall implement a method in the online claims process through which Customer Class Members may challenge their Tier designation and submit evidence to the Settlement Administrator thereof (*e.g.* receipts).

- ***Sales Advisor Class.*** Thirty-eight percent (38%) of the Class Fund (approximately $1,358,500) is allocated to the Sales Advisor Class. Each Sales Advisor Class Member who submits a Valid Claim form shall receive a share of the amount allocated to the Sales Advisor Class *proportional* to the amount of sales made by that Sales Advisor Class Member between January 1, 2014, and August 17, 2014.

  The entire amount allocated to the Sales Advisor Class will be allocated to the Sales Advisor Class. The final cash payment to Sales Advisor Class Members will depend on the total number of Valid Claims filed by the Sales Advisor Class. The proposed Settlement Administrator has analyzed Act II's records and estimates the following recoveries based on claims rate:

Sales Advisor Class Claims Rate	Estimated Recovery
10%	20.04% of the Member's 2014 Sales
15%	13.36% of the Member's 2014 Sales
25%	8.02% of the Member's 2014 Sales

- ***New Sales Advisor Class.*** Five percent (5%) of the Class Fund (approximately $178,750) is allocated to the New Sales Advisor Class. Each New Sales Advisor Class Member who submits a Valid Claim form shall receive a *full reimbursement* for the cost of his or her initial starter kit, which ranged from $99 to $149.

  In the event the number of Valid Claims for New Sales Advisor Class Members exhausts the amount allocated to the New Sales Advisor Class, each New Sales Advisor who submits a Valid Claim will have his or her benefit reduced proportionally so that the total benefit to the New Sales Advisor Class does not exceed five percent (5%) of the Class Fund. In the event that there is money remaining in the New Sales Advisor Class Fund after payment of benefits to all New Sales Advisor Class Members who submit Valid Claims, the remainder shall be reallocated back to the Class

Fund and distributed to the Customer Class and the Sales Advisor Class in the same proportion as other funds distributed to those Classes, as described above.

- **No Reversion.** No amount of the Settlement Fund shall revert back to Defendants. Settlement Class Members' uncashed checks shall be awarded to a *cy pres* recipient.

The Settlement is thus designed to afford relief to as many Class members as possible.

C. Class Notice.

Subject to the Court granting preliminary approval of the Settlement, the Settlement Administrator will provide the Class with notice of the proposed Settlement by the following methods:

- **Direct Notice Via Electronic Mail.** Within forty (40) days after entry of the Preliminary Approval Order, the Settlement Administrator shall, for all Settlement Class Members for whom the Settlement Administrator is able to determine an email address based on transaction records provided by Defendant Act II, disseminate direct notice by email in the first instance, in the form of Exhibit B to the Settlement Agreement.

- **Direct Notice Via U.S. Mail.** Within fifty-five (55) days after entry of the Preliminary Approval Order, the Settlement Administrator shall, for all Settlement Class Members for whom the Settlement Administrator is unable to determine an email address, and for all Settlement Class Members for whom email notice is sent that is returned, disseminate direct notice by U.S. mail, in form of Exhibit C to the Settlement Agreement. The mailing addresses provided on the Notice List shall be run through a National Change of Address database prior to being mailed. The postage rate selected for the mailing of the Notice shall provide for notification of forwarding addresses. If the Notice is returned by the Postal Service with a forwarding address or other error that can be ascertained and corrected, then the Settlement Administrator shall re-send the Notice to the new address within five (5) business days.

- **Notice Via Settlement Website.** Within forty (40) days after entry of the Preliminary Approval Order, the Settlement Administrator shall create a Settlement Website where notice, in the form of Exhibit D to the Settlement Agreement, shall be posted and on which Settlement Class Members may submit claims.

- **Notice Via Social Media.** Within forty (40) days after entry of the Preliminary Approval Order, Defendants shall post notice of the Settlement on the lia sophia outlet and lia sophia Facebook pages, in the form of Exhibit E to the Settlement Agreement.

- **Notice Via Publication.** Within forty (40) days after entry of the Preliminary Approval Order, the Settlement Administrator shall implement a highly targeted online search and social media outreach effort to serve over 3,000,000 impressions via Internet banners, as well as issue a press release to over 7,000 news outlets and journalists, as described in Exhibit F to the Settlement Agreement.

- **Toll-Free Phone Line.** Within forty (40) days after entry of the Preliminary Approval Order, the Settlement Administrator shall establish a phone line with touch-tone and interactive voice response for individuals to learn more about the Settlement.

- **CAFA Notice.** Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendants shall serve upon the Attorneys General of each U.S. State in which there are members of the Class, the Attorney General of the United States, and other required government officials, notice of the proposed settlement, which shall include: (1) a copy of the most recent complaint and all materials filed with the complaint or notice of how to electronically access such materials; (2) notice of all scheduled judicial hearings in the Action; (3) all proposed forms of Notice to the Settlement Class; and (4) a copy of this Agreement. To the extent known, the Defendants shall serve upon the above-referenced government official the names of Class Members who reside in each respective state and the share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such members to the entire Agreement. The costs of conducting CAFA Notice shall not be deducted from the Settlement Fund. Defendants are responsible for paying the costs of CAFA Notice separate and apart from the Settlement Fund.

In order to receive a Cash Award described above, the Settlement Class Member must submit a Claim Form within ninety (90) days after the Notice Date. Class Members may submit their claims via mail or online at the Settlement Website. Class Members who wish to either opt-out of or object to the Settlement, must do so in accordance with the Agreement within ninety (90) days after the Notice Date. Within sixty (60) days of the Effective Date, or at another time

as the Court directs, the Settlement Administrator shall cause distribution of Cash Awards to the Settlement Class Members who submit Approved Claims.

D. Incentive Awards to Class Representatives.

Subject to Court approval, the Class Representatives will request Incentive Awards ranging from $2,500 to $7,500, in recognition of their contributions to the Settlement Class and the risk they incurred in commencing the action, both financial and otherwise. The Court does not need to award or otherwise rule on Plaintiffs' Incentive Awards at this time. Class Counsel will file a motion for the Incentive Awards, pursuant to the schedule in the Preliminary Approval Order, and will support the request for the awards in detail.

E. Attorneys' Fees and Expenses.

Class Counsel will request fees and expenses in the amount of one-third of the Net Settlement Fund (approximately $1,800,000). Importantly, however, this is not a provision of the Settlement. There is no agreement on attorneys' fees—*i.e.*, no "clear-sailing" provision—consistent with recent Seventh Circuit jurisprudence. *Redman v. RadioShack Corp.*, 768 F.3d 622, 637 (7th Cir. 2014) ("Clear-sailing clauses have not been held to be unlawful per se, but at least in a case such as this, involving a non-cash settlement award to the class, such a clause should be subjected to intense critical scrutiny by the district court[.]"), *cert. denied sub nom. Nicaj v. Shoe Carnival, Inc.*, 135 S. Ct. 1429 (2015). Of course, this Settlement ***is a common fund, cash*** settlement and, hence, "intense critical scrutiny" is not warranted. In any event, the Court does not need to award or otherwise rule on Class Counsel's fees at this time. Class Counsel will file a motion for attorneys' fees separately, pursuant to the schedule in the Preliminary Approval Order, and will support the request for fees in detail.

ARGUMENT

I. The Proposed Settlement is Fair and should be Preliminarily Approved.

Both judicial and public policies strongly favor the settlement of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996) ("We also consider the facts 'in the light most favorable to the settlement.'"); *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 312 (7th Cir. 1980) ("It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement."). Although the standards to be applied at the preliminary approval stage "are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l*, No. 05 C 5944, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007). The factors considered at this stage include: "(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014).[2]

A. Strength of the Case Balanced Against the Settlement.

"The most important factor relevant to the fairness of a class action settlement is the strength of the plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong,* 773 F.3d at 864; *Synfuel Techs, Inc. v. DHL Express (USA), Inc.,* 463 F.3d 646, 653 (7th Cir. 2006). However, "courts should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *In re AT &*

[2] Until notice is provided, there is not an opportunity for Class Members to react to the Settlement. Hence, factors "(3)" and "(4)" are not analyzed below.

T Mobility Wireless Data Servs. Sales Litig., 270 F.R.D. 330, 346 (N.D. Ill. 2010) (internal quotations omitted). Moreover, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs." *Id.* (internal quotations omitted) Rather, the integral part of the Court's strength-versus-merits evaluation is "a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons,* 778 F.2d 298, 309 (7th Cir. 1985).

