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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 SHAVONDA HAWKINS, on behalf
11 of herself and all others similarly
12 situated,

13 Plaintiff,

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15 v.

16 THE KROGER COMPANY,

17 Defendant.
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Case No: 3:15-cv-2320-JM-AHG

CLASS ACTION SETTLEMENT
AGREEMENT

Judge: The Honorable Jeffrey T. Miller

1 This Class Action Settlement Agreement (the “Settlement Agreement”) is made and
 2 entered into by and between Plaintiff Shavonda Hawkins, on behalf of herself and the
 3 Class she was appointed by the Court to represent, and Defendant Kroger Company
 4 (hereinafter “Kroger” or “Defendant”) (collectively “the Settling Parties”).

5 RECITALS

6 **PROCEDURAL BACKGROUND**

7 WHEREAS, this action, entitled *Hawkins v. The Kroger Co.*, 3:15-cv-2320-JM-
 8 AHG (C.D. Cal.), was filed in the U.S. District Court for the Southern District of
 9 California against Kroger, bringing claims under California’s Consumer Legal Remedies
 10 Act (Civ. Code § 1750, *et seq.* [“CLRA”]), Unfair Competition Law (Bus. & Prof. Code
 11 § 17200, *et seq.* [“UCL”]), and False Advertising Law (*id.* § 17500, *et seq.* [“FAL”]), as
 12 well as claims for breach of express and implied warranty, arising from Defendant’s
 13 marketing and sale of Kroger Bread Crumbs, as defined below (hereinafter “the
 14 Litigation”);

15 WHEREAS, based upon extensive discovery, investigation, and evaluation of the
 16 facts and law relating to the matters alleged in the pleadings of the Litigation, plus the
 17 risks and uncertainties of continued litigation and all factors bearing on the merits of
 18 settlement, the parties have conducted arm’s-length negotiations both before and during a
 19 formal mediation, and have agreed to settle the claims asserted in the Litigation pursuant
 20 to the provisions of this Settlement Agreement;

21 **NOW THEREFORE**, subject to the final approval of the Court, the Settling Parties
 22 hereby agree, in consideration of the mutual promises and covenants contained herein, and
 23 for other good and valuable consideration, that any Released Claims, as defined below,
 24 against any Released Parties, as defined below, shall be settled, compromised and forever
 25 released upon the following terms and conditions.

26 **TERMS AND CONDITIONS OF THE SETTLEMENT**

27 **1. DEFINITIONS**

28 As used herein, the following terms have the meanings set forth below.

1 “CAFA Notice” means the notice of this Settlement to the appropriate federal and
2 state officials in the United States, as provided by the Class Action Fairness Act of 2005,
3 28 U.S.C. § 1715.

4 “Class” means all citizens of California who purchased, between January 1, 2010
5 and December 31, 2015, Kroger Bread Crumbs containing partially hydrogenated oil and
6 the front label claim “0g Trans Fat,” but not Defendant or any of its officers, directors,
7 agents, representatives, employees, or other person affiliated with Defendant.

8 “Class Counsel” means The Weston Firm.

9 “Class Member” means members of the Class, which will eventually exclude those
10 who file a timely Request for Exclusion in accordance with the provisions of the Notice
11 Plan.

12 “Class Period” means January 1, 2010 through December 31, 2015.

13 “Court” means the U.S. District Court for the Southern District of California.

14 “Defendant” means The Kroger Company.

15 “Defense Counsel” means Defendant’s counsel of record in the Litigation, Jacob
16 Harper, Heather Canner, and Nicole Phillis of Davis Wright Tremaine LLP.

17 “Effective Date” means the day the Court grants final approval to this settlement.

18 “Fairness Hearing” means the hearing that is to take place after entry of the
19 Preliminary Approval Order and after Notice is distributed pursuant to the Notice Plan for
20 purposes of determining (1) whether the terms and conditions of the Settlement
21 Agreement are fair, reasonable, and adequate, and therefore the Settlement Agreement
22 should be finally approved with entry of the Final Judgment and Order; (2) whether a
23 judgment should be entered dismissing this action with prejudice in accordance with the
24 Settlement Agreement; and (3) whether an order approving of fees, costs and incentive
25 award should be entered.

