

REVISED SETTLEMENT AGREEMENT AND RELEASE

This Revised Settlement Agreement and Release (the "Agreement") is entered into by and between Hiroyuki Oda ("Oda") and Corey Roth ("Roth") (collectively referred to below as the "Plaintiffs"), on behalf of themselves individually and the settlement class described below, on the one hand, and Wilson Sporting Goods Co. ("Wilson"), on the other hand (collectively referred to below as the "Parties").


RECITALS

WHEREAS, Wilson sold certain softball bats called the "White Steel," models WTDXWHI-13 and WTDXWHI-14, for the 2013 and 2014 model years, beginning with sales on or about September 28, 2012, which bats were sold in a variety of weights and lengths (hereafter "13/14 White Steels");

WHEREAS, Plaintiffs purchased 13/14 White Steels for personal use in league softball play;

WHEREAS, on December 23, 2015, Plaintiffs filed suit against Wilson in the United States District Court for the Central of California, in an action styled Hiroyuki Oda, et al. v. Wilson Sporting Goods Co., et al., Case No. 8:15-cv-02131-JLS (hereinafter, the "Lawsuit");

WHEREAS, on February 15, 2017, the Plaintiffs filed a Second Amended Complaint in the Lawsuit. In their Second Amended Complaint ("SAC"), the Plaintiffs plus six new plaintiffs (Anthony Zambino, Kelsey Hines, Gary Vickery, Ryan Rainone, John Bilodeau, and Melissa Triplett) (collectively "New Plaintiffs"), individually and on behalf of a putative class, asserted class action claims against Wilson, and against Vari-Wall Sports, Inc. ("Vari-Wall") and Jackson Tube Service, Inc. ("Jackson Tube"), under California law (the Consumers Legal Remedies Act ("CLRA"); the Unfair Competition Law ("UCL"); and the Song-Beverly Warranty Act); under



the consumer statutes of Pennsylvania, New Jersey, Tennessee, Connecticut, Massachusetts, and Florida; under the law of 50 states for breach of implied warranty; under the law of 50 states for strict liability (including claims for defective design and failure to warn); and under the federal Magnuson-Moss Warranty Act, alleging that the 13/14 White Steels were more prone to crack and break during normal use than other generations of the same bat model. Plaintiffs are represented in the Lawsuit by Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP, and Jesse Bablove of Dickson Kohan & Bablove LLP (collectively "Class Counsel");¹

WHEREAS, Wilson filed a Motion to Dismiss (the "Motion") all New Plaintiffs from the Lawsuit, and to dismiss the claims for strict liability, for breach of implied warranty, and under the consumer statutes of Pennsylvania, New Jersey, Tennessee, Connecticut, Massachusetts, and Florida, which Motion was granted by the Court, dismissing the six New Plaintiffs, dismissing the claims under the consumer statutes of Pennsylvania, New Jersey, Tennessee, Connecticut, Massachusetts, and Florida, dismissing the claims for strict liability and dismissing the claim for breach of implied warranty;

WHEREAS, Plaintiffs voluntarily dismissed Vari-Wall and Jackson Tube prior to Wilson filing an answer to the SAC;

WHEREAS, Wilson has filed an answer to the remaining Plaintiffs and claims in the SAC, denying that it violated the CLRA, UCL, Song-Beverly warranty act or the Magnuson Moss Warranty Act, or that it violated the terms of its warranty, and denying wrongdoing or liability on any of the claims asserted against it in the Lawsuit, and asserting various affirmative and other defenses;

¹ Class Counsel warrants, represents and agrees that it is the only authorized Class Counsel representing the Plaintiffs and Settlement Class. See Paragraph 15.

