

1 JEFFREY B. MARGULIES (BAR NO. 126002)
2 EVA YANG (BAR NO. 306215)
3 **NORTON ROSE FULBRIGHT US LLP**
4 555 South Flower Street
5 Forty-First Floor
6 Los Angeles, California 90071
7 Telephone: (213) 892-9200
8 Facsimile: (213) 892-9494
9 jeff.margulies@nortonrosefulbright.com
10 eva.yang@nortonrosefulbright.com

11 ATTORNEYS FOR DEFENDANT
12 ROSS STORES, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 DOMINIQUE MORRISON, on behalf of
17 herself and all others similarly situated,

18 Plaintiff,

19 vs.

20 ROSS STORES, INC.,

21 Defendants.

Case No. 4:18-cv-02671-YGR

Assigned for All Purposes to the Hon. Yvonne
Gonzalez Rogers

STIPULATION OF SETTLEMENT

1 This Stipulation of Settlement is made by and among Dominique Morrison ("Plaintiff"), on
 2 behalf of herself and the Settlement Class (defined below), on the one hand, and Ross Stores, Inc.,
 3 on the other.

4 RECITALS

5 A. On May 7, 2018, Plaintiff commenced a proposed class action against Ross Stores,
 6 Inc. ("Ross"), AQ Textiles, LLC ("AQ"), and Creative Textile Mills Private Limited ("Creative")
 7 in the United States District Court, Northern District of California, Case No. 4:18-cv-02671-
 8 YGR. Plaintiff alleged that the bed sheets that she purchased from Ross that were imported by
 9 AQ and manufactured by Creative were represented to have a higher thread count than they
 10 actually had. Plaintiff asserted claims on behalf of herself and a proposed California class of all
 11 purchasers that purchased bedding linen or bedding products from defendants that were
 12 represented as having higher thread counts for violation of the Magnuson-Moss Warranty Act, 15
 13 U.S.C. § 2301, *et seq.* ("MMWA"), fraud, violation of the Consumer Legal Remedies Act, Civ.
 14 Code § 1750, *et seq.* ("CRLA"), violation of California's Unfair Competition Law, Bus. & Prof.
 15 Code § 17200, *et seq.* ("UCL") under the unlawful, unfair, and fraudulent prong, violation of
 16 False Advertising Law, Bus. & Prof. Code § 17500, *et seq.* ("FAL"), breach of express warranty,
 17 breach of warranty of merchantability, and negligent misrepresentation.

18 B. On June 29, 2018, AQ and Ross each filed a motion to dismiss the Complaint. On
 19 July 20, 2018, prior to the motion to dismiss hearings, Plaintiff filed an amended complaint
 20 ("FAC"). The Court vacated the motion to dismiss hearing as moot.

21 C. Plaintiff's FAC alleged the same claims, but added a claim for violation of the
 22 Missouri Merchandising Practices Act ("MMPA"), Missouri Rev. Stat. § 407.020. Rather than a
 23 California class, the FAC sought to certify a proposed Missouri and nationwide class. The claims
 24 alleged under the CLRA, UCL, and FAL are alleged against Ross only, the others are alleged
 25 against all defendants.

26 D. On August 3, 2018, AQ and Ross again moved to dismiss the FAC. On November
 27 14, 2018, the Court granted both motions but allowed Plaintiff leave to amend with respect to the
 28

1 claims against Ross. The Court found that Plaintiff failed to establish personal jurisdiction as to
2 AQ, and therefore granted AQ's motion without allowing Plaintiff leave to amend her claims
3 against AQ.

4 E. On December 4, 2018, Plaintiff filed a Second Amended Complaint ("SAC")
5 alleging the same claims in the FAC, and adding a claim for unjust enrichment. Plaintiff asserted
6 these claims on behalf of herself and a proposed Missouri and nationwide class who purchased
7 bedding or linen products from Ross that were manufactured or supplied by AQ and/or Creative
8 and that were packaged or advertised with a representation regarding thread count. On January 4,
9 2019, Ross filed a motion to dismiss the SAC.

10 F. On May 30, 2019, the Court granted Ross's motion to dismiss as to Plaintiff's
11 claims for violation of MMWA and unjust enrichment without leave to amend. As such, the
12 operative claims that currently remain are: (1) fraud; (2) violation of the CLRA; (3) violation of
13 UCL under its unlawful prong, unfair prong, and fraudulent prong; (4) violation of the FAL; (5)
14 breach of express warranty; (6) breach of warranty of merchantability; (7) negligent
15 misrepresentation; and (8) violation of the MMPA.

16 G. On June 20, 2019, Ross answered Plaintiff's SAC, denying Plaintiff's allegations
17 and asserting several affirmative defenses.