26 “Final Judgment and Order” means an order and judgment substantially in the form
27 of Exhibit A to this Agreement, entered by the Court approving this Settlement Agreement
28 as final and binding on the Parties, Class Members, and Released Parties , pursuant to

1 Federal Rule of Civil Procedure 58(a), dismissing the Litigation with prejudice.

2 The “Litigation” means the action entitled *Hawkins v. Kroger Co.*, 3:15-cv-2320-
3 JM-AHG (S.D. Cal.).

4 “Notice” means the “Class Notice,” to be disseminated in accordance with
5 Preliminary Approval Order, informing the Class of, among other things, the pendency of
6 the Litigation, the material terms of the Settlement Agreement, and their options with
7 respect thereto.

8 “Notice Plan” means the method of providing the Class with Notice of the
9 Settlement.

10 “Personal Injury” means a disease or adverse physical condition.

11 “Representative Plaintiff” means the named plaintiff in this action, Shavonda
12 Hawkins.

13 “Plaintiffs” means the Representative Plaintiff and all Class Members.

14 “Preliminary Approval Order” means an order, providing for, among other things,
15 preliminary approval of the Settlement and dissemination of the Notice to the Class
16 according to the Notice Plan.

17 “Release,” “Released Persons,” and “Released Claims” are defined in the separate
18 release section contained in Section 8 of this Settlement Agreement.

19 “Request for Exclusion” means a timely, written request from a Class Member who
20 does not wish to participate in the Settlement to the Class Action Administrator, stating
21 an intent to be “excluded from” or to “opt-out” of the Settlement.

22 “Settlement” means the settlement set forth in this Settlement Agreement.

23 “Settlement Agreement” means this agreement and its Exhibits, attached hereto and
24 incorporated herein, including all subsequent amendments agreed to in writing by the
25 Settling Parties and any exhibits to such amendments.

26 “Settling Parties” means, collectively, Plaintiffs (except for those Class Members
27 that opt out of the Settlement in the manner provided herein) and Kroger.

28 **2. DENIAL OF WRONGDOING AND LIABILITY**

1 Kroger denies the material factual allegations and legal claims asserted in the
2 Litigation, including any and all charges of wrongdoing or liability arising out of any of
3 the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the
4 Litigation. Similarly, this Settlement Agreement provides for no admission of wrongdoing
5 or liability by any of the Released Persons. This Settlement is entered into solely to
6 eliminate the uncertainties, burdens, and expenses of protracted litigation.

7 **3. THE BENEFITS OF SETTLEMENT**

8 Class Counsel and the Representative Plaintiff recognize and acknowledge the
9 expense and length of continued proceedings that would be necessary to prosecute the
10 Litigation through trial and further appeals. Class Counsel also has taken into account the
11 uncertain outcome and the risk of any litigation, especially in complex actions such as the
12 Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel
13 is mindful of the challenges it will face in maintaining class certification. Class Counsel
14 is also mindful of the inherent problems of proof related to the claims and defenses to the
15 claims asserted in the Litigation. Class Counsel believes that the proposed Settlement
16 confers substantial benefits upon the Class, as well as a *cy pres* contribution to the
17 American Heart Association that will benefit even Class Members who do not file a claim.
18 Based on their evaluation of all of these factors, following briefing on the sufficiency of
19 the complaint and the evaluation of documents produced, the Representative Plaintiff and
20 Class Counsel have determined that the Settlement is in the best interests of the Class.

21 **4. MONETARY RELIEF – SETTLEMENT FUND**

22 Kroger agrees to pay a \$780,000 cash settlement to the class. Class Members will
23 receive an estimated \$17.50 for claims not documented by receipts, up to \$100 if
24 documented by receipts. Notice costs and settlement administrative expenses associated
25 with distribution of large numbers of small payments not to exceed \$79,635 are to be paid
26 out of this \$780,000 settlement fund. Kroger will not have any responsibility for the
27 allocation of the settlement proceeds or the review of claims of Class Members.

28 If valid claims exceed the total amount to be paid from the \$780,000 settlement

fund less the settlement administrative expenses, the payments will be reduced on a pro rata basis. If valid claims are below the total amount of the fund, the payments will be increased pro-rata such that the fund is exhausted. Any funds remaining after the distribution, such as checks that are returned for incorrect addresses, or that are not cashed within 90 days, shall be paid by the Class Action Administrator as a *cy pres* payment to the American Heart Association, 9404 Genesee Ave., #240, San Diego, CA 92037.