WHEREAS, Plaintiffs have filed a Motion for Class Certification in the Lawsuit, which Wilson intended to oppose. As of the date of this Agreement, Wilson has not filed its opposition, and the Court has not issued any ruling on the Motion for Class Certification;

WHEREAS, if Wilson were to respond to the Plaintiffs' Motion for Class Certification, Wilson would assert that it performed its warranty obligations to consumers who made warranty returns on White Steel bats, that Wilson has no liability or damages in this case to the Plaintiffs and fellow purchasers of the White Steel bats, and that Wilson would contest the Plaintiffs as class representatives for California or for any other state(s);

WHEREAS, Wilson preserves all jurisdictional arguments, whether general and/or specific, and specifically preserves that a settlement, if approved, shall not constitute a waiver of any jurisdictional arguments for any future matters.

WHEREAS, Plaintiffs have conducted extensive investigations regarding their claims and potential claims against Wilson;

WHEREAS, arm's length settlement negotiations have taken place between Class Counsel and Counsel for Wilson, including private mediation, and continued negotiations weeks after the unsuccessful mediation, the result of which is this Agreement, which embodies all of the terms and conditions of the settlement between the Plaintiffs and Wilson, and which is subject to the approval of the Court (the "Settlement");

WHEREAS, Class Counsel have concluded, after conducting substantial discovery in the Lawsuit and carefully analyzing the applicable laws relating to the remaining claims in the Lawsuit that were not dismissed by the Court, that it would be in the best interests of Plaintiffs and the Settlement Class to enter into this Agreement in order to avoid the uncertainties and

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delay of litigation, particularly trial and appeals, and to assure a benefit to the entire Settlement Class;

WHEREAS, the Parties' Counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of Plaintiffs and all Settlement Class members;

WHEREAS, based upon the uncertainty and expense involved in litigation, the Parties hereto desire to settle the claims asserted in the Lawsuit, subject to Court approval, on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, **IT IS HEREBY STIPULATED AND AGREED**, by and between the Plaintiffs, individually and on behalf of all members of the Settlement Class (as that term is defined below), on the one hand, and Wilson, on the other hand, that the Lawsuit shall be compromised and settled, subject to Court approval, on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. **Purpose of Settlement.** This Agreement shall not be construed by anyone as an admission of any liability of any kind by Wilson, which liability is expressly denied. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of jurisdiction, liability or wrongdoing of any nature on the part of Wilson. This Agreement is being entered into by Wilson solely to fully and completely settle, resolve, and compromise any and all disputes within the scope of this Agreement between or among Wilson and Plaintiffs and the Settlement Class, as described more fully herein.

2. **Agreed Certification of the Settlement Class.** Subject to Court approval and the other provisions of this Agreement, Plaintiffs and Wilson agree to certification pursuant to

Rule 23(b)(3) of the Federal Rules of Civil Procedure of the following Settlement Class, for purposes of settlement only: “All individual consumers, exclusive of Wilson and its employees, the judges presiding over this case, and Plaintiffs’ counsel, who purchased from Wilson or an authorized retailer² of Wilson in the United States, one or more new 13/14 White Steels within four years of the filing of the original Complaint (i.e. after December 23, 2011) to the date the Court grants preliminary approval of the settlement.”

3. **Class Relief.** Members of the Settlement Class must proceed under one of two options:

a. **Benefit A - \$85 Wilson Voucher.** This option is available only to members of the Settlement Class who:

(i) are listed on Exhibit H as the group of consumers who purchased one or more of the 13/14 White Steels and completed the warranty claim process with Wilson regarding a 13/14 White Steel, and who indicate on their properly submitted Claim Form that they completed a warranty claim on a 13/14 White Steel, or

(ii) are not listed on Exhibit H, but who purchased one or more of the 13/14 White Steels and have proof of purchase, and who indicate on their properly submitted Claim Form that they started, but did not complete, the warranty claim process by doing at least the following: they contacted Wilson and provided their name, telephone number, and address or email address, and identified the White Steel bat as the reason for their claim, such that their personal information and claim could appear in Wilson’s customer service records, and who satisfy the

² Authorized retailers of Wilson shall specifically exclude, without limitation, auction websites such as ebay or Craigslist. Wilson shall provide the Settlement Administrator with a list of authorized retailers.

Settlement Administrator respecting their warranty claim initiation as described above and pursuant to the claim process provisions of Paragraph 10.d of this Agreement.