18 H. On July 8, 2019, the parties attended an initial case management conference where
19 the Court set various scheduling deadlines and referred the case to mediation.

20 I. On November 13, 2020, the parties attended a full day mediation before the Hon.
21 Jay C. Gandhi. The parties exchanged detailed settlement proposals and continued to engage in
22 settlement discussions following the mediation.

23 J. On March 23, 2020, due to the worsening situation with COVID-19 and
24 government mandated closures, the parties stipulated to vacate all existing deadlines. The parties
25 thereafter submitted two stipulations further extending their time to submit a proposed briefing
26 schedule due to the continued state closures and circumstances surrounding COVID-19.

27 K. On July 20, 2020, the Court ordered the parties to jointly submit a proposed
28

1 scheduling order, which was submitted to the Court on November 23, 2020.

2 L. On January 7, 2021, in accordance with the Court's Standing Order, Ross
3 requested a pre-filing conference in connection with its anticipated motion for summary
4 judgment. On January 14, 2021, the Court found that the pre-filing conference was premature,
5 although noting that it cannot prohibit a party from filing a motion for summary judgment. As
6 such, Ross was prepared to file a motion for summary judgment as to all of Plaintiff's claims on
7 the basis that, among others, Ross, as a retailer, did not make or participate in any representations
8 regarding the thread count of the sheets that Plaintiff purchased.

9 M. On February 18, 2021, the parties attended a second mediation session before the
10 Hon. Elizabeth D. Laporte (ret.) and continued to discuss possible settlement of the matters.

11 N. On March 3, 2021, the parties attended a third mediation session before the Hon.
12 Elizabeth D. Laporte (ret.) and reached a settlement in principle of this matter.

13 O. Ross denies all of Plaintiff's allegations and charges of wrongdoing or liability
14 arising out of any of the conduct, statements, acts or omissions alleged, or that could have been
15 alleged in the Litigation. Ross also denies that Plaintiff, the Settlement Class, or any member of
16 the Settlement Class have suffered damage or harm by reason of any alleged conduct, statement,
17 act or omission of Ross. Ross further denies that the litigation meets the requisites for
18 certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for
19 purposes of settlement, or that the evidence is sufficient to find liability as to Ross for any of
20 Plaintiff's claims that are alleged.

21 P. Plaintiff's counsel has analyzed and evaluated the merits of all the Parties'
22 contentions and this Settlement as it impacts all the Parties and the Settlement Class Members,
23 including, but not limited to, engaging in discovery and reviewing voluminous documents
24 produced, taking the depositions of relevant witnesses, consulting with experts and evaluating the
25 facts and evidence to date. Among the risks of continued litigation for Plaintiff are the risks of
26 failing to prove liability and damages on a class-wide or individual basis. In particular, there may
27 be difficulties establishing that Ross made a representation or had any input, comment, or control
28

over the thread count language on sheets that were supplied and labeled by AQ, that Plaintiff's claims are typical, or that common questions of fact or law predominate. Plaintiff and Plaintiff's counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Settlement Class are in the best interest of the Settlement Class Members.

Q. Ross agrees that the settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Ross considers it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, inconvenience, and interference with its ongoing business operations.

In consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged by each of the Parties, Plaintiff on behalf of herself and the Settlement Class and Ross agree to the Settlement described herein, subject to Court approval, under the following terms and conditions:

I. **DEFINITIONS**

1.1 "Agreement" or "Settlement" means this Stipulation of Settlement.

1.2 "AQ" means AQ Textiles, LLC. as presently organized and includes any subsequent or additional business or other entities created to continue the present business operations of AQ in whole or part.

1.3 "Class Counsel" means Audet & Partners, LLP; Cuneo, Gilbert & LaDuca; Levin, Sedran & Berman; and Steckler Wayne Cochran Cherry PLLC.

1.4 "Class Representative" means Plaintiff Dominique Morrison.

1.5 "Complaint" means the operative complaint filed in the Litigation by Plaintiff.

1.6 "Defendant" or "Ross" means Ross Stores, Inc.

1.7 “Defendant’s Counsel” or “Ross’s Counsel” of “Defense Counsel” means Defendant’s counsel of record in the Litigation, Norton Rose Fulbright US LLP.

1.8 “Effective Date” means the later of: (i) the expiration date of the time for filing a notice of appeal from the Final Approval or (ii) if a notice of appeal is filed, but the Final Approval is affirmed or the appeal is dismissed, the date upon which the mandate of the Court of Appeals is issued.

1.9 “Early Termination” means the early termination of the injunctive relief terms that is prior to twelve (12) years after Final Approval.

1.10 “Exclusion Deadline” means the deadline for which the Settlement Class Member must request to be excluded from the Settlement Class as to the Released Claims, 90 days after the Court preliminarily approves this Settlement.