5. MONETARY RELIEF – *CY PRES*

Within 90 days of the Effective Date, Kroger will make a one-time payment of \$21,000 to the American Heart Association, 9404 Genesee Ave., #240, San Diego, CA 92037.

This payment is separate from the payment to be made to the same organization by the Class Action Administrator of leftover funds from Class Members who make claims but whose checks are returned by the post office undeliverable, or who fail to cash their check after 90 days.

6. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND APPROVAL

As soon as practicable, within 30 days following the signing of this Settlement Agreement, Class Counsel shall seek preliminary approval of this agreement because it is within the range of reasonableness such that Notice should be provided pursuant to this Settlement Agreement.

7. ADMINISTRATION AND NOTICE

Class Counsel shall arrange for providing Notice to the Class in conjunction with the Class Action Administrator. Kroger has agreed to pay a \$780,000 cash settlement to the Class. Notice and administrative expenses of \$79,635 are to be paid out of this \$780,000 settlement fund.

A. Appointment and Retention of Class Action Administrator

The Class Action Administrator shall be Classaura LLC.

The Class Action Administrator shall be responsible for providing the Settling

Parties with assistance, as necessary, such as by preparing affidavits of work it has performed with respect to implementing the Notice Plan and providing regular updates to the Settling Parties' counsel. Defendant shall pay \$49,635 to the Class Action Administrator within five court days of an order granting preliminary approval to this settlement to cover the expenses associated with Class Notice and processing of claims. Defendant shall pay the balance of \$732,000 to the Class Action Administrator, consisting of the \$700,365 distribution and \$30,000 in costs for postage and check printing, within five court days of the later of (1) an order granting final approval to the settlement, if there are no objections to the settlement; (2) the time to file a timely appeal of the denial of objections has passed, if there are objections; (3) the day the Ninth Circuit affirms the order granting final approval if there are both objections and appeals of the denial of the objections, and the time for further appeals has elapsed.

B. Class Settlement Website

The Class Action Administrator will create and maintain a class settlement website (the "Class Settlement Website"), to be activated within seven (7) calendar days of its receipt of the Preliminary Approval Order. The Class Settlement Website will contain Settlement information and case-related documents such as this Settlement Agreement, the Preliminary Approval Order, the Notice, the Petition for Attorneys' Fees, Costs and Incentive Award (as described in Section 10), the Final Approval Motion, and notices from the Court. In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Fairness Hearing date, when the Final Judgment and Order has been entered, and when the Effective Date has been reached, including any appeal(s).

The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Class Action Administrator within ten days of Final Approval if there are no objections, and within ten days of the time to appeal (or further appeal) expiring.

C. CAFA Notice

Defendant shall serve notice of the Settlement Agreement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days following the filing of Plaintiffs' motion for preliminary approval of settlement with the Court.

D. Notice Plan

The Notice Plan, attached hereto as **Exhibit B**, shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Settling Parties and approved by the Court.

The Class Action Administrator shall commence providing Notice to the Class according to the Notice Plan as attached in **Exhibit B**, as ordered by the Court in its Preliminary Approval Order.

The form of the claim forms or any other documents to be presented to potential Class Members will be agreed upon by the Settling Parties.

The Class Action Administrator shall be responsible for receiving all opt-out and other requests and correspondence from the Class Members to exclude themselves from the Settlement and provide to Class Counsel and Defense Counsel a copy thereof within three (3) days of receipt. The Class Action Administrator shall also receive and maintain all other correspondence from any Class Member regarding the Settlement and promptly provide such correspondence to Class Counsel and Defense Counsel. No later than seven (7) calendar days before the date of the Fairness Hearing, the Class Action Administrator shall provide to the Settling Parties and file with the Court a list of those persons who have submitted a valid Request for Exclusion, as described in Section 12 of this Settlement Agreement.