Plaintiffs Hollander and Ballon allege that Defendants breached their contracts, violated the ICFA, committed common law fraud, and were unjustly enriched by failing to honor their promise of lifetime warranties on the jewelry they sold and by unilaterally repudiating the terms of the lifetime replacement guarantee, even though Defendants knew they would not honor the lifetime guarantee upon closure of their business. (Dkt. No. 75, ¶¶140-171.) Plaintiffs Hollander and Ballon therefore claim that they, and the Customer Class, have sustained damages through the diminished value of the jewelry they purchased. (*Id.*)

Plaintiffs West, Esposito, and Roman allege that Defendants violated the ICFA, committed common law fraud, and were unjustly enriched by continuing to encourage their Sales Advisors to purchase jewelry from Act II, by assuring their Sales Advisors that they would never bypass them and sell directly to the customers, and by taking their Sales Advisors' customer information and using it to compete against them. (*Id.* at ¶¶172-194.) Plaintiffs West, Esposito, and Roman therefore claim that they, and the Sales Advisor Class, have sustained damages through their reliance on Defendants' statements in continuing to work and purchase jewelry and supplies as Act II Sales Advisors. (*Id.*)

Plaintiff Zimmerman alleges that Defendants violated the ICFA and committed common law fraud by encouraging New Sales Advisors to purchase initial starter kits, even though Defendants knew the New Sales Advisors would never recoup their expenditures because Act II was going to close its business. (*Id.* at ¶¶195-209.) Plaintiff Zimmerman therefore claims that she, and the New Sales Advisor Class, have sustained damages through their reliance on Defendants' statements in purchasing their initial starter kits and by Defendants' abrupt closure of business. (*Id.*)

Defendants deny liability and assert several defenses that would defeat Plaintiffs' claims on both substantive and procedural grounds. With respect to the Customers, Defendants contend that the lifetime warranty was expressly limited only to manufacturers' defects, that breach of contract claims are not actionable under the ICFA, that most Customers – including the named Plaintiffs – had no breach of warranty claim because they never attempted to return their jewelry, and that determining whether each customer tried and failed to return jewelry with a manufacturer's defect is an individualized question not suitable for class treatment. With respect to the Sales Advisors and New Sales Advisors, Defendants contend that the Advisors expressly waived their right to participate in class actions pursuant to the terms of their contracts, that Sale Advisors had no right to continue as sales advisors after their agreements were terminated, that Sales Advisor claims were defeated by their contracts, that Act II had a right to contact its own customers, that the Sales Advisors were not the procuring cause of any online sales, and that the Sales Advisors' alleged injuries had no connection to their theory of liability. Defendants further contend that any alleged statements made to the Customers or Advisors were true (or believed to be true) at the time they were made, that reliance on any allegedly fraudulent statements cannot be demonstrated on a classwide basis, and that reliance on any allegedly fraudulent statements

did not cause any actual injury. One of the factors to be considered as to the fairness of a class action settlement is a defendant's willingness and ability to mount just such a vigorous defense, as it demonstrates that the class may not have recovered all (or any) of what it sought at trial.

As explained above, the Settlement allows Class Members to receive direct monetary relief depending on the claims-rate of each class. If 3% of Customer Class Members submit valid claim forms, each of those claimants will receive approximately $13 to $40, depending on the amount of jewelry purchased, to offset the alleged diminished value of their jewelry from the alleged repudiation of the lifetime guarantee. Similarly, if 15% of Sales Advisor Class Members submit valid claim forms, each of those claimants will receive payments totaling approximately 13% of their sales of Act II jewelry in 2014, to offset their alleged injuries incurred due to Defendants' misappropriation of their customer contacts. Finally, members of the New Sales Advisor Class will receive relief in the amount of the full cost of the initial starter kits they purchased, which ranged from $99 to $149. While Plaintiffs believe that their claims are strong, Plaintiffs are also aware of the inherent risks and costs of continuing with complex litigation of this nature. If Defendants were to prevail on their asserted defenses, Class Members, including Plaintiffs, would receive *no relief at all*. Given this possibility, the Settlement Agreement is a meaningful achievement. Accordingly, the Settlement provides a tangible benefit to all those affected by Defendants' repudiation of the lifetime guarantee and sudden closure of business.

B. The Risk, Expense, & Complexity of the Case.

Due to the nature of Plaintiffs' case, trial will require the collection of evidence and witness testimony from across the country. Both Parties would examine a number of Act II's current and former employees, as well as the employees and agents of Act II's affiliates and other third-parties. Defendants intend to assert several defenses that they contend bar Plaintiffs' claim in whole or in part, which Plaintiffs would necessarily attempt to rebut. The uncertainty as

to whether these defenses apply in this case creates substantial risk for both sides. Plaintiffs and proposed Class Counsel also recognize that the expense, duration, and complexity of protracted litigation would be substantial, and would require further briefing on numerous substantive issues, evidentiary hearings, further discovery, and the gathering of witnesses. In addition, Defendant Act II has subsequently closed, and has few, if any, assets available to satisfy a judgment.

C. The Opinion of Counsel.

"The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586-87 (N.D. Ill. 2011). Here, Class Counsel has extensive experience in consumer class actions and complex litigation. (McLawhorn Decl. ¶15.) *See Gehrich v. Chase Bank USA, N.A.*, No. 12 C 5510, 2016 WL 806549, at *9 (N.D. Ill. Mar. 2, 2016) ("Class Counsel are experienced [] litigators and strongly support the settlement. . . . this factor (whatever its weight) favors approval."); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 495 (N.D. Ill. 2015) ("Class counsel in this case are highly experienced class action litigators who strongly support the proposed settlement. This factor weighs in favor of approval.").

Based upon proposed Class Counsel's analysis of the information obtained from Defendants during discovery and the four mediation sessions, the Settlement Agreement represents a significant recovery for the Settlement Classes, especially when weighed against Defendants' anticipated defenses and the inherent risks of litigation. Class Counsel believes that the Settlement is beneficial to the Settlement Classes and meets the class-certification requirements of Rule 23. (McLawhorn Decl. ¶17.)

D. The Extent of Discovery.

Based upon discovery conducted by the Parties, Plaintiffs believe they possess the evidence needed to evaluate the strengths and weaknesses of the case. Extensive discovery has taken place in this litigation. As explained *supra*, the Parties have reviewed tens of thousands of pages of documents, including those produced by various third parties. (*Id.* at ¶7.) In addition, the Parties have prepared for the taking and/or defending the depositions of approximately ten fact witnesses from Act II, the six Class Representatives, and various third-parties. (*Id.*) Three of the Class Representatives were deposed. (*Id.* at ¶14.) In sum, counsel for each party has sufficient information to assess the strengths, weaknesses, and likely expense of taking this case to trial.

While the Parties have both formally and informally exchanged information critical to evaluating the strength of Plaintiffs' contentions (and Defendants' defenses), the amount of discovery taken is not a prerequisite to a class action settlement. Courts have noted that, "the label of 'discovery' [either formal or informal] is not what matters. Instead, the pertinent inquiry is what facts and information have been provided." *Schulte*, 805 F. Supp. 2d at 587 (internal citation omitted). Here, information more than sufficient to make a reasonable and informed decision has been procured, meaning that there was a reasonable, informed basis to evaluate the Settlement.

E. The Presence of Governmental Participants.

Although there is no governmental entity participating in this matter as of this time, full and complete notice is being provided to all appropriate state and federal authorities. Defendants will provide such notice which will include all appropriate information and documents required by the Class Action Fairness Act, 28 U.S.C. § 1715(b).

II. The Settlement Classes should be Provisionally Certified.

Before preliminary approval of a class action settlement can be granted, the Court must determine that the proposed class is appropriate for certification. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004). Federal Rule of Civil Procedure 23(a) provides that a class may be certified if (i) the class is so numerous that joinder of all members is impractical, (ii) there are questions of law or fact common to the class, (iii) the claims or defenses of the representative parties are typical of those of the class, and (iv) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Williams v. Chartwell Fin. Serv., Ltd*., 204 F.3d 748, 760 (7th Cir. 2000).

Once the requirements of Rule 23(a) have been met, the proposed class must then satisfy at least one of the three subsections of Rule 23(b). *Amchem*, 521 U.S. at 614. In this case, Plaintiffs seek certification of the Classes under Rule 23(b)(3), which requires that (i) the questions of law or fact common to all class members predominate over issues affecting only individual members, and (ii) the maintenance of a class action be superior to other available methods for the fair and efficient adjudication of the controversy. *Id*. at 615; *Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 676 (7th Cir. 2001).

As discussed further below, the proposed Classes meet each of the requirements of Rules 23(a) and (b), and therefore, certification is appropriate.

A. Numerosity — Federal Rule of Civil Procedure 23(a)(1).

Rule 23(a)'s first requirement, numerosity, is satisfied where "the class is so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a)(1). There is neither a specific number required to satisfy this requirement, nor is a plaintiff required to state the exact number of potential class members. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006) ("[A] plaintiff need not identify each class member or even provide an exact number of

class members to satisfy that element.") (citing *Marcial v. Coronet Ins. Co.*, 880 F.2d 954 (7th Cir. 1989)); Alba Conte & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 7.20, 66 (4th ed. 2002). Instead, courts are permitted "to make common-sense assumptions that support a finding of numerosity." *Maxwell v. Arrow Fin. Servs., LLC*, No. 03 C 1995, 2004 WL 719278, at *2 (N.D. Ill. Mar. 31, 2004).