1.11 “Fee and Expense Award” means the amount awarded to Class Counsel by the Court for attorneys’ fees, costs, and expenses.

1.12 “Final Approval” means an order by the Court for, among other things, final approval of the Settlement.

1.13 “Final Approval Hearing” means the hearing for which the Court considers whether to grant or deny the final approval of the Settlement.

1.14 “Incentive Award” means any award sought by application to and approval by the Court that is payable to Plaintiff to compensate her for efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in section 6.2.

1.15 “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

1.16 “Litigation” means *Dominique Morrison v. Ross Stores, Inc., et al.*, United States District Court for the Northern District of California, Case No. 4:18-cv-02671-YGR.

1.17 “Notice” means a document, which includes both the Long Form Notice and Summary Notice, to be disseminated in accordance with the Preliminary Approval Order,

1 informing Persons who fall within the Settlement Class definition of, among other things, the
 2 pendency of the Litigation, the material terms of the proposed Settlement and their options with
 3 respect thereto. Proposed Long Form Notice and Summary Notice has been concurrently filed.

4 1.18 "Notice Plan" means the method of providing the Class with notice of the
 5 Settlement. A proposed Notice Plan has been concurrently filed.

6 1.19 "Notice of Early Termination" means a written document prepared by Ross or
 7 Ross's counsel notifying Plaintiff's Counsel of Early Termination.

8 1.20 "Objection Deadline" means the date by which Settlement Class Members must file
 9 objections, if any, to the Settlement, 90 days after the Court preliminarily approves this Settlement.

10 1.21 "Parties" means Plaintiff and Defendant, collectively.

11 1.22 "Party" means either Plaintiff or Defendant.

12 1.23 "Plaintiff" or "Class Representative" means Dominique Morrison.

13 1.24 "Plaintiff's Counsel" means Plaintiff's counsel of record in the Litigation, Audet &
 14 Partners, LLP; Cuneo Gilbert & Laduca; Levin Sedran & Berman; and Steckler Wayne Cochran
 15 Cherry PLLC.

16 1.25 "Preliminary Approval Order" means an order providing for, among other things,
 17 preliminary approval of the Settlement and dissemination of the Notice to the Settlement Class
 18 according to the Notice Plan.

19 1.26 "Products" means polyester/cotton sheets imported and supplied to Ross by AQ
 20 Textiles, LLC that are packaged or advertised with a representation regarding thread count as
 21 identified on **Exhibit A**.

22 1.27 "Released Claims" means the release and discharge of the Released Parties by the
 23 Settlement Class from any and all claims, liens, demands, actions, causes of action, rights, duties,
 24 obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or
 25 otherwise, known or unknown, whether arising under any international, federal, state or local
 26 statute, ordinance, common law, regulation, principle of equity or otherwise, that that were, or could
 27
 28

1 have been, asserted in the Litigation and that arise out of or relate to the allegations thereof, or to
2 any similar allegations or claims regarding the thread count of the Products.

3 1.28 "Released Parties" means Defendant and its present and former subsidiaries,
4 parents, affiliates, divisions, officers, directors, members, managers, shareholders, insurers, re-
5 sellers, distributors, brokers, service providers, employees, agents, legal representatives, heirs,
6 predecessors, successors, or assigns. Released Parties does not include AQ or Creative Textiles
7 LLC.

8 1.29 "Settlement Administrator" means CPT Group.

9 1.30 "Settlement Class" or "Settlement Class Members" means all persons in the United
10 States who purchased the Products for personal use from a Ross store on or after May 7, 2014, to
11 the Objection/Exclusion Deadlines. Excluded from the Settlement Class are: (a) Ross's employees,
12 officers, directors and attorneys; (b) persons who timely and properly exclude themselves from the
13 Settlement Class as provided herein, and (c) the Court, the Court's immediate family, and Court
14 staff.

15 1.31 "Settlement Website" means an internet website created and maintained by the
16 Settlement Administrator. The URL of the Settlement Website shall be provided in the Notice Plan.

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

18 2.1 The Parties agree, for settlement purposes only, that the Settlement Class shall be
19 certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3) or 23(b)(2),
20 or both, with a class consisting of all Settlement Class Members, and with Plaintiff as the Class
21 Representative and with Class Counsel as counsel for the Settlement Class Members.

22 2.2 In the event that the Court declines to enter the Preliminary Approval Order or to
23 grant Final Approval (or enters any order that increases the cost or burden of the settlement to
24 Defendant beyond what is set forth in this Agreement), the Parties may, but are not required to,
25 modify this Agreement. Such a modification shall be binding only if it is in writing and executed
26 by Plaintiff's Counsel and Defendant's Counsel.