8. RELEASES AND DISMISSAL OF ACTION

Upon the Effective Date, Plaintiffs, except for those that have opted out, will be deemed to have, and by operation of the Final Judgment and Order will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released

1 Claims, meaning any and all causes of action, claims, suits, debts, damages, judgments,
 2 liabilities, demands, and controversies of every nature and description whatsoever—
 3 whether now known or unknown, asserted or not asserted, matured or unmatured,
 4 liquidated or unliquidated, at law or in equity, for injunctive relief or damages, whether
 5 before a local, state or federal court, or state or federal administrative agency, commission,
 6 arbitrator(s) or otherwise—that such Plaintiffs now have or may have, and for all times up
 7 to and including the Effective Date of the Settlement, for all claims that were or could
 8 have been asserted relating to the manufacturing, formulation, preparation, handling,
 9 distribution, advertising, marketing, packaging, sale, labeling, promotion, and ingredients
 10 of Kroger Bread Crumbs. Plaintiffs (except for those that have opted out in the manner
 11 provided for herein) also knowingly, expressly, and voluntarily waives all rights under
 12 Section 1542 of the California Civil Code (or similar laws of other States) which states:

13
 14 **A GENERAL RELEASE DOES NOT EXTEND TO**
 15 **CLAIMS THAT THE CREDITOR OR RELEASING**
 16 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
 17 **HIS OR HER FAVOR AT THE TIME OF EXECUTING**
 18 **THE RELEASE AND THAT, IF KNOWN BY HIM OR**
 19 **HER, WOULD HAVE MATERIALLY AFFECTED HIS**
 20 **OR HER SETTLEMENT WITH THE DEBTOR OR**
 21 **RELEASED PARTY.**

22 “Released Persons” includes Defendant and its predecessors, successors, assigns,
 23 parents, owners, subsidiaries, indemnitees, divisions, affiliates, members, investors
 24 (including, but not limited to, affiliated partnerships and joint ventures), agents, agencies,
 25 contractors, and any of their past or present directors, officers, employees, insurers,
 26 attorneys, and anyone working on their behalf.

27 This Release includes all claims that such Plaintiffs and their heirs, successors, and
 28 assigns have, has, or may have against the Released Persons arising out of, in connection
 with, or related in any way, directly or indirectly, to the manufacturing, formulation,
 preparation, handling, distribution, advertising, marketing, packaging, sale, labeling,

1 promotion, and ingredients of Kroger Bread Crumbs, that have been brought, or could
2 have been brought, in the Litigation against the Released Persons.

3 After entering into this Settlement Agreement, Plaintiffs may discover facts other
4 than, different from, or in addition to, those that they know or believe to be true with
5 respect to the Released Claims. Plaintiffs expressly waive and fully, finally, and forever
6 settle and release any known or unknown, suspected or unsuspected, contingent or non-
7 contingent claim, whether or not concealed or hidden, without regard to the subsequent
8 discovery or existence of such other, different, or additional facts. Notwithstanding
9 Section 1542 of the California Civil Code, or any other federal or state statute or rule of
10 law of similar effect, this Settlement Agreement shall be given full force and effect
11 according to each and all of its expressed terms and provisions, including those related to
12 any unknown or unsuspected claims, liabilities, demands, or causes of action which are
13 based on, arise from or are in any way connected with the Litigation.

14 **A. Continuing Jurisdiction**

15 The Settling Parties shall agree to continued jurisdiction over the Settling Parties to
16 this Settlement with respect to the future performance of the terms of this Settlement
17 Agreement. In the event that any applications for relief are made, such applications shall
18 be made to the Court.

19 **B. Sole and Exclusive Remedy**

20 Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any
21 and all Released Claims of Plaintiffs (except for those that opt out in the manner provided
22 herein), and (b) Plaintiffs (except for those that opt out in the manner provided herein)
23 stipulate to be and shall be permanently barred and enjoined by Court order from initiating,
24 asserting, or prosecuting against the Released Persons in any federal or state court or
25 tribunal any and/or all Released Claims.

26 **C. Personal Injury Exclusion**

27 As the exception to Class Members' broad release, claims of a *Personal Injury*
28 resulting from a defect in Kroger Bread Crumbs or packaging are specifically not included

1 in the Released Claims.