"[A] class can be certified without determination of its size, so long as it's reasonable to believe it large enough to make joinder impracticable and thus justify a class action suit." *Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.*, 747 F.3d 489, 492 (7th Cir. 2014). "Although no magic number exists for satisfying the numerosity requirement, the Seventh Circuit has held that '[e]ven if the class were limited to 40 [members] … that is a sufficiently large group to satisfy Rule 23(a) where the individual members of the class are widely scattered and their holdings are generally too small to warrant undertaking individual actions.'" *Gehrich*, 2016 WL 806549, at *4 (quoting *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 n. 9 (7th Cir. 1969)); *Pope v. Harvard Banchares, Inc*., 240 F.R.D. 383, 387 (N.D. Ill. 2006) (granting class certification, distinguishing that "impracticable" does not mean "impossible," but rather extremely difficult and inconvenient).

The Settlement Agreement comprises three Classes. There are approximately 4.0 million individuals in the Customer Class, 19,069 individuals in the Sales Advisor Class, and 2,709 individuals in the New Sales Advisor Class. (McLawhorn Decl. ¶12.) Accordingly, the Classes easily satisfy the numerosity requirement. *See* NEWBERG ON CLASS ACTIONS § 3:5, 243-46 (4th ed. 2002) ("Class actions under the amended Rule 23 have frequently involved classes numbering in the hundreds, or thousands . . . In such cases, the impracticability of bringing all

class members before the court has been obvious, and the Rule 23(a)(1) requirement has been easily met.").

B. Commonality/Predominance — Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).

The commonality element requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Courts recognize that there may be factual differences between class members, but "factual variations among class members' claims" do not themselves "defeat the certification of a class." *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992) (citing *Patterson v. Gen. Motors Corp.*, 631 F.2d 476, 481 (7th Cir. 1980), *cert. denied*, 451 U.S. 914 (1980)), *cert. denied*, 506 U.S. 1051 (1993). In fact, the threshold for commonality is not high. *Scholes v. Stone, McGuire, & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992) (granting class certification, characterizing the commonality requirement as "a low hurdle" easily surmounted). Rather, commonality exists if a common nucleus of operative fact exists, even if as to one question of law or fact. *Wal-Mart Stores, Inc. v. Dukes,* 131 S. Ct. 2541, 2551 (2011) ("[C]ommonality requires that the claims of the class simply "depend upon a common contention . . . of such a nature that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."); *Whitten v. ARS Nat'l Servs. Inc.*, No. 00 C 6080, 2001 WL 1143238, *3 (N.D. Ill. Sept. 27, 2001) (commonality is often found where "Defendants have engaged in standardized conduct toward the members of the proposed class").

The Settlement Classes share common questions of fact and law that predominate over issues affecting only individual Settlement Class Members. Those common factual and legal issues include:

- **The Customer Class**

  a. Whether Defendant Act II offered a lifetime replacement guarantee on its jewelry;

  b. Whether Defendant Act II breached the contract of the terms of its sale with those customers that purchased products with lifetime replacement guarantees;

  c. Whether Defendant Act II continued to sell jewelry with a lifetime replacement guarantee while planning to close and repudiate the guarantee; and

  d. Whether Plaintiffs Hollander, Ballon, and the Customer Class, have been injured by Defendants' conduct, and the proper measure of their losses as a result of those injuries.

- **The Sales Advisor Class**

  a. Whether Defendants sold supplies and jewelry to their Sales Advisors, and encouraged their Sales Advisors to purchase supplies and jewelry, while planning to close and subsequently precluded the Sales Advisors from recouping those expenditures;

  b. Whether Defendants actively concealed the fact that they were closing from their Sales Advisors;

  c. Whether Defendants unfairly usurped the customer networks developed by their Sales Advisors by firing these Sales Advisors upon closing the business, and then directly soliciting those same customers; and

  d. Whether Plaintiffs West, Esposito, Roman, and the Sales Advisor Class, have been injured by Defendants' conduct, and the proper measure of their losses as a result of those injuries.

- **The New Sales Advisor Class**

  a. Whether Defendants sold initial starter kits to New Sales Advisors, and encouraged New Sales Advisors to purchase initial starter kits, while planning to close and subsequently precluded the New Sales Advisors from recouping those expenditures;

  b. Whether Defendants actively concealed the fact that they were closing from the New Sales Advisors; and

c. Whether Plaintiff Zimmerman and the New Sales Advisor Class have been injured by Defendants' conduct, and the proper measure of their losses as a result of those injuries.

Additionally, Rule 23(b)(3) provides that a class action may be maintained where the questions of law and fact common to members of the proposed class predominate over any questions affecting only individual members. Fed. R. Civ. P. 23(b)(3); *Fletcher v. ZLB Behring LLC*, 245 F.R.D. 328, 331-32 (N.D. Ill. 2006). "Predominance . . . is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 800 (7th Cir. 2013). A class action is the more efficient procedure for determining liability and damages in a case such as this, where "loss, and the statutory remedy, are the same for all recipients[.]" *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 684 (7th Cir. 2013) *reh'g denied* (Sept. 24, 2013), *cert. denied,* 134 S. Ct. 1318 (2014).

In this case, common questions predominate for the Settlement Class because Defendants' alleged unlawful conduct presents common questions with regard to all proposed Settlement Class Members. *Holtzman*, 728 F.3d at 684. Defendants' alleged unlawful conduct – its sale of jewelry with lifetime warranties to the Customer Class, and its sale of supplies and jewelry to the Sales Advisor Class and the New Sales Advisor Class – presents common questions with regard to Defendants' intentions with regard to closing down its business. Defendants' liability depends on whether Defendants sold the jewelry and supplies despite knowing that: (a) customers would not be able to utilize the lifetime guarantee; and (b) sales advisors would not be able to recoup their expenditures. Thus, in the context of the proposed class-wide settlement, the predominance requirement is satisfied because liability and damages would have been decided predominantly, if not entirely, based on common evidence of Defendants' conduct.

C. Typicality — Federal Rule of Civil Procedure 23(a)(3).

Rule 23 also requires that a plaintiff's claims be typical of other class members' claims. Fed. R. Civ. P. 23(a)(3). The typicality requirement is closely related to the commonality requirement and is satisfied if the plaintiff's claims arise from "the same event or practice or course of conduct that gives rise to the claims of other class members and . . . are based on the same legal theory." *Radmanovich v. Combined Ins. Co. of Am.*, 216 F.R.D. 424, 432 (N.D. Ill. 2003) (internal quotations omitted). The existence of factual differences will not preclude a finding of typicality. *Id.* "Typicality does not mean identical, and the typicality requirement is liberally construed." *In re Neopharm, Inc. Secs. Litig.*, 225 F.R.D. 563, 566 (N.D. Ill. 2004) (citation omitted).

Here, Plaintiffs Hollander, Ballon and the Customer Class allege that they purchased jewelry from Act II that was accompanied by a lifetime guarantee. (Dkt. No. 75, ¶¶95-101) Plaintiffs Hollander, Ballon, and the Customer Class allege that they were similarly injured by Act II when Act II later unilaterally revoked the lifetime guarantee. (*Id.*) Therefore, Plaintiffs Hollander and Ballon's claims are typical of those of the Customer Class.

Similarly, Plaintiffs West, Esposito, Roman and the Sales Advisor Class allege that they worked as Sales Advisors for Act II, and continued to purchase jewelry and supplies from Act II based on Defendants' representations and omissions that Act II was doing business as usual and had no plans to close. (*Id.* at ¶¶102-121.) Plaintiffs West, Esposito, Roman, and the Sales Advisor Class were similarly harmed by Defendant Act II when it suddenly ceased operations and usurped their customer lists. (*Id.*) Therefore, Plaintiffs West, Esposito, and Roman's claims are typical of those of the Sales Advisor Class.

Finally, Plaintiff Zimmerman and the New Sales Advisor Class allege that they purchased initial starter kits from Act II based on Defendants' representations and omissions that Act II had no plans to close. (*Id.* at ¶¶122-129.) Plaintiff Zimmerman and the New Sales Advisor Class were similarly harmed by Defendant Act II when it suddenly ceased operations. (*Id.*) Therefore, Plaintiff Zimmerman's claims are typical of those of the New Sales Advisor Class.

Accordingly, the claims of each Class Representative is typical of the Class she seeks to represent. Moreover, there are no defenses that pertain to Plaintiffs that would not also pertain to their respective Settlement Classes. Accordingly, Plaintiffs' claims are typical of the other Class members' claims.

D. Adequacy of Representation — Federal Rule of Civil Procedure 23(a)(4).

The final Rule 23(a) prerequisite requires that a proposed class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy the adequacy requirement, class representatives must establish that: (1) their claims are not in conflict with those of the proposed class; (2) they have sufficient interests in the outcome of the case; and (3) they are represented by experienced, competent counsel. *Hinman v. M & M Rental Ctr., Inc.*, 545 F. Supp. 2d 802, 807 (N.D. Ill. 2008). Furthermore, proposed class counsel must be competent and have the resources necessary to sustain the complex litigation necessitated by class claims; it is persuasive evidence that proposed class counsel have been found adequate in prior cases. *Gomez v. Ill. State Bd. of Educ.*, 117 F.R.D. 394, 401 (N.D. Ill. 1987) (finding class counsel was adequate and stating if "attorneys have been found to be adequate in the past, it is persuasive evidence that they will be adequate again.").