2.3 In the event the Settlement is terminated or for any reason the Settlement is not effectuated, the certification of the Settlement Class shall be vacated and the Litigation shall proceed as if the Class had not been certified. Any certification of a conditional, preliminary or final Settlement Class, pursuant to the terms of this Agreement, shall not be construed as an admission on the part of Ross that the Settlement Class is appropriate for certification as a litigation class under the Federal Rules of Civil Procedure or any similar state or federal class action statute or rule.

III. SETTLEMENT CONSIDERATION

3.1 Injunctive Relief. Ross will provide the Class with injunctive relief by way of the following:

a) Ross will require AQ to certify in writing on an annual basis beginning on January 1st after the Effective Date that the description of the thread count on its packaging for Products accurately reflects the actual thread count as determined by ASTM 3775, as officially interpreted and amended from time to time, or any successor industry standard for textile thread count for Products sold to Ross. Ross shall not be required to obtain a certification from AQ if it has not purchased any Products within the previous year and has not issued any purchase orders for future purchases of Products; provided, however, that Ross shall require AQ to provide a certification before issuing any subsequent purchase orders for Products to AQ.

b) Ross will require AQ to report in writing on an annual basis beginning on January 1st after the Effective Date as to whether there are any known investigations by any outside entity or pending claims or lawsuits regarding AQ's representations concerning thread count on the Products, any remedial actions taken regarding these claims or investigations, and if no remedial actions were taken, the reasons for which remedial actions were not taken.

c) Commencing no later than the Effective Date, Ross will require AQ to supply a passing test report for each new style of Products showing compliance with ASTM 3775, as officially interpreted and amended from time to time, or any successor industry standard for

1 textile thread count, before taking possession of such style. Only one test report is required if the
 2 Product differs only by size or color.

3 d) Termination. The injunctive relief terms set forth in Section 3.1 will remain
 4 in effect for 12 years following Final Approval of this Settlement, with such terms automatically
 5 terminating after 12 years. Ross may seek Early Termination of the injunctive relief terms in
 6 Section 3.1 no earlier than seven years, provided that there have been no violations of such
 7 injunctive relief terms within the preceding three years.

8 The aforementioned injunctive relief will be implemented and commence within 30 days
 9 of the Effective Date of this agreement.

10 IV. FEE AND EXPENSE AND INCENTIVE AWARDS

11 4.1 Class Counsel will make an application to the Court for an Attorneys' Fee and
 12 Expense Award in an amount not to exceed \$750,000, plus reimbursement of Class Counsel's costs
 13 and expenses in the amount of up to \$40,000. Any motion for attorneys' fees and costs and expenses
 14 must be filed at least 35 days before the Objection Deadline.

15 4.2 The Fee and Expense Award shall be the total obligation of Ross to pay for
 16 attorneys' fees, costs, and/or expenses of any kind (including, but not limited to, travel, filing fees,
 17 court reporter, and videographer expenses, expert fees, and costs, and document review and
 18 production costs) related to this Litigation.

19 4.3 Class Counsel shall have the sole and absolute discretion to allocate the Fee and
 20 Expense Award amongst Plaintiff's Counsel and any other attorneys for Plaintiff. Ross shall have
 21 no liability or other responsibility for allocation of any such attorney's fees and expenses awarded,
 22 and, in the event that any dispute arises relating to allocation of fees, Class Counsel agree to hold
 23 Ross harmless from, and indemnify Ross with respect to, any and all such liabilities, costs, and
 24 expenses, including attorneys' fees and costs of such dispute. Except as set forth in this Agreement,
 25 each Party shall bear his, her or its own fees, costs and expenses.

26 4.4 Plaintiff may additionally apply to the Court for an Incentive Award as
 27 compensation for the time and effort undertaken in and risks of pursuing this Litigation, including
 28

1 the risk of liability for the Parties' costs of suit, and for agreeing to the general release set forth in
 2 Section 6.1. The Incentive Award shall not exceed \$5,000.

3 4.5 Ross agrees not to oppose or to submit any evidence or argument challenging or
 4 undermining the applications for Fee and Expense Award or Incentive Award, provided such
 5 applications are consistent with Sections 4.1 and 4.4. Plaintiffs' Counsel and Plaintiff agree that the
 6 denial of, reduction or downward modification of, or failure to grant any application for attorneys'
 7 fees, costs, and expenses or Incentive Awards shall not constitute grounds for modification or
 8 termination of this Agreement, including the settlement and releases provided for herein.

9 4.6 Ross shall pay any Fee and Expense Award or Incentive Award within 30 days of
 10 the Effective Date.

11 **V. NOTICE TO THE CLASS AND ADMINISTRATION OF SETTLEMENT**

12 5.1 The Class Notice shall conform to all applicable requirements of the Federal Rules
 13 of Civil Procedure, the United States Constitution (including the Due Process Clauses), the Class
 14 Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable law, and shall otherwise
 15 be in the manner and form approved by the Court.