Members of the Settlement Class who meet either clause 3.a (i) or 3.a (ii) above are entitled to a Wilson voucher in the amount of \$85.00 for use in online purchases of any items available for sale as of the date of purchase on the website of DeMarini (www.demarini.com) or Wilson (www.wilson.com) (including the reissue of partial, or “remaining balance” vouchers to consumers who use less than the stated value of any voucher issued or re-issued under the Agreement, but with no cash refunds for any unused amount or any “remaining balance” on any voucher issued or re-issued under this Agreement). The vouchers shall have no expiration date. The vouchers are transferrable. The claims process is set forth in Paragraph 10.d of this Agreement.

b. **Benefit B - \$35 Wilson Voucher.** This option is available only to members of the Settlement Class who:

(i) purchased one or more of the 13/14 White Steels and have proof of purchase, and

(ii) indicate on their properly submitted Claim Form that they did not start or complete a warranty claim on a 13/14 White Steel, or who are unable to satisfy the Settlement Administrator that they started or completed a warranty claim irrespective of their indication on the Claim Form pursuant to the claim process provisions of Paragraph 10.d of this Agreement.

Members of the Settlement Class who meet clause 3.b (i) and (ii) are entitled to a Wilson voucher in the amount of \$35.00 for use in online purchases of any items available for sale as of the date of purchase on the website of DeMarini (www.demarini.com) or Wilson (www.wilson.com) (including the reissue of partial, or “remaining balance” vouchers to


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consumers who use less than the stated value of any voucher issued or re-issued under the Agreement, but with no cash refunds for any unused amount or any “remaining balance” on any voucher issued or re-issued under this Agreement). The vouchers shall have no expiration date. The vouchers are transferrable. The claims process is set forth in Paragraph 10.d of this Agreement.

c. There are no other options or benefits available to members of the Settlement Class aside from Benefit A or Benefit B as defined above. The total number of vouchers that are authorized by this Settlement Agreement is limited to the number of each bat model manufactured and sold by Wilson, to wit: 1) five thousand seven hundred and three (5,703) 2013 White Steels; and 2) four thousand five hundred thirty seven (4,537) 2014 White Steels, which are the numbers of 13/14 White Steels manufactured and sold by Wilson.

4. **Settlement Administrator.** The Parties jointly agree on and designate KCC as the Settlement Administrator for this Settlement. The Settlement Administrator, at its sole discretion but in accordance with the provisions of this Agreement, will evaluate and determine eligibility for vouchers claimed under Benefit A and Benefit B. The cost of administration of the Settlement Administrator shall be paid directly by Wilson in an estimated cost of sixty-two thousand five hundred dollars (\$62,500). In the event the Court does not give final approval to this Settlement, the Settlement Administrator shall immediately stop any and all activity on this case, and will not be paid for activity taking place thereafter.

5. **Release by Plaintiffs and the Settlement Class.** The Plaintiffs and each member of the Settlement Class (except those who opt-out), on their own behalf and on behalf of their predecessors, successors, heirs, estates, executors, administrators, trusts, trustees, beneficiaries, assigns, transferees, attorneys, representatives and all others with whom they are in privity



("Releasing Parties"), hereby covenant not to sue, release, acquit and forever discharge Wilson and its past, present, and future officers, directors, agents, predecessors, assignees, parents, divisions, subsidiaries, affiliates, sister corporations, insurers and reinsurers, lenders, attorneys, employees, shareholders, administrators, successors, suppliers, distributors, retailers, any subsequent purchaser of all or substantial part of Wilson's stock or assets (collectively the "Released Parties") as follows:

a. Plaintiffs release the Released Parties from and against all claims, demands, damages, nuisance annoyance damages, obligations, controversies, suits, liabilities, attorneys' fees, expert fees, expenses, injunctive remedies, and causes of actions at law or equity, whether or not known now, that in any way arise from or relate to the 13/14 White Steels including, but not limited to, any loss of money or value, or the loss of the reasonable use of 13/14 White Steels ("Released Claims"). In addition, and in light of the enhanced payment that Plaintiffs will receive, Plaintiffs will further release all other claims against the Released Parties, whether known or unknown, under federal law or state law. Plaintiffs understand that this release includes unknown claims and that they are waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

b. Settlement Class members release the Released Parties from any and all claims or causes of action that are asserted, that were at any time asserted, or that could have been asserted in the Lawsuit including, but not limited to, the Released Claims, violations of the CLRA, UCL, Song-Beverly warranty act and the Magnuson Moss Warranty Act and any and all provisions, rights and benefits of any similar state or federal laws or the common law.