2 **9. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION**
 3 **FROM THE SETTLEMENT**

4 Subject to modification by the Court, the Settling Parties agree and stipulate to the
 5 following procedures:

6 **9.1. Procedures for Objecting to the Settlement**

7 Class Members shall have the right to appear and show cause, if they have any
 8 reason why the terms of this Settlement Agreement should not be given final approval,
 9 subject to each of the sub-provisions contained in this section. Any objection to the
 10 Settlement or Settlement Agreement, including any of its terms or provisions, should be
 11 in writing, filed with the Court, with a copy served on Class Counsel, Defense Counsel,
 12 and the Class Action Administrator at the addresses set forth in the Notice, and postmarked
 13 no later than thirty (30) calendar days prior to the Fairness Hearing date. Class Members
 14 may object either on their own or through an attorney hired at their own expense.

15 If a Class Member hires an attorney to represent him or her at the Fairness Hearing,
 16 he or she must do so solely at his or her own expense unless the Court orders otherwise.
 17 No Class Member represented by an attorney should be deemed to have objected to the
 18 Settlement Agreement unless an objection signed by the Class Member is also filed with
 19 the Court and served upon Class Counsel and Defense Counsel at the addresses set forth
 20 in the Notice thirty (30) days before the Fairness Hearing.

21 Any objection regarding or related to the Settlement Agreement should contain (a)
 22 the objector's full name, address and telephone number; (b) the name, address, and
 23 telephone number of any attorney for the objector with respect to the objection; (c) the
 24 factual and legal grounds for the objection(s); (d) documents sufficient to establish the
 25 basis for his or her standing as a Class Member, *i.e.*, verification under oath as to the
 26 approximate date(s) and location(s) of his or her purchase(s) of Kroger Bread Crumbs; (e)
 27 his or her signature or the signature of the objector's counsel, if any; (f) the case name and
 28 case number (*Hawkins v. Kroger Co.*, Case No. 3:15-cv-2320-JM-AHG (S.D. Cal.)); and

(g) a list, including case names and numbers, of any other objections by the objector, as well as by the objector's attorney, to any class action settlements submitted to any state or federal court in the previous two years. Any objection should also contain information sufficient to identify and contact the objecting Class Member (or his or her attorney, if any). Any objections not containing the required information and/or not submitted to the Court at least thirty (30) days prior to the Fairness Hearing may be deemed waived and may not be considered by the Court. If an objecting party chooses to appear at the hearing, that party should, in addition to filing his or her objection, file with the Court, at least thirty (30) days before the Fairness Hearing, a notice of intent to appear and that notice must list the name, address and telephone number of the attorney, if any, who will appear on behalf of that party.

9.2. Response to Objections

Class Counsel and Defendant may respond to any objection, by filing opposition papers no later than seven calendar days prior to the Fairness Hearing, or on such other date as set forth in the Preliminary Approval Order, or any subsequent Court order(s) modifying the briefing schedule for the Fairness Hearing. The Party responding shall file a copy of the response with the Court, and shall serve a copy to the objector (or counsel for the objector) to the extent the objector or their counsel do not receive notice of electronic filing via the Court's ECF filing system.

9.3. Opt-Outs

Any Class Member who does not wish to participate in the Settlement must submit a Request for Exclusion to the Class Action Administrator, stating an intent to be "excluded" from this Settlement. The written Request for Exclusion must be sent via first class United States mail to the Class Action Administrator at the address set forth in the Notice and postmarked no later than thirty (30) calendar days before the date set for the Fairness Hearing ("Opt-Out Date"). The Request for Exclusion must be personally signed by the Class Member and may only be on behalf of such signing Class Member. So-called "mass" or "class" opt-outs shall not be allowed. Members who "opt-out" will not release

1 their claims pursuant to the Settlement Agreement. Members of the Class who fail to
 2 submit a valid and timely Request for Exclusion on or before the date specified in the
 3 Notice shall be bound by all terms of the Settlement Agreement and Final Judgment and
 4 Order. Every Request for Exclusion must contain his or her (a) full name, (b) current
 5 address, (c) a clear statement communicating that he or she elects to be excluded from the
 6 Class, (d) his or her signature, and (e) the case name and case number.

7 Any Class Member who requests exclusion from the Settlement does not have the
 8 right to object to the Settlement. If a Class Member submits an objection and a written
 9 Request for Exclusion, he or she shall be deemed to have complied with the terms of this
 10 opt-out procedure. His or her objection will be considered void and he or she shall not be
 11 bound by the Settlement Agreement if approved by the Court. However, any objector who
 12 has not submitted a proper Request for Exclusion from the Settlement will be bound by
 13 the terms of the Settlement Agreement upon final approval of the Settlement.