16 5.2 Ross shall retain the Settlement Administrator to facilitate the notice process by
 17 assisting the Parties in the implementation of the Notice Plan. The Settlement Administrator will
 18 help implement the terms of this Settlement. The Settlement Administrator shall be responsible for
 19 administrative tasks, including, without limitation, (a) notifying the appropriate state officials about
 20 the Settlement, (b) arranging, as set forth in this Section and in the Preliminary Approval Order,
 21 for distribution of Class Notice in accordance with the Notice Plan to Settlement Class Members,
 22 (c) answering inquiries from Settlement Class Members and/or forwarding such written inquiries
 23 to Class Counsel or their designee, (d) receiving and maintaining on behalf of the Court and the
 24 Parties any Settlement Class Member correspondence regarding exclusions from the Settlement,
 25 (e) posting notices on the Settlement Website, and other related documents, and (f) otherwise
 26 assisting with implementation and administration of the Settlement terms.

1 5.3 The Settlement Administrator will create and maintain a Settlement Website, which
 2 will contain relevant Settlement information and case-related documents such as this Agreement,
 3 the Notice, Preliminary Approval Order, applicable deadlines, all papers filed in support of the
 4 proposed Agreement (including Plaintiff's anticipated motion for a Fee and Expense Award),
 5 orders of the Court pertaining to this Agreement, opt-out process, and contact information for the
 6 Settlement Administrator for a toll-free telephone number, e-mail, and U.S. mail. The Parties shall
 7 use reasonable efforts to agree on all information and documents to be posted on the Settlement
 8 Website and no information shall be posted or provided without the Parties' express approval.

9 5.4 Notice shall be provided as provided in the Notice Plan as approved by the Court.

10 5.5 The Parties shall supervise the Settlement Administrator in the performance of the
 11 notice functions set forth herein.

12 5.6 At least 14 days prior to the Final Approval Hearing, the Settlement Administrator
 13 shall certify to the Court that it has complied with the notice requirements set forth herein.

14 5.7 Ross will bear the cost of the Notice and Settlement Administrator.

15 VI. **RELEASES**

16 6.1 Releases Regarding Named Plaintiff (Class Representative) and Released Parties.

17 Upon Final Approval, Plaintiff on the one hand, and Ross on the other hand, shall have
 18 unconditionally, completely, and irrevocably released and forever discharged each other from and
 19 shall be forever barred from instituting, maintaining, or prosecuting (1) any and all claims, liens,
 20 demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature
 21 whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or
 22 could have been, asserted in the Litigation as to each Party, whether based upon any violation of
 23 any state or federal statute or common law or regulation or otherwise, or arise directly or indirectly
 24 out of, or in any way relate to, the allegations, claims, or contentions that Plaintiff, on the one hand,
 25 and Ross, on the other hand, have had in the past, or now have, related in any manner to Ross's
 26 products and services or business affairs; and (2) any and all other claims, liens, demands, actions,
 27 causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether
 28

1 legal or equitable or otherwise, known or unknown, that Plaintiff, on the one hand, and Ross, on
 2 the other hand, have had in the past or now have, related in any manner to any and all Released
 3 Parties' products, services or business affairs, or otherwise.

4 6.2 Releases Regarding Settlement Class Members and released Parties. Upon Final
 5 Approval, Settlement Class Members shall have unconditionally, completely, and irrevocably
 6 released and discharged the Released Parties from any and all claims, liens, demands, actions,
 7 causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether
 8 legal or equitable or otherwise, known or unknown, whether arising under any international,
 9 federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise,
 10 that that were, or could have been, asserted in the Litigation and that arise out of or relate to the
 11 allegations thereof, or to any similar allegations or claims regarding the Products (the Released
 12 Claims"). Upon Final Approval, Settlement Class Members shall be forever barred from initiating,
 13 maintaining, or prosecuting any Released Claims against Released Parties.

14 6.3 All Parties to this Settlement Agreement, including the Settlement Class,
 15 specifically acknowledge that they have been informed by their legal counsel, via the Notice, of
 16 Section 1542 of the California Civil Code (and any similar State laws) and they expressly waive
 17 and relinquish any rights or benefits available to them under this statute (and any similar State
 18 laws). California Civil Code § 1542 provides:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 20 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
 21 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
 22 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
 23 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

24 6.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal or
 25 state statute or rule of law of similar effect, this Agreement shall be given full force and effect
 26 according to each and all of its expressed terms and provisions, including those related to any
 27 unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise
 28 from or are in any way connected with the Litigation.