6. **Notice to the Class.** Pursuant to Federal Rule of Civil Procedure 23(e), all members of the Settlement Class shall receive notice of this Settlement, and shall be afforded the right to either opt out from or object to this Settlement.

a. **Email Notice.** No later than fourteen (14) days after the date upon which the Court enters the Preliminary Approval Order (as that term is defined in Paragraph 8 below), the Settlement Administrator shall cause to be delivered via email to members of the Settlement Class, for whom the Parties have an email address, the following documents: (i) Notice of Proposed Class Settlement (the "Settlement Notice," a copy of which is attached as Exhibit A to this Agreement); and (ii) the Claim Form (a copy of which is attached as Exhibit B to this Agreement) (collectively referred to as the "Notice Package").

b. **Mail Notice.** To those members of the Settlement Class for whom the Parties do not have an email address or the initial email notice bounces back as undeliverable, no later than fourteen (14) days after the date upon which the Court enters the Preliminary Approval Order, or the email notice bounces back as undeliverable, the Settlement Administrator shall cause to be delivered the Notice Package via U.S. Mail to the members of the Settlement Class with known mail addresses.

c. **Publication Notice.** No later than fourteen (14) days after the date upon which the Court enters the Preliminary Approval Order, the Settlement Administrator will begin Publication Notice. Publication Notice will include an interactive Website and an Internet Banner ad campaign established and administered by the Settlement Administrator at a website dedicated to this Settlement and claim process. The Publication Notice shall inform Class Members that they may obtain the Notice Package by calling the Settlement Administrator and/or by accessing the Website established by the Settlement Administrator. The Settlement

Notice Plan, attached as Exhibit C, describes the methods of Publication Notice. The written Publication Notice is attached as Exhibit D.

The Parties agree that distribution of the Notice Package in the manners described above constitutes the best notice practicable under the circumstances to members of the Settlement Class, and complies fully with the provisions set forth in Federal Rule of Civil Procedure 23, and any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Parties also agree that the Notice Package sufficiently notifies the Settlement Class of the terms of the proposed Settlement, their right to object to the Settlement or to opt out of the Settlement, and the deadlines and procedures to object, opt out or submit a Claim Form (attached as Exhibit B) in connection with this Settlement.

7. **Notice to the Appropriate Federal and State Officials.** Within seven (7) days after the date upon which the Court enters the Preliminary Approval Order, Wilson shall provide notice to the appropriate Federal and State officials as required by the Class Action Fairness Act. The notice to be provided is attached (without exhibits) as Exhibit E to this Agreement. The Parties agree that this notice fully complies with the provisions set forth in the Class Action Fairness Act, 28 U.S.C. § 1715 and any other applicable law.

8. **Necessary Court Approvals.** This Agreement is conditioned on: 1) the entry of an order granting preliminary approval to the Settlement substantially in the form as attached hereto as Exhibit F (the "Preliminary Approval Order"), and 2) the entry of an order granting final approval to this Settlement and providing for the dismissal of the Lawsuit with prejudice substantially in the form attached hereto as Exhibit G (the "Final Approval Order"), and the occurrence of the Effective Date as that term is defined in Paragraph 12 of this Agreement.

9. **Event of Non-Approval.** In the event that the Court denies preliminary or final approval of this Agreement, or holds that it will not enter 1) the Preliminary Approval Order in substantially the same form as Exhibit F to this Agreement, or 2) the Final Approval Order in substantially the same form as Exhibit G to this Agreement, or if the Final Approval Order is modified in any material respect or vacated on appeal, then this Agreement shall become null and void and the Lawsuit will continue.