Here, Plaintiffs' interests are consonant with the interests of the Settlement Classes—obtaining relief from Defendants for their alleged unlawful conduct in revoking the lifetime

guarantees on their products and suddenly shutting down operations precluding sales advisors from recouping their expenditures. Plaintiffs have no interests antagonistic to the interests of the other Settlement Class Members. (McLawhorn Decl. ¶16.) Moreover, Plaintiffs' counsel are well respected members of the legal community, have regularly engaged in major complex litigation, and have significant experience in consumer class actions involving similar issues, scope, and complexity. (*Id.* ¶15; Siprut Firm Resume (attached as Exhibit A to the McLawhorn Decl.).) Accordingly, Plaintiffs and their counsel would adequately represent the proposed Class.

E. Superiority — Federal Rule of Civil Procedure 23(b)(3).

In addition to satisfying Rule 23(a), a plaintiff seeking certification must satisfy one of the provisions of Rule 23(b). Rule 23(b)(3) provides that matters pertinent to a finding of superiority include: "(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action." Fed. R. Civ. P. 23(b)(3). When settling a class action, Plaintiffs do not have to prove manageability under Rule 23(b)(3) as if the case were being fully litigated because settlement may "eliminate all the thorny issues that the court would have to resolve if the parties fought out the case." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004) (citing *Amchem*, 521 U.S. at 620).

The burden and expense of individual prosecution of the litigation necessitated by Defendants' actions makes a class action superior to other available methods of resolution. Absent a class action, it would be difficult, if not impossible, for individual members of the Class to obtain effective relief. *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015)

("[I]n cases involving relatively low-cost goods or services . . . the class device is often essential 'to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.'") (quoting *Amchem*, 521 U.S. at 617).

III. The Form and Method of Service of Class Notice should be Approved.

"When the parties reach a settlement agreement before a class determination and seek to stipulate that the settlement will have class wide scope, a class notice must be sent to provide absent class members with certain basic information so that they have an opportunity to consider the terms of the settlement." NEWBERG ON CLASS ACTIONS, § 11:30, p. 11-62-11-63 (4th ed. 2002). The substance of the notice must describe, in plain language, the nature of the action, the definition of the certified class, and the class claims and defenses at issue. *See* Fed. R. Civ. P. 23(c)(2)(B). The notice must also explain that class members may enter an appearance through counsel if desired, may request to be excluded from the class, and that a class judgment shall have a binding effect on all class members. *Id*. Additionally, dissemination of the notice must comport with both Rule 23 and due process, which require that a class receive "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The proposed notice plan in this case satisfies Rule 23's notice requirements as well as due process considerations, and provides:

a. A brief summary of the claims alleged in the action;

b. An explanation of the proposed terms of the Settlement, the amount the Settlement Class members are entitled to receive under the Settlement Agreement, and the method by which Settlement Class members can claim their Settlement benefit;

c. An explanation of the right to opt out of and/or object to the Settlement within given time-frames and subject to certain requirements;

d. An explanation that members of the Settlement Class who do not opt out will be bound by the proposed Settlement and judgment and will have released their claims;

e. An explanation that members of the Settlement Class who do not opt out will be represented by proposed Class Counsel; and

f. An identification of Class Counsel and a means for making inquiries thereof.

Federal courts authorize service of class notice by a variety of reliable means. In this regard, "[t]here is no statutory or due process requirement that all class members receive actual notice by mail or other means; rather, 'individual notice must be provided to those Class members who are identifiable through reasonable effort.'" *Eisen,* 417 U.S. at 175-76.

In this case, the Settlement provides for direct notice via electronic mail and U.S. Mail, as well as via publication through social media, internet banners, and a press release, and a detailed settlement website. These notice procedures were determined and agreed to during settlement negotiations, after the Settlement Administrator analyzed Defendants' records and determined the best practical means of effecting notice on the Classes. (McLawhorn Decl. ¶11.)

Courts in this District routinely find the methods of notice proposed in this case to be reasonably calculated to reach class members by the best means practicable. *See In re AT & T Mobility Wireless Data Servs. Sales Litig.,* 270 F.R.D. at 351-53 (granting approval of notice plan that consisted of notice on class members' monthly bill, via text message, electronic mail, and U.S. mail, and via print publication); *In re AT & T Mobility Wireless Data Servs. Sales Tax*

Litig., 789 F. Supp. 2d 935, 968 (N.D. Ill. 2011) (same); *In re Nat'l Collegiate Athletic Ass. Student-Athlete Concussion Injury Litig.,* 314 F.R.D. 580, 603 (N.D. Ill. 2016) (granting approval of notice plan that consisted of both direct and publication notice); *In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.,* No. 09-cv-03690, 2014 WL 1017515, at *2 (N.D. Ill. Mar. 17, 2014) (granting approval of notice plan that consisted of mail notice and publication notice); *Hedges v. Earth Inc.,* No. 14-cv-9858, 2015 WL 10853985, at *2 (N.D. Ill. Oct. 14, 2015) (same); *In re Capital One Tel. Consumer Protection Act Litig.,* 80 F. Supp. 3d 781, 786 (N.D. Ill. 2015) (granting approval of notice plan that consisted of mail, e-mail, and internet publication notice); *Shestopal v. Follett Higher Education Grp., Inc.,* No. 15-cv-8980, Dkt. No. 54 (N.D. Ill. Nov. 17, 2016) (granting approval of notice plan that consisted of mail, e-mail, print and internet publication notice); *see also A & L Indus., Inc. v. P. Cipollini, Inc.,* No. 12-7598, 2014 WL 906180, at *1 (D.N.J. Mar. 7, 2014) (rejecting arguments that notice had to be served in accordance with Rule 5(b); "Rule 23(c) should supersede because Rule 23(c) addresses class notice specifically, whereas Rule 5 addresses service generally."). Accordingly, this notice plan should be approved.

IV. The Court should Schedule a Hearing for Final Settlement Approval.

Following notice to the Class, a Fairness Hearing is to be held on the proposed Settlement. MANUAL FOR COMPLEX LITIGATION § 21.633. Accordingly, Plaintiffs, by proposed Class Counsel, respectfully request that the Court schedule a hearing on final approval of the Settlement to be held no earlier than 180 days after entry of the Preliminary Approval Order. The hearing on the final settlement approval should be scheduled now so that the date can be disclosed in the class notice. After receiving final approval, the Parties request that the Court enter a final order approving the Settlement.

CONCLUSION

Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and advantageous to the proposed Class, Plaintiffs respectfully request that the Court enter an Order:

A. Preliminarily approving the Settlement as being fair, reasonable, and adequate;

B. Preliminarily approving the form, manner, and content of the Class Notice;

C. Setting the date and time of the Final Approval Hearing to be held no earlier than 180 days after entry of the Preliminary Approval Order;

D. Provisionally certifying the proposed Classes under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;

E. Appointing Plaintiffs as Class Representatives;

F. Appointing Joseph J. Siprut, Todd L. McLawhorn, and Siprut PC as Class Counsel; and

G. Such other and further relief the Court deems just and proper.

Dated: November 21, 2017

Respectfully submitted,

By: *s/ Todd L. McLawhorn*

Joseph J. Siprut
jsiprut@siprut.com
Todd L. McLawhorn
tmclawhorn@siprut.com
Ke Liu
kliu@siprut.com
SIPRUT PC
17 N. State Street
Suite 1600
Chicago, Illinois 60602
Phone: 312.236.0000
Fax: 312.878.1342

Counsel for Plaintiffs and the Proposed Settlement Classes

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **Plaintiffs' Memorandum In Support Of Motion For Preliminary Approval Of Class Action Settlement** was filed this 21st day of November 2017 via the electronic filing system of the United States District Court for the Northern District of Illinois, which will automatically serve all counsel of record.

s/ Todd L. McLawhorn

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA WEST, KRISTINE HOLLANDER, JENNIFER ZIMMERMAN, MARY ROMAN, MARIE ESPOSITO, and MICHELLE BALLON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Case No. 1:15-cv-05569
v.	)	Judge Samuel Der-Yeghiayan
ACT II JEWELRY, LLC, a Delaware limited liability corporation d/b/a lia sophia, and VICTOR K. KIAM, III,	)	
Defendants.	)	

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement) is entered into between and among the following parties (the "Parties"), by and through their respective counsel: (a) Plaintiffs Cynthia West, Kristine Hollander, Jennifer Zimmerman, Mary Roman, Marie Esposito, and Michelle Ballon as Class Representatives on behalf of themselves and as representatives of the respective Settlement Classes (as hereinafter defined) (collectively "Plaintiffs") and (b) Defendants Act II Jewelry, LLC f/k/a lia sophia ("Act II") and Victor K. Kiam, III ("Victor Kiam") (collectively "Defendants"). This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle all the claims specified below, subject to approval by the Court and the settlement terms set forth below. Capitalized terms have the meaning ascribed to them in Section II of this Agreement.