1 6.5 Effectuation of Settlement. None of the above releases include releases of claims or
 2 otherwise affects the rights of Settlement Members to pursue any other party not expressly released,
 3 including AQ and Creative, regarding the allegations in the Litigation regarding Products sold by
 4 Ross.

5 6.6 No Admission of Liability. This Agreement set forth herein reflects, among other
 6 things, the compromise and settlement of disputed claims among the Parties, and neither this
 7 Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to
 8 carry out the terms of this Agreement, are intended to be, nor may they be deemed or construed to
 9 be, an admission or concession of liability, or the validity of any claim, defense, or of any point of
 10 fact or law on the part of any Party. Ross denies the material allegations of the Complaint and
 11 denies any wrongdoing or liability as to the Litigation. Neither this Agreement, nor the fact of the
 12 Agreement set forth herein, nor the settlement proceedings, nor the settlement negotiations, nor any
 13 related document, shall be used as an admission of any fault or omission by any or all of the
 14 Released Parties, or be offered or received in evidence as an admission, concession, presumption,
 15 or inference of any wrongdoing or liability by any or all of the Released Parties in any proceeding,
 16 other than such proceedings as may be necessary to consummate, interpret or enforce this
 17 Agreement.

18 **VII. CLASS SETTLEMENT PROCEDURES**

19 7.1 Preliminary Approval Order. As soon as practicable following the signing of this
 20 Agreement, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order,
 21 certifying the Settlement Class; preliminarily approving this Agreement as fair, just, reasonable and
 22 adequate; approving Notice to the Settlement Class Members as described in Section V above; and
 23 setting the Final Approval Hearing of the Agreement and any objections thereto.

24 7.2 Final Approval Order and Judgment. At or before the Final Approval Hearing,
 25 Plaintiff, with the support of Ross, shall move for entry of an order of Final Approval, granting
 26 final approval of this Agreement and adjudging this Agreement to be final, fair, reasonable,
 27 adequate, and binding on all Settlement Class Members who have not excluded themselves from
 28

1 the Settlement Class as provided below; ordering that the settlement relief be provided as set forth
 2 in this Agreement and giving effect to the releases as set forth herein; and entering Judgment in the
 3 Litigation.

4 7.3 Exclusions and Objections. The Notice and Settlement Website shall advise
 5 prospective Settlement Class Members of their rights to forego the benefits of this Agreement with
 6 respect to the Released Claims and pursue an individual claim; to object to this settlement
 7 individually or through counsel; and to appear at the Final Approval Hearing. The proposed
 8 Preliminary Approval Order, Notice, and Settlement Website will also provide that any Settlement
 9 Class Members wishing to object or exclude themselves who fail to properly or timely file or serve
 10 any of the requested information and/or documents will be precluded from doing so.

11 7.4 Objections to the Settlement. Settlement Class Members shall have the right to
 12 appear and show cause, if they have any reason why the terms of this Agreement should not be
 13 given Final Approval. Any objection to this Agreement, including any of its terms or provisions,
 14 must be in writing, in the manner set forth in the Notice, and postmarked by the Objections
 15 Deadline. Class Members may object either on their own or through an attorney hired at their own
 16 expense. Any objection regarding or related to the Agreement shall contain a caption or title that
 17 identifies it as "Objection to Class Settlement in *Dominque v. Ross Stores, Inc. et al.*, Case No.
 18 4:18-CV-02671-YGR" and also shall contain information sufficient to identify and contact the
 19 objecting party (or his or her attorney, if any), as well as a clear and concise statement of the
 20 objection, documents sufficient to establish the basis for their standing as a Settlement Class
 21 Member, i.e., verification under oath as to the approximate date(s) and location(s) of their
 22 purchase(s) of the Products, the facts supporting the objection, and the legal grounds on which the
 23 objection is based. Any objections not submitted to the Court by the Objection Deadline are deemed
 24 waived. If an objecting party chooses to appear at the Final Approval Hearing, that party must file
 25 with the Court, at least 30 days before the Final Approval Hearing, a notice of intent to appear and
 26 that notice must list the name, address and telephone number of the attorney, if any, who will appear
 27 on behalf of that party.

1 7.5 Right to Respond to Objections. Class Counsel and Defendant shall have the right,
 2 but not the obligation, to respond to any objection, by filing opposition papers no later than seven
 3 calendar days prior to the Final Approval Hearing, or on such other date as set forth in the
 4 Preliminary Approval Order, or any subsequent Court order(s) modifying the briefing schedule for
 5 the Final Approval Hearing. The Party responding shall file a copy of the response with the Court,
 6 and shall serve a copy, by regular mail, hand or overnight delivery, in the Party's discretion, to the
 7 objector (or counsel for the objector), Class Counsel and Defense Counsel, to the extent the objector
 8 or their counsel do not receive notice of electronic filing via the Court's ECF filing system.