10. **Distribution of the Class Relief and Other Settlement Funds.**

a. **Attorneys' Fees and Expenses.** Pursuant to Federal Rule 23(h) and in connection with final approval of the settlement, Class Counsel shall petition the Court for an award of attorneys' fees, expenses and costs in an amount collectively not to exceed Four Hundred Forty Thousand Dollars (\$440,000). Wilson shall be responsible for payment to Class Counsel of the amount of attorney fees, costs and expenses approved by the Court, not to exceed the total amount of \$440,000.

b. **Class Representative Awards.** The Plaintiffs, in consideration of their assumption and diligent performance of the duties and responsibilities as class representatives and the extensive time and effort they expended in connection with the Lawsuit, shall petition the Court for class representation awards in a total amount not to exceed Ten Thousand Dollars (\$10,000), divided into two separate payments of Five Thousand Dollars (\$5,000) to each of the two Plaintiffs. These class representative awards are in addition to the amount of compensation the Plaintiffs are entitled to receive as members of the Settlement Class, as specified below in Paragraph 10.c of this Agreement. Wilson shall be responsible for payment to the Plaintiffs of class representation awards approved by the Court, not to exceed the total amount of \$10,000.

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c. **Settlement Distributions.** Within fourteen (14) calendar days after the Effective Date (as that term is defined below in Paragraph 12), the Settlement Administrator shall issue vouchers to members of the Settlement Class who submitted timely and valid Claim Forms as evaluated and approved by the Settlement Administrator, and electronically wire to Class Counsel their attorneys' fees and expenses and the class representative awards pursuant to Paragraph 10.b above. The Class Relief as set forth in Paragraphs 3.a (Benefit A) and 3.b (Benefit B) shall be distributed to members of the Settlement Class who properly submit a Claim Form pursuant to Paragraph 10.d of this Agreement. The Settlement Administrator shall, after distribution of the vouchers, file a certificate with the Court in the Lawsuit attesting that the Class Relief has been distributed to the Settlement Class as provided for in this Agreement.

d. **Claims Process.** Any Settlement Class member who wishes to receive the Class Relief set forth in Paragraphs 3.a or 3.b above, must submit a properly completed, written Claim Form (a copy of which is attached hereto as Exhibit B) no later than 60 days after notice of the Settlement is issued either by email, mail or Publication Notice, specifying which of the settlement benefits the Settlement Class member is eligible to receive, and otherwise properly completing, furnishing and attesting the information in the Claim Form. The Claim Form shall be mailed to the Settlement Administrator, or Settlement Class members can submit their Claim Form electronically through the Website established by the Settlement Administrator within the time period specified on the Claim Form and in the Settlement Notice.

(1) **Benefit A.** The Settlement Class members submitting a Claim Form for Benefit A shall be verified by the Settlement Administrator pursuant to the requirements of Paragraph 3.a of this Agreement, including those individuals listed in Exhibit H. If a Settlement Class member claims that he/she initiated or completed a warranty claim, but is

not listed in Exhibit H, the Settlement Class member is entitled to submit proof of purchase and any available materials to prove to the Settlement Administrator that he/she is entitled to Benefit A in accordance with Paragraph 3.a of this Agreement. The Settlement Administrator will provide such information to Wilson, which will be able to search for such a claimant in its customer service records to verify that such a claimant is entitled to a voucher under Benefit A. Wilson may also produce any available material to demonstrate the contrary. The Settlement Administrator will consider all evidence submitted by the Settlement Class member and Wilson and will, at its sole discretion but in accordance with the provisions of this Agreement, determine whether the Settlement Class member is entitled to Benefit A no later than the conclusion of the 60-day claims period.

(2) **Benefit B.** The Settlement Class members submitting a Claim Form for Benefit B shall be verified by the Settlement Administrator pursuant to the requirements of Paragraph 3.b of this Agreement. The Settlement Administrator will consider all evidence and any available material submitted by the Settlement Class member and will, at its sole discretion but in accordance with the provisions of this Agreement, determine whether the Settlement Class member is entitled to Benefit B no later than the conclusion of the 60-day claims period.

