

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Scott Biddick, Individually and on Behalf of All Others Similarly Situated,	:	
	:	Case No. 1:20-cv-08091
	:	
Plaintiff,	:	Judge Vernon S. Broderick
	:	
v.	:	
	:	
Lumondi, Inc.,	:	
	:	
Defendant.	:	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement (the “Agreement”) is made and entered effective November __, 2021, by and among, Scott Biddick (the “Named Plaintiff”), on behalf of himself and the Settlement Class (collectively, “Plaintiffs”) and Lumondi, Inc. (as defined in Section 3.21 below, “Defendant” or “Lumondi”). Plaintiffs and Defendant are referred to collectively as the “Parties” or the “Settling Parties,” and each individually as a “Party.”

This Agreement is intended to fully and finally resolve and settle the case captioned *Scott Biddick, et al. v. Lumondi, Inc.*, Civil Action No. 1:20-cv-0809, pending in the United States District Court for the Southern District of New York (the “Lawsuit”). In this Agreement, any capitalized term not immediately defined is defined in Section III below.

I. THE LAWSUIT

A. On September 29, 2020, the Named Plaintiff commenced the Lawsuit by filing a Class Action Complaint against Defendant challenging the marketing and sale of Luminox watches (the “Watches”), which Watches were manufactured by Defendant’s supplier. ECF No. 1. The Class Action Complaint alleges, among other things, that (i) Defendant represented, advertised, and marketed the Watches as designed to be durable and tough for military service

members, scuba divers, first responders, athletes, and “rugged outdoorsmen” seeking “extreme performance;” (ii) said representations, advertising and marketing statements were false and misleading because the Watches are actually poorly-suited for “rugged outdoorsmen” because they contain a defect that causes their faces to fog when worn outdoors in air temperatures below approximately 40 degrees Fahrenheit or above approximately 90 degrees Fahrenheit; and (iii) the Named Plaintiff and all other consumers who purchased the Watches have suffered damages because had they known the truth they would not have purchased the Watches or would have paid less for the Watches. Based on these allegations, the Named Plaintiff asserts claims for: (a) Violation of New York General Business Law, Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349 (“NYGBL”); (b) Breach of Express Warranty – Magnuson Moss Warranty Act; (c) Breach of Express Warranty; (d) Violation of California’s Consumer Legal Remedies Act, California Civil Code § 1750 *et seq.*; (e) Violation of California’s Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*; (f) Breach of Implied Warranty of Merchantability; and (g) Breach of Implied Warranty of Fitness for a Particular Purpose. The Class Action Complaint seeks certification of a nationwide class of purchasers of the Watches.

B. Lumondi denies the allegations in the Lawsuit and asserts numerous defenses to Plaintiff’s claims, including that: (i) the Watches are not defective in any respect; (ii) the Watches were tested and qualified to be advertised as represented; (iii) Lumondi did not fail to disclose any material defect in the Watches; (iv) Plaintiff’s and the putative class’s exclusive remedy for any defective Watch is the Limited Warranty; (v) Lumondi fully complied with the Limited Warranty for the Watches; (vi) Plaintiff fails to allege sufficient facts in the Class Action Complaint to state any valid claims against Lumondi; (vii) Plaintiff and the putative class did not suffer any losses or actual injury whatsoever; and (viii) it is customary for the watches to show fogging when exposed

to an extreme temperature decrease because of a law of physics known as the dew point, but the fog will dissipate within 20 minutes after the watch is returned to room temperature.

C. On May 4, 2021, the Parties engaged in private mediation with the aid of and before the Honorable Judge James Holderman (Ret.). The Parties were not able to resolve the dispute at the mediation, but with the aid of the mediator the Parties continued to engage in extensive settlement discussions thereafter.

D. From May through July, the Parties continued to engage in settlement discussions with the aid of the mediator, and the parties reached a settlement in principle on July 12, 2021 and entered into a written Memorandum of Understanding signed by the Parties' counsel.

E. On July 16, 2021, the Parties informed the Court that they had reached a settlement in principle to resolve this matter on a class-wide basis.

F. Prior to reaching a settlement and entering into this Agreement: (1) the Parties engaged in informal discovery and sharing of information regarding: warranty claims, the design, development, and testing of the Watches, the law of physics known as the dew point which will cause a watch to fog when exposed to a significant temperature decrease, such fog dissipates when the watch is returned to room temperature for 20 minutes, and the fact that the Watches are assembled in a temperature and humidity controlled clean room, which lowers the dew point temperature; and (2) the Parties engaged in numerous arm's-length settlement negotiations, including months of mediation efforts and discussions under the direction and guidance of Judge Holderman as a mediator. The Parties have now reached an agreement providing for a resolution of all claims that have been or could have been brought in the Lawsuit against Defendant on behalf of Named Plaintiff. In addition, the Parties have reached agreement as to the amount of Attorneys'

Fees and Expenses Class Counsel may receive under the Settlement and the amount to be paid to the Named Plaintiff as a Service Award, subject to Court approval.