I. RECITALS.

A. On June 23, 2015, Plaintiffs West and Hollander filed a putative class action complaint against Act II, Kiam Equities Corporation, Victor Kiam, and Elena Kiam in the United States District Court for the Northern District of Illinois, No. 1:15-cv-05569, alleging claims for breach of contract, violation of the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), fraud and unjust enrichment. Plaintiffs West and Hollander sought to represent two classes: (1) all purchasers of Act II's jewelry; and (2) all individuals who sold jewelry for Act II.

B. On October 19, 2015, the Parties held a mediation with Retired District Judge James F. Holderman in Chicago, Illinois. Prior to the mediation, the Parties engaged in limited discovery and exchanged written mediation statements summarizing their respective positions concerning the factual and legal issues in the Litigation. The mediation did not result in settlement.

C. Act II denied all liability and moved to dismiss the complaint in part on multiple grounds. Kiam Equities Corporation, Victor Kiam, and Elena Kiam also denied all liability and moved to dismiss the claims against them in full. After full briefing before the Court, on March 18, 2016, the Court denied Act II's motion but granted the remaining Defendants' motion, dismissing Kiam Equities Corporation, Victor Kiam, and Elena Kiam from the Litigation.

D. Between April 2016 and April 2017, the Parties engaged in multiple rounds of written and electronic discovery regarding the claims and defenses in the Litigation, including: (i) the review of approximately 12,267 pages of documents produced by Plaintiffs; (ii) the review of approximately 20,111 pages of documents produced by Act II; (iii) the review of approximately 345 pages produced by Victor Kiam; (iv) the review of approximately 6 pages produced by Kiam Equities Corporation; (v) the review of approximately 203 pages produced by

Elena Kiam; (vi) the review of approximately 963 pages of documents produced by additional third-party witnesses in addition to computer media provided by those third parties; (vii) the preparation for taking and/or defending the depositions of approximately ten fact witnesses from Act II and various third-parties; and (viii) the preparation for taking and/or defending the depositions of the six Class Representatives.

E. In the meantime, while discovery was ongoing, on November 30, 2016, Plaintiffs filed the First Amended Class Action Complaint against Act II and Victor Kiam, alleging claims for breach of contract, violation of the ICFA, fraud and unjust enrichment. Plaintiffs West and Hollander were joined by Plaintiffs Ballon, Esposito, Roman and Zimmerman. Plaintiffs sought to represent three classes: (1) all purchasers of Act II jewelry; (2) all individuals who sold jewelry for Act II; and (3) all individuals who joined Act II as sales advisors on or after May 31, 2014. Defendants denied all liability and filed an answer on December 20, 2016.

F. Following the filing of the First Amended Complaint, the Parties continued to engage in discovery, and the Defendants took the depositions of three of the Class Representatives in the spring of 2017. Following those depositions, the parties resumed settlement discussions and engaged in extensive mediation and settlement discussions over the course of approximately four months, including two separate mediations administered by Jill Sperber of Sperber Dispute Resolution (based in California) and an additional mediation session conducted by Judge Holderman.

G. As a result of those continued discussions and mediations, culminating with the mediation before Judge Holderman on July 17, 2017, the Parties agreed to a settlement in principle that would resolve all claims asserted in the Litigation. The parties subsequently exchanged drafts of a Settlement Term Sheet, and executed same on August 1, 2017.

H. Class Counsel has concluded, after extensive discovery and investigation of the facts relating to the Litigation, including third-party discovery, and consideration of Defendants' legal and factual defenses, that it is in the best interests of the Class Representatives and the Settlement Classes to enter into the Agreement to avoid the uncertainties, burdens and risk of litigation, and to obtain the substantial benefits provided by the Agreement. Further, Class Counsel has concluded that the Agreement is fair, reasonable, adequate and in the best interests of all putative members of the Settlement Classes.

I. Defendants deny and continue to deny any wrongdoing and damages, and further deny that the Litigation may be maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding liability or damages, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the substantial expense, burden, and disruption of continued litigation and to avoid the risks and uncertainty inherent in any litigation.

J. The Parties desire to compromise and settle the Released Claims with prejudice.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth below, and subject to the preliminary and final approval of the Court pursuant to Fed. R. Civ. P. 23(e), the Parties agree as follows:

II. DEFINITIONS.

A. "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release, including all exhibits hereto.

B. "Attorneys' Fee Award" means the total award of attorneys' fees, costs and expenses sought by Class Counsel and/or allowed by the Court.

C. "CAFA Notice" means the notice of this Settlement to be served upon State and Federal authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

D. "Cash Award" means the payment to each Class Member who submits a Valid Claim.

E. "Claim Deadline" means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than ninety (90) days after the Notice Date. The Claim Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

F. "Claim Form" means a document in the form of **Exhibit A** attached hereto, as approved by the Court, to be submitted by Settlement Class Members in order to receive a Cash Award.

G. "Class Fund" means the Net Settlement Fund less the amounts paid for the Attorneys' Fee Award and the Incentive Awards.

H. "Class Counsel" means Joseph J. Siprut and Todd L. McLawhorn of Siprut PC.

I. "Class Representatives" means Cynthia West, Kristine Hollander, Jennifer Zimmerman, Mary Roman, Marie Esposito and Michelle Ballon.

J. "Court" means the United States District Court for the Northern District of Illinois.

K. "Customer Class" is defined in Section III.

L. "Customer Class Member" means those persons that fall within the definition of the Customer Class who have not submitted a valid Opt-Out request.

M. "Defense Counsel" means Eric L. Samore, Albert M. Bower, and Ronald D. Balfour of SmithAmundsen, LLC.

N. "Effective Date" means the date defined in Section XII.

O. "Fairness Hearing" means the hearing to be conducted by the Court under Fed. R. Civ. P. 23(e) to consider the fairness, reasonableness and adequacy of this Agreement.

P. "Final Order and Judgment" means the Order entered by the Court granting the Motion for Final Approval of the Settlement and entering judgment.

Q. "Incentive Award" means the amount awarded, if any, to the individual Class Representatives.

R. "Litigation" means the action captioned *West v. Act II Jewelry*, LLC, No. 1:15-cv-05569 (N.D. Ill.).

S. "Net Settlement Fund" means the Settlement Fund less the amounts paid for Settlement Administration Expenses.

T. "New Sales Advisor Class" is defined in Section III.

U. "New Sales Advisor Class Member" means those persons that fall within the definition of the New Sales Advisor Class who have not submitted a valid Opt-Out request.

V. "Notice" means the notice of this proposed Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement and is consistent with the requirements of Due Process and Federal Rule of Civil Procedure 23.

W. "Notice Date" means the first day on which the Settlement Administrator begins disseminating the Notice.

X. "Notice Plan" means the plan for notifying Settlement Class Members of the Settlement.

Y. "Opt-Out" means a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement in accordance with the Preliminary Approval Order.

Z. "Opt-Out List" means the list compiled by the Settlement Administrator identifying those who properly and timely submit a request for exclusion and become Opt-Outs.

AA. "Opt-Out and Objection Deadline" means, respectively, the dates, to be set by the Court, by which a request for exclusion must be filed with the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement.

BB. "Parties" means the Plaintiffs and the Settlement Class on the one hand, and Defendants, on the other hand.

CC. "Person" means without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. The definition of "Person" is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General's office.

DD. "Plaintiffs" means the Class Representatives and the Settlement Class.

EE. "Preliminary Approval Date" means the date the Preliminary Approval Order is entered by the Court.

FF. "Preliminary Approval Order" means the proposed order preliminarily approving the Settlement Agreement and directing notice thereof to the Settlement Class, to be submitted to

the Court in conjunction with Plaintiffs' motion for preliminary approval of the Settlement Agreement. The Preliminary Approval Order shall be in form and substance the same as attached as **Exhibit G**.

GG. "Release" means the release and discharge, as of the Effective Date, by the Class Representatives and all Settlement Class Members (and their respective successors, assigns and insurers) of the Released Persons of and from all Released Claims and shall include the agreement and commitment by the Class Representatives and all Settlement Class Members (and their respective successors, assigns and insurers) to not now or hereafter initiate, maintain or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by the Class Representatives or any Settlement Class Members (and their respective successors, assigns and insurers) against the Released Persons or any of them in this Litigation or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body arising out of or related to the Released Claims, with the exception of any claims by the Class Representatives or Settlement Class Members in connection with their work for Adornable.U, or the contemplation of working for Adornable.U.

HH. "Released Claims" means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith

and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practices, false advertising, restitution, rescission, and any other claims, whether known or unknown, whether asserted or unasserted in the Litigation, which the Class Representatives or any Settlement Class Member had, now have or may in the future have with respect to any conduct, acts, omissions, facts, matters, transactions or oral or written statements or occurrences on or prior to the date of this Agreement arising from or relating to Act II's business or the operation thereof, including the sale of merchandise, the replacement or non-replacement of jewelry, the use of customer information, and the enrollment of Sales Advisors, with the exception that "Released Claims" does not include any claims by the Class Representatives or Settlement Class Members, either on an individual or class basis, in connection with their work for Adornable.U, or the contemplation of working for Adornable.U.