9 7.6 Ability to Opt Out. If any Settlement Class Member wishes to be excluded from this
 10 Agreement and the Settlement Class, the Settlement Class Member may do so by completing and
 11 submitting the online form at the Settlement Website or by mailing a valid request to opt out, as
 12 described in the Notice, to the Settlement Administrator, provided however, that a Settlement Class
 13 Member's ability to opt out is solely as to the Released Claims and no Settlement Class Member
 14 may opt out with regard to the benefit of the injunctive relief terms as set forth in Section 3.1.
 15 Requests to exclude must be submitted online by the Exclusion Deadline, or if mailed must be
 16 *received* by the Settlement Administrator (not just postmarked) by the Exclusion Deadline, or they
 17 shall not be valid. For exclusion requests that are submitted online, the Class Member shall have
 18 the opportunity to print a page immediately after submission showing the information entered and
 19 the date and time the request for exclusion was received. A Settlement Class Member who elects
 20 to opt out of this Settlement and the Settlement Class shall not be permitted to object to this
 21 Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email
 22 addresses in their requests for exclusion. Each request for exclusion must be submitted individually
 23 and may not be submitted on behalf of more than one individual. So-called "mass" or "class"
 24 requests for exclusion shall not be allowed.

25 7.7 Effect of Opt Out or Objection. Any Settlement Class Member who does not request
 26 exclusion from the Settlement has the right to object to the Settlement. Any Class Member who
 27 wishes to object must timely submit an objection. If a Class Member submits an objection and a
 28

1 written request for exclusion, he or she shall be deemed to have complied with the terms of the opt
 2 out procedure and shall not be bound by the Agreement if approved by the Court. However, any
 3 objector who has not timely requested exclusion from the Settlement will be bound by the terms of
 4 the Agreement upon Final Approval.

5 7.8 Effect if Settlement Is Not Approved. This Agreement was entered into only for
 6 purposes of settlement, subject to and without waiver of the Parties' respective rights. If the Court
 7 does not enter the Preliminary Approval Order or does not grant Final Approval, or if the Final
 8 Approval and Judgment is vacated, overturned, reversed, or rendered void as a result of appeal, the
 9 Parties shall be restored to their respective positions immediately preceding execution of this
 10 Agreement.

11 **VIII. MISCELLANEOUS PROVISIONS**

12 8.1 The Parties agree that the recitals are contractual in nature and form a material part
 13 of this Agreement.

14 8.2 The Parties' counsel shall use their best efforts to cause the Court to enter the
 15 Preliminary Approval Order of this Agreement and Agreement as promptly as practicable, to take
 16 all steps contemplated by this Agreement to effectuate the settlement on the stated terms and
 17 conditions, and to obtain Final Approval of this Agreement.

18 8.3 This Agreement is intended to and shall be governed by the laws of the State of
 19 California, without regard to conflicts of law principles.

20 8.4 This Agreement and its accompanying exhibits set forth the entire understanding of
 21 the Parties. No change or termination of this Agreement shall be effective unless in writing and
 22 signed by Plaintiff's Counsel and Ross's Counsel. No extrinsic evidence or parol evidence shall be
 23 used to interpret this Agreement.

24 8.5 All of the Parties warrant and represent that they are agreeing to the terms of this
 25 Agreement based upon the legal advice of their respective attorneys, that they have been afforded
 26 the opportunity to discuss the contents of this Agreement with their attorneys and that the terms
 27 and conditions of this document are fully understood and voluntarily accepted.

1 8.6 The waiver by any party of a breach of any term of this Agreement shall not operate
2 or be construed as a waiver of any subsequent breach by any party. The failure of a party to insist
3 upon strict adherence to any provision of the Agreement shall not constitute a waiver or thereafter
4 deprive such party of the right to insist upon strict adherence.

5 8.7 The headings in this Agreement are inserted merely for the purpose of convenience
6 and shall not affect the meaning or interpretation of this document.

7 8.8 This Agreement may be executed by facsimile signature and in counterparts, each
8 of which shall be deemed an original and all of which, when taken together, shall constitute one
9 and the same instrument. The date of execution shall be the latest date on which any party signs the
10 Agreement. This Agreement has been negotiated among and drafted by Class Counsel and Defense
11 Counsel. Plaintiff, Plaintiff's Counsel, Settlement Class Members, and Defendant shall not be
12 deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that
13 any particular provision should be construed against its drafter or otherwise resort to the contra
14 proferentem canon of construction. Accordingly, this Agreement should not be construed in favor
15 of or against one Party as to the drafter, and the Parties agree that the provisions of California Civil
16 Code § 1654 and common law principles of construing ambiguities against the drafter shall have
17 no application. All Parties agree that counsel for the Parties drafted this Agreement during extensive
18 arm's-length negotiations.