G. The Named Plaintiff and Class Counsel have reviewed and analyzed the information furnished by Defendant and information obtained through their own investigation; examined and considered the benefits to be provided to the Class Members under the Settlement provided for in this Agreement; and considered the laws of the several States and the claims that could be asserted under those laws regarding the Watches.

H. Named Plaintiff and Class Counsel believe the Settlement is fair, adequate, reasonable, and in the best interests of the Class Members, taking into account the benefits provided to the Class Members through the terms of the Settlement, the risks of continued litigation and possible trial and appeals, and the length of time and the costs that would be required to complete the litigation.

I. Defendant has at all times disputed, and continues to dispute, Plaintiff's allegations in the Lawsuit and denies any liability for any of the claims that have or could have been raised in the Lawsuit by Plaintiff or the Class Members, but believes that the comprehensive resolution of the claims in the Lawsuit as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation, including potential trial and appeals, is in the best interest of Class Members, is in the best interests of Defendant, its employees, and its customers, and is the most effective and efficient resolution of the Lawsuit reasonably possible.

J. The Settling Parties entered into this Agreement after extensive arm's-length negotiations. The Settling Parties agreed on the benefits to the Settlement Class described in this Agreement before negotiating the provisions of this Agreement and before negotiating Attorneys' Fees and Expenses and the amount to be paid as a Service Award to the Named Plaintiff.

K. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the Lawsuit be settled and dismissed, on the merits and with prejudice, and that the Released Claims be finally and fully settled and dismissed, subject to and according to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, without any concession by Plaintiff that his claims lack merit, and without any concession by Defendant of any liability or wrongdoing or lack of merit in its defenses, it is hereby AGREED by and among the Parties, subject to approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that, in consideration for the benefits flowing to the Settlement Class and the Parties, the Lawsuit and all Settled Class Claims and Released Claims, as defined below, shall be compromised, settled, acquitted, and dismissed with prejudice, on the following terms and conditions:

II. NO ADMISSION OF WRONGDOING AND CONDITIONAL NATURE OF THIS AGREEMENT

2.1 Defendant does not admit any wrongdoing, fault, liability, or damage to Plaintiff or Class Members. Nor does Defendant admit that it engaged in any wrongdoing or committed any violation of law. Defendant stands behind all of its products, including the Watches. Defendant maintains that it has meritorious defenses to the Lawsuit, that the Watches are not defective, that it has fully complied with its Limited Warranty for the Watches, and that Plaintiffs have not been damaged or harmed in any way, or at all. In view, however, of the uncertainty and risk of the outcome of any litigation, the difficulties and substantial expense and length of time necessary to defend the proceeding—including potentially through trial, post-trial motions, and appeals—and to eliminate the burden and expense of further litigation, Defendant wishes to settle the Lawsuit and to put the claims alleged in the Lawsuit to rest, finally and forever, without in any way

acknowledging any wrongdoing, fault, liability, or damage to Plaintiff or the Class Members. The Settlement and this Agreement represent a compromise of disputed claims and the arm's-length negotiations, discussions, and communications in connection with or leading up to and including the Settlement are not and shall not be construed as admissions or concessions by any of the Parties, either as to any liability or wrongdoing or as to the merits of any claim or defense, regardless of whether this Agreement becomes effective.

2.2 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Lawsuit and are made in compromise of disputed claims. Because this Agreement settles the Lawsuit on a class-wide basis, it must receive preliminary and final approval from the Court. Accordingly, the Settling Parties enter into this Agreement on a conditional basis. If the Court does not enter the Final Approval Order, the proposed judgment does not become a final judgment for any reason, or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to or used for any purpose whatsoever; and the negotiation, terms, and entry of the Agreement shall remain subject to Rule 408 of the Federal Rules of Evidence and any analogous federal or state court rules of evidence or substantive law.

2.3 If more than seven hundred fifty (750) Class Members submit timely and valid Opt-Out Requests, Defendant, at its sole discretion, shall be entitled to terminate this Agreement, such that this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever. To exercise this right, Defendant must inform the Court, the Named Plaintiff and Class Counsel, in writing, of the exercise of this right within ten (10) days after Defendant receives notices that seven hundred fifty (750) or more Class Members have submitted Opt-Out Requests.