14 **10. FEES, EXPENSES AND INCENTIVE AWARD**

15 In accord with Federal Rule of Civil Procedure Rule 23(h) and relevant case law,
 16 Plaintiff will petition the Court for fees and expenses, separate from the Settlement Fund,
 17 not to exceed \$400,000, and a Representative Plaintiff incentive award not to exceed
 18 \$7,000. Defendant shall not object to or oppose any such petition, provided it does not
 19 exceed these limits, nor take any steps to encourage objectors to do so.

20 Upon a Court order so providing, any award of fees, incentive award, and costs shall
 21 be paid by Defendant within 60 calendar days of the Effective Date.

22 The incentive payment, if awarded, shall be paid separately from fees and costs in
 23 the form of a check sent in the care of Class Counsel made payable to the Representative
 24 Plaintiff.

25 **11. MOTION FOR FINAL APPROVAL AND ORDER**

26 Defendant shall cooperate in good faith with the preparation of the motion for final
 27 approval of the Settlement Agreement.

28 **12. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

1 The Effective Date of this Settlement Agreement shall be the date the Court grants
2 final approval of this agreement.

3 If this Settlement Agreement is not approved by the Court or the Settlement
4 Agreement is terminated or fails to become effective in accordance with the terms of this
5 Settlement Agreement, the Settling Parties will be restored to their respective positions in
6 the Litigation as of the day before the Motion for Preliminary Approval was filed. In such
7 event, except with respect to the Class Action Administrator's fees, the terms and
8 provisions of this Settlement Agreement will have no further force and effect with respect
9 to the Settling Parties and will not be referenced or used in the Litigation or in any other
10 proceeding for any purpose, and any Judgment or order entered by the Court in accordance
11 with the terms of this Settlement Agreement will be treated as vacated. If for whatever
12 reason the Settlement Agreement fails to become effective, the Settling Parties will split
13 equally the Class Action Administrator's fees paid prior to that date.

14 **13. MISCELLANEOUS PROVISIONS**

15 A. The Settling Parties acknowledge that it is their intent to consummate this
16 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to
17 effectuate and implement all terms and conditions of this Settlement Agreement and to
18 exercise their best efforts to accomplish the foregoing terms and conditions of this
19 Settlement Agreement.

20 B. The Settling Parties intend the Settlement to be a final and complete
21 resolution of all disputes between them with respect to the Litigation. The Settlement
22 compromises claims that are contested and will not be deemed an admission by any
23 Settling Party as to the merits of any claim or defense.

24 C. The Settling Parties agree that the consideration provided to the Class and the
25 other terms of the Settlement were negotiated at arm's-length, in good faith by the Settling
26 Parties, and reflect a settlement that was reached voluntarily, after consultation with
27 competent legal counsel. The Litigation was filed in good faith, was not frivolous and was
28 in compliance with Rule 11 of the Federal Rules of Civil Procedure. This Settlement

1 Agreement is entered into to eliminate the uncertainties, burdens and expenses of
2 protracted litigation.

3 D. Any party to the Litigation or any other Released Person may file this
4 Settlement Agreement and/or the Judgment in any action that may be brought against it in
5 order to support any defense or counterclaim, including without limitation those based on
6 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar
7 or reduction, or any other theory of claim preclusion or issue preclusion or similar defense
8 or counterclaim.

9 E. This Settlement Agreement shall be interpreted and enforced in accordance
10 with the laws of the state of California without regard to its rules regarding conflict of
11 laws.

12 F. The waiver by one party of any provision or breach of this Settlement
13 Agreement shall not be deemed a waiver of any other provision or breach of this
14 Settlement Agreement.