II. "Released Persons" means Act II Jewelry, LLC, Victor K. Kiam, III, Elena Kiam, Kiam Equities Corporation, and their parents, subsidiaries, affiliates, controlled companies, officers, directors, managers, shareholders, members, partners, owners, employees, predecessors, successors, assigns, agents, insurers, and attorneys. For avoidance of doubt, "Released Persons" includes Mackinac Partners, Keith Maib, and Matthew Beresh in their individual capacities and as officers of Act II Jewelry, LLC.

JJ. "Releasing Persons" means the Class Representatives on behalf of themselves and all Settlement Class Members, each Settlement Class Member, and the respective heirs, administrators, representatives, attorneys, agents, partners, successors, insurers and assigns of each Class Representative and Settlement Class Member.

KK. "Sales Advisor Class" is defined in Section III.

LL. "Sales Advisor Class Member" means those persons that fall within the definition of the Sales Advisor Class who have not submitted a valid Opt-Out request.

MM. "Settlement" means the settlement contemplated by this Settlement Agreement.

NN. "Settlement Administration Expenses" means the expenses incurred by the Settlement Administrator in providing Notice and processing Claim Forms.

OO. "Settlement Administrator" means the independent professional service company selected by the Parties to oversee the distribution of Notice as well as the processing and payment of claims to Settlement Class Members as set forth in the Settlement Agreement. The Parties have agreed that Heffler Claims Group will serve as Settlement Administrator, subject to the Court's approval.

PP. "Settlement Class" or "Settlement Classes" means all Persons who fall within any of the Customer Class, Sales Advisor Class, or New Sales Advisor Class.

QQ. "Settlement Class Member" means those persons that fall within the definition of the Customer Class, Sales Advisor Class, and/or New Sales Advisor Class, who have not submitted a valid Opt-Out request.

RR. "Settlement Fund" means a non-reversionary common fund of $6.7 million established by Defendants to pay all expenses relating to the Settlement, including: (a) Cash Awards; (b) Settlement Administration Expenses; (c) the Attorneys' Fee Award; and (d) Incentive Awards.

SS. "Settlement Website" means the website administered by the Settlement Administrator on which Settlement Class Members may submit Claim Forms and review information about the Settlement, including this Agreement, the First Amended Complaint, Defendants' Answer, the Notice and the Claim Form.

TT. "Unknown Claims" means claims that could have been raised in the Litigation and that the Class Members or any or all other Persons and entities whose claims are being released, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Class Members and all other Persons and entities whose claims are being released shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which 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.

Upon the Effective Date, Class Members and all other Persons and entities whose claims are being released, also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever to settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

UU. "Valid Claim" means a claim submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions on the Claim Form, (b) fully completed and (c) signed by the Settlement Class Member.

III. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASSES.

A. Pursuant to Fed. R. Civ. P. 23(b)(3), the Parties stipulate to certification, for settlement purposes only, of the following three Settlement Classes:

1. All individuals who purchased jewelry from Act II Jewelry, LLC between June 23, 2011 and December 1, 2014 ("Customer Class"). The Customer Class is estimated to contain approximately 4 million individuals.

2. All individuals who sold at least $250 of jewelry for Act II between January 1, 2014, and August 17, 2014 ("Sales Advisor Class"). The Sales Advisor Class is estimated to contain approximately 19,069 individuals.

3. All individuals who purchased initial starter kits from Act II between August 1, 2014 and December 1, 2014 ("New Sales Advisor Class"). The New Sales Advisor Class is estimated to contain approximately 2,709 individuals.

Specifically excluded from the Customer Class, Sales Advisor Class, and New Sales Advisor Class are the following persons: (a) Defendants and their respective affiliates, (b) Class Counsel and their immediate family members; and (c) the judges who have presided over this Litigation and their immediate family members.

B. The Parties agree that some individuals may be members of more than one Settlement Class. Such individuals may obtain the relief available for each class of which they are members.

C. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily certifying the Customer Class, Sales Advisor Class, and New Sales Advisor Class, appointing Plaintiffs as representatives of the respective Classes, and appointing the following as Class Counsel:

Joseph J. Siprut
jsiprut@siprut.com
Todd L. McLawhorn
tmclawhorn@siprut.com
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Phone: 312.236.0000
Fax: 312.878.1342

D. Solely for purposes of implementing the Settlement Agreement, the Parties stipulate to the Court entering an order preliminarily finding that Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

E. In the event that the Settlement Agreement is terminated pursuant to its terms or is not granted final approval by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated and the Litigation shall proceed as if the Settlement Class had not been certified, and the Defendants reserve all rights to challenge certification of any class for trial purposes.

IV. BENEFITS TO SETTLEMENT CLASS MEMBERS.

A. Pursuant to the terms and conditions set forth below, Defendants agree to pay a Settlement Fund of $6.7 million, which will be used to pay all Settlement costs, including

without limitation Cash Awards, Settlement Administration Expenses, Attorneys' Fee Award and Incentive Awards. Defendants need not segregate funds or otherwise create special accounts to hold the Settlement Fund and will not relinquish control of any money until payments are due. Defendants' and their insurers' maximum liability pursuant to this Settlement shall be the amount of the Settlement Fund.

B. The Settlement Fund shall be allocated as follows:

1. *Settlement Administration Expenses*. The amount of $1.3 million will be allocated from the Settlement Fund to Settlement Administration Expenses incurred by the Settlement Claims Administrator, Heffler Claims Group.
2. *Net Settlement Fund.* The amount remaining ($5.4 million) after deducting the Settlement Administration Expenses from the Settlement Fund shall be the Net Settlement Fund.
3. *Attorneys' Fee Award and Incentive Awards.* Class Counsel will seek a one-third Attorneys' Fee Award from the Net Settlement Fund. Class Counsel will also seek Incentive Awards for the Class Representatives from the Net Settlement Fund.
4. *Class Fund.* The amount remaining from the Net Settlement Fund after deducting the Attorneys' Fee Award and the Incentive Awards shall be the Class Fund.
5. The Class Fund will be paid to the Settlement Class, as follows:
    a. *Customer Class*. Fifty-seven percent (57%) of the Class Fund will be allocated to the Customer Class. Each Customer Class Member who submits a Valid Claim form shall receive a share of the

amount allocated to the Customer Class based on the total dollar value of their purchases between June 23, 2011, and December 1, 2014, as reflected in Act II's records. Each Customer Class Member who submits a Valid Claim and purchased less than $100 in jewelry from Act II between June 23, 2011, and December 1, 2014 will be deemed to be in "Tier One" of the Customer Class and will receive the same amount as each other member of Tier One; each Customer Class Member who submits a Valid Claim and purchased $100-$299.99 in jewelry from Act II between June 23, 2011, and December 1, 2014 will be deemed to be in "Tier Two" of the Customer Class and will receive double the amount received by each member of Tier One; each Customer Class Member who submits a Valid Claim and purchased $300 or more in jewelry from Act II between June 23, 2011, and December 1, 2014 will be deemed to be in "Tier Three" of the Customer Class and will receive triple the amount received by each member of Tier One. The amount received by each Customer Class Member will be dependent upon how many Valid Claims are submitted, and the entire amount allocated to the Customer Class will be distributed to the Customer Class.

b. *Sales Advisor Class.* Thirty-eight percent (38%) of the Class Fund will be allocated to the Sales Advisor Class. Each Sales Advisor who submits a Valid Claim shall receive a share of the amount

allocated to the Sales Advisor Class based on the amount of sales made by that Sales Advisor between January 1, 2014 and August 17, 2014 as reflected in Act II's records, *i.e.*, those Sales Advisors who submit a Valid Claim will receive an amount in proportion to the dollar value of their sales during that time period. The entire amount allocated to the Sales Advisor Class will be distributed to the Sales Advisor Class.

c. *New Sales Advisor Class.* Five percent (5%) of the Class Fund will be allocated to the New Sales Advisor Class. Each New Sales Advisor Class Member who submits a Valid Claim shall receive the amount paid by that New Sales Advisor for her initial starter kit, which ranged from $99 to $149. In the event the number of Valid Claims for New Sales Advisors exhausts the amount allocated to the New Sales Advisor Class, each New Sales Advisor who submits a Valid Claim will have his or her Cash Award reduced proportionally so that the total amount of Cash Awards paid to New Sales Advisors will not exceed five percent (5%) of the Class Fund. In the event that there is money remaining for the New Sales Advisor Class after the payment of Cash Awards to all New Sales Advisors who submit Valid Claims, the remainder shall be added back to the Class Fund and distributed to the Customer Class and Sales Advisor Class in the same proportion as funds distributed per the preceding two paragraphs.

C. *Tax Withholding.* Within fourteen (14) days after the Effective Date, or such other date the Court may set, the Settlement Administrator shall send to each Class Member who submitted a Valid Claim a W-9, if the Cash Award to that Class Member exceeds $599. If the Class Member does not postmark a valid W-9 to the Settlement Administrator within thirty (30) days, the Settlement Administrator shall take any action necessary to comply with the rules and regulations of the Internal Revenue Service, including, but not limited to, deducting from the Cash Award a tax withholding.