19 8.9 Any disagreement and/or action to enforce this Agreement shall be commenced and
20 maintained only in the Court in which this Litigation is pending.

21 8.10 The Parties reserve the right, subject to the Court's approval, to agree to any
22 reasonable extensions of time that might be necessary to carry out any of the provisions of this
23 Agreement.

24 8.11 In the event any one of the provisions contained in this Agreement shall for any
25 reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
26 unenforceability shall not affect other provisions if Defense Counsel and Class Counsel, on behalf
27
28

1 of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had
 2 never been included in this Agreement.

3 8.12 This Agreement shall be binding upon and inure to the benefit of the respective
 4 heirs, successors and assigns of the Parties.

5 8.13 The Parties intend for this Agreement to be a complete and final resolution of all
 6 disputes between them with respect to the Litigation.

7 IN WITNESS HEREOF the undersigned, being duly authorized, have caused this
 8 Agreement to be executed on the dates shown below and agree that it shall take effect on the first
 9 date it has been executed by all of the undersigned.

10
 11
 12
 13
 14 Dated: 5/6/2021

DocuSigned by:

 A622C43DC692475...
 By: DOMINIQUE MORRISON

15
 16
 17 Dated:

By: _____
 ROSS STORES, INC.

18
 19 Printed Name:

20 Title:

21 Dated:

NORTON ROSE FULBRIGHT US LLP

22
 23
 24 By: _____
 25 Jeffrey Margulies
 26 Attorneys for Defendant
 27 ROSS STORES, INC.
 28

1 of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had
 2 never been included in this Agreement.

3 8.12 This Agreement shall be binding upon and inure to the benefit of the respective
 4 heirs, successors and assigns of the Parties.

5 8.13 The Parties intend for this Agreement to be a complete and final resolution of all
 6 disputes between them with respect to the Litigation.

7 IN WITNESS HEREOF the undersigned, being duly authorized, have caused this
 8 Agreement to be executed on the dates shown below and agree that it shall take effect on the first
 9 date it has been executed by all of the undersigned.

10
 11
 12
 13
 14 Dated:

By: _____
 DOMINIQUE MORRISON

15
 16
 17 Dated: May 6, 2021

By: Kenneth A. Hew
 ROSS STORES, INC.

18
 19 Printed Name: Ken. Hew

20 Title: Group Senior Vice President
 General Counsel and Corporate Secretary

21 Dated: May 6, 2021

22 NORTON ROSE FULBRIGHT US LLP

23
 24 By Jeffrey B. Margulies

Digitally signed by Jeffrey B. Margulies
 DN: cn=Jeffrey B. Margulies, o=Norton
 Rose Fulbright US LLP, ou,
 email=jeff.margulies@nortonrosefulbrig
 ht.com, c=US
 Date: 2021.05.06 13:34:59 -0700

25 Jeffrey Margulies
 26 Attorneys for Defendant
 27 ROSS STORES, INC.
 28

1 Dated: May 6, 2021

AUDET & PARTNERS, LLP

2
3 

4 By

Michael McShane
Attorneys for Plaintiff
DOMINIQUE MORRISON

5
6 Dated:

7 **STECKLER WAYNE COCHRAN CHERRY**
8 **PLLC**

9
10 By

Stuart Cochran
Attorneys for Plaintiff
DOMINIQUE MORRISON

11
12 Dated: May 6, 2021

13 **CUNEO, GILBERT & LADUCA**

14
15 By Charles LaDuca (with consent)

16 Charles LaDuca
17 Attorneys for Plaintiff
DOMINIQUE MORRISON

18 Dated: May 6, 2021

19 **LEVIN, SEDRAN & BERMAN**

20
21 By Charles Schaffer (with consent)

22 Charles Schaffer
23 Attorneys for Plaintiff
DOMINIQUE MORRISON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

AUDET & PARTNERS, LLP

By

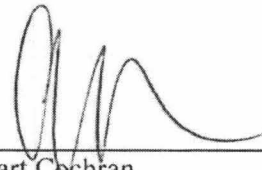
Michael McShane
Attorneys for Plaintiff
DOMINIQUE MORRISON

Dated:

STECKLER WAYNE COCHRAN CHERRY
PLLC

5/6/21

By


Stuart Cochran
Attorneys for Plaintiff
DOMINIQUE MORRISON

Dated:

CUNEO, GILBERT & LADUCA

By

Charles LaDuca
Attorneys for Plaintiff
DOMINIQUE MORRISON

Dated:

LEVIN, SEDRAN & BERMAN

By

Charles Schaffer
Attorneys for Plaintiff
DOMINIQUE MORRISON