15 G. This Settlement Agreement is governed by the terms of Federal Rule of
16 Evidence 408 and is for settlement purposes only, and neither the fact of, nor any provision
17 contained in this Settlement Agreement or its attachments, nor any action taken hereunder
18 shall constitute, be construed as, or be admissible in evidence as, any admission of the
19 validity of any claim, defense or any fact alleged by any of the parties in the Litigation or
20 in any other pending or subsequently filed action or of any wrongdoing, fault, violation of
21 law, or liability of any kind on the part of any party, or admission by any party of any
22 claim, defense or allegation made in the Litigation or any other action, nor as an admission
23 by any of Defendant, the Representative Plaintiff, Class Members, or Class Counsel of the
24 validity of any fact or defense asserted against them in the Litigation or any other action.
25 If the Court should for any reason fail to approve this Settlement Agreement in the form
26 agreed to by the parties, decline to enter the Final Judgment substantially in the form of
27 Exhibit A and as agreed to by the parties, or impose any condition to approval of the
28 settlement to which the parties do not consent, or if the Final Judgment and Order is

1 reversed or rendered void, then (a) this Settlement Agreement shall be considered null and
2 void, (b) neither this Settlement Agreement nor any of the related negotiations shall be of
3 any force or effect, and (c) all parties to this Settlement Agreement shall stand in the same
4 position, without prejudice, as if the Settlement Agreement had been neither entered into
5 nor filed with the Court. Invalidation of any portion of this Settlement Agreement shall
6 invalidate this Agreement in its entirety unless the parties agree in writing that the
7 remaining provisions shall remain in full force and effect. If this Settlement Agreement
8 terminates or is nullified, the Litigation shall revert to the status that existed before the
9 execution of this Settlement Agreement. Upon nullification of this Settlement Agreement,
10 Representative Plaintiff shall be free to pursue any claims available to her, and Defendant
11 shall be free to assert any defenses available to it.

12 H. All agreements made and orders entered during the course of the Litigation
13 relating to the confidentiality of information will survive this Settlement Agreement.

14 I. This Settlement Agreement and exhibits constitute the entire agreement
15 among the Settling Parties, and no representations, warranties, or inducements have been
16 made to any Party concerning this Settlement Agreement or its exhibits other than the
17 representations, warranties, and covenants covered and memorialized in such documents.
18 Except as otherwise provided herein, the Settling Parties will bear their own respective
19 costs.

20 J. Class Counsel, on behalf of the Class, is expressly authorized by the
21 Representative Plaintiff to take all appropriate action required or permitted to be taken by
22 the Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly
23 authorized to enter into any modifications or amendments to this Settlement Agreement
24 on behalf of the Class that Class Counsel deems appropriate. Each counsel or other person
25 executing this Settlement Agreement hereby warrants that such person has the full
26 authority to do so.

27 K. This Settlement Agreement may be executed in one or more counterparts. A
28 faxed or electronic signature shall have the same force and effect as an original signature.

1 All executed counterparts and each of them will be deemed to be one and the same
2 instrument. A complete set of original counterparts will be filed with the Court.


3 L. This Settlement Agreement will be binding upon, and inure to the benefit of,
4 the successors and assigns of the Settling Parties.

5 M. None of the Settling Parties, or their respective counsel, will be deemed the
6 drafter of this Settlement Agreement or its exhibits for purposes of construing the
7 provisions thereof. The language in all parts of this Settlement Agreement and its exhibits
8 will be interpreted according to its fair meaning, and will not be interpreted for or against
9 any of the Settling Parties as the drafter thereof.

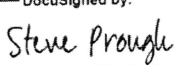
10 N. Plaintiff and Class Counsel agree not to make disparaging public statements
11 about the Defendant, the Defendant's products, and/or Defense Counsel. Defendant and
12 Defense Counsel agree not to make disparaging public statements about Plaintiff, Class
13 Counsel, or the Settlement.

14 IN WITNESS WHEREOF, the Settling Parties have executed and caused this
15 Agreement to be executed by themselves, approved as to form and content by their
16 respective attorneys, dated as of April 19, 2021, 2021.

17
18 Dated: 4-20-21



19 Plaintiff Shavonda Hawkins

20
21 Dated: 4/19/2021


DocuSigned by:

FDE3ADB895A49F
22 Steven J. Prough,
23 Vice President—Legal Services
24 The Kroger Co.

25 APPROVED AS TO FORM AND CONTENT:

26 Dated: 4/19/21


27 Gregory S. Weston
28 Class Counsel

1
2 Dated: 4/19/2021

3 
4 Jacob M. Harper
5 DAVIS WRIGHT TREMAINE, LLP
6 Counsel for The Kroger Co.
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