D. *Issuance Of Checks.* Within sixty (60) days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Valid Claims by check and mail them to the claimants via first-class mail. All payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void. Fourteen (14) days before the date on which the checks become void, the Settlement Administrator may contact Settlement Class Members who have not cashed their checks in order to urge them to do so and, if requested by the Settlement Class Member, may issue a new check.

E. *Cy Pres.* Sixty (60) days after the final date to cash a check, the Settlement Administrator shall report to the Parties the number of uncashed checks and their total value. Subject to Court approval, if there are any uncashed checks, such funds will be awarded to a cy pres recipient selected by Class Counsel in consultation with Defense Counsel.

V. RELEASES.

A. The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims and Unknown Claims, as against all Released Parties for the Settlement Class.

B. Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished and discharged all Released Claims and Unknown Claims against the Released Parties, and each of them.

VI. NOTICE TO THE CLASS.

A. Upon issuance of Preliminary Approval of this Agreement, the Settlement Administrator shall disseminate Notice to the Settlement Classes. Such Notice shall comport with due process and be effectuated pursuant to a Notice Plan. All Settlement Administration Expenses shall be paid from the Settlement Fund.

B. The following is the Notice Plan contemplated by the Parties and the Settlement Administrator, subject to approval by the Court.

1. *Direct Notice Via Email.* For all Settlement Class Members for whom the Settlement Administrator is able to determine an email address based on transaction records provided by Act II, direct notice shall be made by email in the first instance, in the form of **Exhibit B**.

2. *Direct Notice Via U.S. Mail.* For all Settlement Class Members for whom the Settlement Administrator is unable to determine an email address, and for all Settlement Class Members for whom email notice is sent that is returned, notice shall be

by direct mail, in the form of **Exhibit C**, provided that the Settlement Administrator is able to determine a valid mailing address for those individuals based on transaction records provided by Act II. For those Settlement Class Members without any valid email or mailing address that the Settlement Administrator can determine from the transaction records provided by Act II, the notice described in subsubsections 3 through 5 below shall be deemed sufficient.

3. *Notice Via Settlement Website.* The Settlement Administrator will create a Settlement Website where Notice, in the form of **Exhibit D**, shall be posted and on which Settlement Class Members may submit claims.

4. *Notice Via Social Media.* Defendants shall post notice of the Settlement on the lia sophia outlet and lia sophia Facebook pages, in the form of **Exhibit E**.

5. *Notice Via Publication.* The Settlement Administrator shall create a publication notice plan designed to reach a reasonable portion of Settlement Class Members. A description of the process to be used by the Settlement Administrator is attached as **Exhibit F**.

6. *Toll-Free Phone Line.* Within thirty (30) days after Preliminary Approval, the Settlement Administrator shall establish a phone line with touch-tone and interactive voice responses for individuals to learn more about the Settlement.

7. *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendants shall serve upon the Attorneys General of each U.S. State in which there are members of the Class, the Attorney General of the United States, and other required government officials, notice of the proposed settlement, which shall include: (1) a copy of the most recent complaint and all materials

filed with the complaint or notice of how to electronically access such materials; (2) notice of all scheduled judicial hearings in the Action; (3) all proposed forms of Notice to the Settlement Class; and (4) a copy of this Agreement. To the extent known, the Defendants shall serve upon the above-referenced government official the names of Class Members who reside in each respective state and the share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such members to the entire Agreement. The costs of conducting CAFA Notice shall not be deducted from the Settlement Fund. Defendants are responsible for paying the costs of CAFA Notice separate and apart from the Settlement Fund.

C. The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Opt-Out And Objection Deadline approved by the Court and specified in the Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time: (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court; (b) that any objection made by a Settlement Class Member represented by counsel must be filed through the Court's CM/ECF system; and (c) send copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendants' Counsel.

VII. OBJECTIONS AND OPT-OUTS.

A. Any Settlement Class Member who intends to object must do so on or before the Opt-Out And Objection Deadline. To be valid, any objections must be appropriately filed with the Court no later than the Opt-Out And Objection Deadline, or alternatively they must be mailed to the Court at the address below and postmarked no later than the Opt-Out And Objection Deadline.

Clerk of Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Attention: "*West v. Act II Jewelry, LLC*
Case No. 15-cv-05569"

A copy of the objection must also be mailed to the Settlement Administrator at a mailing address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communications relating to this Settlement.

B. The Settlement Class Member must include in any such objection the name, address, telephone number of the Person objecting and, if represented by counsel, of his or her counsel. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to timely file and serve a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Paragraph, as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

C. Any Person who objects to the Settlement may be subject to discovery, including a deposition, by order of the Court. The Parties will work together to respond to any objections raised to the Settlement.

D. Any payments made from the Settlement Fund to Persons objecting to the Settlement must receive prior Court approval.

E. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Opt-Out And Objection Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and docket number of the case, and a statement that he/she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the Persons or entities serving such a request shall be members of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (a) be bound by any orders or the Final Judgment; (b) be entitled to relief under this Settlement Agreement; (c) gain any rights by virtue of this Settlement Agreement; or (d) be entitled to object to any aspect of this Settlement Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So called "mass" or "class" opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement. If more than 0.1% of

the Settlement Class Members request to be excluded from the Settlement Class, Defendants shall have the right to terminate this Settlement Agreement by providing written notice of the election to do so ("Termination Notice") to Plaintiffs within twenty (20) days of being notified that more than 0.1% of Settlement Members requested to be excluded.

VIII. CLAIMS PROCESS.

A. The Class Notice shall provide information regarding the filing of Claim Forms. Claim Forms shall be available from the Settlement Administrator and on the Settlement Website.

B. To file a Valid Claim, Settlement Class Members must (i) complete a Claim Form, in the form of **Exhibit A**, providing all of the information required by the Claim Form, including a signature; and (ii) return the completed and signed Claim Form and related documents, if any, to the Settlement Administrator on or before the Claim Deadline. Customer Class Members may, but are not required to, include receipts with their respective Claim Forms in the event they wish to challenge the Tier designation which will be provided to them as part of the Notice program. Only Settlement Class Members who submit Valid Claims shall be entitled to a Cash Award.

C. The Settlement Administrator shall be responsible for reviewing all claims to determine their validity. Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement or is postmarked or submitted electronically later than the Claim Deadline shall be rejected. Following the Claim Deadline, the Settlement Administrator shall provide a report of all accepted, rejected, or reclassified claims to

Defense Counsel and Class Counsel, who shall have at least thirty (30) days to engage in the following process:

1. If Class Counsel do not agree with the rejection or reclassification of a claim, they shall bring it to the attention of Defense Counsel, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, if the Parties do not reach agreement, the Parties will provide the Settlement Administrator with their positions regarding the disputed claim. The Settlement Administrator, after considering the positions of the Parties and, if appropriate, seeking any additional information from the Settlement Class Member, will make the final decision in its sole discretion.
2. If Defense Counsel do not agree with the acceptance or reclassification of a claim, they shall bring it to the attention of Class Counsel, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the accepted or reclassified claim. Defense Counsel may object to submitted claims on the basis of lateness, insufficient information provided by the claimant, and indicia of fraud. Following their meet and confer, if the Parties do not reach agreement, the Parties will provide the Settlement Administrator with their positions regarding the disputed claim. The Settlement Administrator, after considering the positions of the Parties and, if appropriate, seeking any additional information from the Settlement Class Member, will make the final decision in its sole discretion.

D. In the event that any Claim Forms are defective, incomplete, inaccurate or evidence fraud, the Settlement Administrator may reject those Claim Forms without seeking additional information or providing an opportunity to cure the defect.

IX. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

A. Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, and entry of a Preliminary Approval Order. Among other things, the Preliminary Approval Order shall set deadlines for submissions of Claim Forms, opt outs and objections, set a Final Approval Hearing date, and approve the Notice and Claim Form for dissemination in accordance with the Notice Plan, substantially in the form of Exhibits A through E hereto.

B. At the time of the submission of this Settlement Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

C. After Notice is given, the Parties shall request and obtain from the Court a Final Approval Order. The Final Approval Order will (among other things):

1. find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Settlement Agreement, including Exhibits A through G thereto;

2. approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, Releasing Parties, and their heirs, executors and administrators, successors and assigns;
3. find that the Notice and the Notice Plan implemented pursuant to the Settlement Agreement: (i) constitute the best practicable notice under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Agreement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and the rules of the Court;
4. find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;
5. dismiss the Litigation (including all individual claims and Settlement Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

6. incorporate the Releases set forth in Paragraph V, above, make the Releases effective as of the date of the Final Approval Order, and forever discharge the Released Parties as set forth herein;
7. permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;
8. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including Exhibits A through G to this Agreement) as: (i) shall be consistent in all material respects with the Final Judgment; or (ii) do not limit the rights of Settlement Class Members;
9. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and
10. incorporate any other provisions, as the Court deems necessary and just.

X. TERMINATION OR CANCELLATION OF SETTLEMENT.

A. Either Party may terminate the Settlement, by providing notice ("Termination Notice") to all other Parties within twenty (20) days of any of the following events: (i) the Court's refusal to grant preliminary approval of the Settlement as written; (ii) the Court's refusal to grant final approval of the Settlement as written; (iii) the reversal or substantial modification

of the Court's order granting preliminary or final approval; (iv) a material alteration by the Court of any of the terms of the Settlement Agreement; or (v) the timely opt out of more than 0.1% of Settlement Class Members.