(3) **Opt Outs and Objections.** Within the 60-day claims period, Settlement Class members may opt out of the Settlement or object to the Settlement by following the directions for objections specified in the Settlement Notice.

11. **Waiver of Appeal.** In the event that this Agreement receives final approval by the Court in the Lawsuit in accordance with Paragraph 8, the Plaintiffs, non-objecting Settlement Class members, Class Counsel, and Wilson hereto waive any right to appeal from any of the

orders entered in the Lawsuit, including the Preliminary Approval Order and the Final Approval Order.

12. **Effective Date.** This Agreement shall become effective (the “Effective Date”) following the entry of the Final Approval Order and on the date that the time has expired within which to appeal the entry of the Final Approval Order without any appeal having been taken, or, if appeal is taken, the date on which such appeal shall have been fully determined (subject to no further appeal as a matter of right) by the highest court before which such appeal is sought or allowed, and such appeal shall have been resolved in such manner as to permit the consummation of the Settlement effected by this Agreement in accordance with all of its terms and conditions.

13. **Choice of Law.** This Agreement shall be governed and interpreted according to the laws of the State of California.

14. **Entire Agreement.** This Agreement and Exhibits referenced herewith represent the entire agreement among the Parties and there are no terms, representations, agreements, understandings or covenants, oral or otherwise, that are not incorporated into this Agreement.

15. **Capacity, Authority, Indemnity, and Hold Harmless.** All Parties entering into this Agreement have the capacity and authority to do so, and no third party has any rights which could affect the validity or legality of this Agreement. Class Counsel warrants, represents and agrees that it is the only authorized Class Counsel representing the Plaintiffs in the Lawsuit, and that Class Counsel is fully authorized to execute this Settlement, and that Class Counsel has the full and sole right and power to enter into this Settlement and to collect attorney fees for the representation of Plaintiffs and the Settlement Class. Further, Class Counsel warrants and agrees jointly and severally to defend, indemnify and hold harmless Wilson and the Released Parties

and to pay any and all reasonable attorneys' fees and costs that may in the future be incurred as a result of defending against claims that any other lawyer or law firm has rights of class counsel, and/or rights to attorney fees or any other recovery or representation right respecting the Plaintiffs and/or any member(s) of the Settlement Class.

16. **Terms of Agreement Negotiated.** This Agreement has been negotiated and drafted by all Parties and their representatives. The Parties to this Agreement represent and warrant that they have read and understand this Agreement and have consulted with their respective counsel concerning its legal effect. No rule of construction shall apply to this Agreement construing its provisions in favor of or against any party.

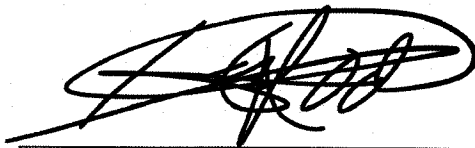
17. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by all Parties to this Agreement.

19. **Originals.** Facsimile and PDF copies of the Parties' signatures on this Agreement shall be deemed originals.

20. **Incorporation of Recitals.** The recital provisions set forth at the beginning of this Agreement are expressly incorporated into and as terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.



HIROYUKI ODA

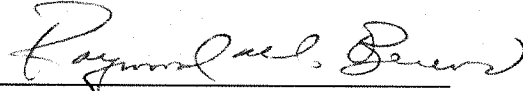
Dated: April 12, 2018



COREY ROTH

Dated: April 12, 2018

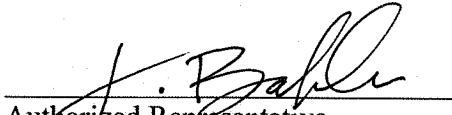
WILSON SPORTING GOODS CO.

By: 

Authorized Representative

Dated: April 11, 2018

CLASS COUNSEL FOR PLAINTIFFS AND CLASS

By: 
Authorized Representative
Dated: April 12, 2018