B. If, for any reason, this Agreement is terminated or fails to become effective, then the Settlement shall be null and void, and no stipulation, representation or assertion of fact made in the Settlement may be used by any Party. The Parties shall, to the fullest extent possible, be returned to their respective positions in the Litigation as of the date of this Agreement.

XI. ATTORNEYS' FEE AWARD; INCENTIVE AWARDS.

A. At least fourteen (14) days prior to the Opt-Out And Objection Deadline, Class Counsel will file its petition for the Attorneys' Fee Award and Incentive Awards for the Class Representatives for their efforts in prosecuting this case and achieving a meaningful benefit for the Class. Subject to Court approval, the Attorneys' Fee Award and Incentive Awards shall be paid from the Settlement Fund. Class Counsel intends to seek Incentive Awards for the Class Representatives ranging from $2,500 to $7,500.

XII. EFFECTIVE DATE AND FINALITY OF SETTLEMENT.

A. The Settlement provided for in this Agreement shall be final and unconditional on the date immediately upon which the last of the following events and conditions have been satisfied or waived, such date to be the "Effective Date":

1. This Agreement has been fully executed by all Parties and their counsel;

2. The Court enters the Preliminary Approval Order;

3. The Notice Administrator causes the Notice to be served in accordance with the Preliminary Approval Order;

4. The Court issues the Final Order and Judgment;

5. All appeal periods have expired or been resolved as set forth below:

   a. If no appeal is taken from a court order or a judgment, the date after the time to appeal therefrom has expired; or

   b. If any appeal is taken from a court order or judgment, the date after all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

XIII. NOTICES.

A. All Notices to Class Counsel and Defense Counsel required by the Agreement shall be made in writing and communicated by email and United States mail to the following addresses:

<u>To Class Counsel</u>

Todd L. McLawhorn
tmclawhorn@siprut.com
SIPRUT PC
17 North State Street
Suite 1600
Chicago, Illinois 60602

<u>To Defense Counsel</u>

Eric L. Samore
esamore@salawus.com
SmithAmundsen, LLC
150 N. Michigan
Suite 3300
Chicago, Illinois 60601

B. The notice recipients and addresses designated in this Section may be changed by written designation.

C. Upon the request of any Party, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion or other documents or filings received as a result of the Notice.

XIV. NO ADMISSION OF LIABILITY

A. *Defendants' Denial of Wrongdoing.* This Agreement reflects the Parties' compromise and settlement of the disputed claims. Defendants do not admit any liability or wrongdoing. The Settlement and its provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession by Defendant of any wrongdoing.

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

XV. MISCELLANEOUS PROVISIONS.

A. *Court Approval.* Promptly after the execution of this Settlement Agreement, Plaintiffs' Counsel shall submit this Agreement to the Court, with the support of Defendants, and shall move the Court for Approval of the Settlement set forth in this Agreement, certification of the Class for settlement purposes only, appointment of Class Counsel and the Class Representatives, and entry of an Preliminary Approval Order in the form attached as **Exhibit G**. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree to cooperate with one another in seeking Court approval of the Settlement Agreement and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain approval of the Agreement.

B. *No Reversion to Defendants.* No amount of the Settlement Fund shall revert back to Defendants. Settlement Class Members' uncashed checks shall be awarded to a cy pres recipient.

C. *Voluntary Agreement.* The Parties executed this Agreement voluntarily of the Party's own free will and without threat, force, fraud, duress, undue influence or coercion of any kind.

D. *Binding on Successors.* This Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

E. *Parties Represented by Counsel.* The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation of this

Settlement and the preparation of this Agreement; (b) they have read this Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Agreement and its legal effect.

F. *Authorization.* Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

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

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

I. *Headings*. The various headings used in this Agreement are solely for the Parties' convenience and may not be used to interpret this Agreement. The headings do not define, limit, extend, or describe the Parties' intent or the scope of this Agreement.

J. *Exhibits*. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement as though fully set forth in the Agreement.

K. *Modifications and Amendments.* No amendment, change, or modification to this Agreement will be valid unless in writing signed by the Parties or their counsel.

L. *Governing Law.* This Agreement is governed by Illinois law and must be interpreted under Illinois law and without regard to conflict of laws principles.

M. *Further Assurances.* The Parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Agreement and to carry out this Agreement's expressed intent.

N. *Agreement Constitutes a Complete Defense.* To the extent permitted by law, this Agreement may be pled as a full and complete defense to any action, suit, or other proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary to this Agreement.

O. *Execution Date.* This Agreement is deemed executed on the date the Agreement is signed by all of the undersigned.

P. *Counterparts.* This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, PDFs, or facsimiles of executed copies of this Agreement may be treated as originals.

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

R. *Severability.* If any provision of this Settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at

which point the Parties shall attempt to renegotiate the Settlement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The Parties have agreed to the terms of this Agreement and have signed below:

SIPRUT PC, Counsel for Plaintiffs and the Settlement Classes

Todd McLaughlan
Printed Name

Todd J McLaughlan
Signature

10/25/17
Date

SmithAmundsen LLC, Counsel for Defendants

Printed Name

Signature

Date

Plaintiff Cynthia West

Signature

Date

Defendant ACT II Jewelry, LLC

Printed Name

Title

Signature

Date

Plaintiff Kristine Hollander

Signature

Date

Defendant Victor K. Kiam, III

Signature

Date

Plaintiff Jennifer Zimmerman

Signature

Date

The Parties have agreed to the terms of this Agreement and have signed below:

SIPRUT PC, Counsel for Plaintiffs and the Settlement Classes

_____
Printed Name

_____
Signature

_____
Date

SmithAmundsen LLC, Counsel for Defendants

_____
Printed Name

_____
Signature

_____
Date

Plaintiff Cynthia West

Cynthia L West
Signature

10/26/2017
Date

Defendant ACT II Jewelry, LLC

_____
Printed Name

_____
Title

_____
Signature

_____
Date

Plaintiff Kristine Hollander

_____
Signature

_____
Date

Defendant Victor K. Kiam, III

_____
Signature

_____
Date

Plaintiff Jennifer Zimmerman

_____
Signature

_____
Date

The Parties have agreed to the terms of this Agreement and have signed below:

SIPRUT PC, Counsel for Plaintiffs and the Settlement Classes

_____
Printed Name

_____
Signature

_____
Date

SmithAmundsen LLC, Counsel for Defendants

_____
Printed Name

_____
Signature

_____
Date

Plaintiff Cynthia West

_____
Signature

_____
Date

Defendant ACT II Jewelry, LLC

_____
Printed Name

_____
Title

_____
Signature

_____
Date

Plaintiff Kristine Hollander

Kristine Hollander
Signature

10/25/2017
Date

Defendant Victor K. Kiam, III

_____
Signature

_____
Date

Plaintiff Jennifer Zimmerman

_____
Signature

_____
Date

The Parties have agreed to the terms of this Agreement and have signed below:

SIPRUT PC, Counsel for Plaintiffs and the Settlement Classes

_____
Printed Name

_____
Signature

_____
Date

SmithAmundsen LLC, Counsel for Defendants

_____
Printed Name

_____
Signature

_____
Date

Plaintiff Cynthia West

_____
Signature

_____
Date

Defendant ACT II Jewelry, LLC

_____
Printed Name

_____
Title

_____
Signature

_____
Date

Plaintiff Kristine Hollander

_____
Signature

_____
Date

Defendant Victor K. Kiam, III

_____
Signature

_____
Date

Plaintiff Jennifer Zimmerman

Jennifer Zimmerman
Signature

10/30/17
Date

Plaintiff Mary Roman

Mary Roman
Signature

10/25/17
Date

Plaintiff Marie Esposito

_____
Signature

_____
Date

Plaintiff Michelle Ballon

_____
Signature

_____
Date

Plaintiff Mary Roman

_____
Signature

_____
Date

Plaintiff Marie Esposito

Marie Esposito
Signature

11/1/17
Date

Plaintiff Michelle Ballon

_____
Signature

_____
Date

Plaintiff Mary Roman

_____
Signature

_____
Date

Plaintiff Marie Esposito

_____
Signature

_____
Date

Plaintiff Michelle Ballon

_____
Signature
11/02/2017
_____
Date

The Parties have agreed to the terms of this Agreement and have signed below:

SIPRUT PC, Counsel for Plaintiffs and the Settlement Classes

_____
Printed Name

_____
Signature

_____
Date

SmithAmundsen LLC, Counsel for Defendants

ERIC SAMORE
Printed Name

Signature

11-21-17
Date

Plaintiff Cynthia West

_____
Signature

_____
Date

Defendant ACT II Jewelry, LLC

Victor K. Kiam III
Printed Name

President
Title

Signature

_____
Date

Plaintiff Kristine Hollander

_____
Signature

_____
Date

Defendant Victor K. Kiam, III

Signature

_____
Date

Plaintiff Jennifer Zimmerman

_____
Signature

_____
Date