2.4 This Agreement and all associated exhibits or attachments, and any and all negotiations relating to it, shall not be admissible in the Lawsuit, or any other action or legal proceeding, in any manner whatsoever, except as necessary: (a) to enforce the terms of this Agreement, including to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, accord and satisfaction, good-faith settlement, judgment bar or reduction, or any theory of claim or issue preclusion or similar defense or counterclaim; or (b) in connection with Third-Party Claims.

III. DEFINITIONS

As used in this Agreement, the following terms have the definitions that follow:

3.1 “Administration and Notice Expenses” means reasonable fees and expenses incurred by the Notice Administrator for: (1) mailing and emailing the Settlement Notice; (2) creating, monitoring, and updating the Settlement Website which will be designed to include notifications to the Class, FAQs, and important case documents; (3) preparing status reports at the request of the Court or in preparation for a hearing or conference with the Court; (4) receiving and processing of Opt-Out Requests submitted by Class Members who wish to exclude themselves from the Settlement Class; and (5) other reasonable costs of notice administration agreed to by the Parties or as ordered by the Court.

3.2 “Agreement” means this Class Action Settlement Agreement and all exhibits attached to, and incorporated by reference into, it.

3.3 “Attorneys’ Fees and Expenses” means the amount of any attorneys’ fees and reimbursement of litigation expenses and costs to be paid by Defendant that may be awarded by the Court to Class Counsel under their Fee Application, as provided and agreed by the Parties in this Agreement.

3.4 “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* (“CAFA”), to be served on the appropriate state official in each state where a Class Member resides and the appropriate federal official.

3.5 “Claim” means the information submitted by Class Members who wish to receive a benefit in accordance with Section VI of this Agreement.

3.6 “Claimant” means a Class Member who submits a valid and timely Claim.

3.7 “Extended Warranty Claims Deadline” means twelve months from the Effective Date.

3.8 “Replacement Watch Claims Deadline” means twelve months following the completion of a Claimant’s second Extended Warranty repair. A Claimant’s second Extended Warranty repair shall be deemed completed on the date the repaired Luminox Watch is mailed back to the Claimant.

3.9 “Class” means all consumers nationwide who purchased in the USA (or received as a gift) one or more Luminox Watch Series 3000/3900, 3050/3950, 3120, 3150, 3160, 3180, 3190, 3250, 3500, 3510, 3580, 3590, 3600, 3610, 3800, 3810, 7050, 7060, 7200, 7250 that contained an original Lumondi Warranty Card (the “Original Warranty”) at the time of purchase on or after June 1, 2018 through the date of preliminary approval by the Court. Excluded from the Class is Defendant and its officers, directors, and employees; Class Counsel and their partners, associates, lawyers, and employees; and the judicial officers and their immediate family members and associated Court staff assigned to this case.

3.10 “Class Counsel” means Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A. and Sean K. Collins of the Law Offices of Sean K. Collins.

3.11 “Class Member” or “Plaintiff” means any Person who is a member of the Settlement Class and who does not exclude himself, herself, or itself from the Settlement Class in the manner and time prescribed by the Court in the proposed Preliminary Approval Order.

3.12 “Class Representative” means Named Plaintiff.

3.13 “Complaint” means the Class Action Complaint filed in the Lawsuit by the Named Plaintiff on September 29, 2020.

3.14 “Court” means the United States District Court for the Southern District of New York.

3.15 “Defendant” means Lumondi, Inc., and its respective parent corporations, affiliates, direct and indirect subsidiaries, predecessors, successors, assigns, and anyone acting on their behalf.

3.16 “Effective Date” means the first date that is three (3) business days after all the following have occurred: (a) the Court has entered an order granting final approval of the Settlement in accordance with the terms of this Agreement; (b) the time for any challenge to the Settlement, both in the Court and on appeal, has lapsed; and (c) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected in such a manner as to affirm the Final Approval Order approving the Settlement. For purposes of this Section, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s request for attorneys’ fees or costs and/or the Service Award to the Class Representative.

3.17 “Fairness Hearing” means the final hearing, to be held by the Court as soon as practicable, (a) to determine whether to grant final approval to (i) the certification of the Settlement Class, (ii) the designation of the Class Representative as the representative of the Settlement Class,

(iii) the designation of Class Counsel as counsel for the Settlement Class, and (iv) the Settlement; (b) to rule on Class Counsel's Fee Application; and (c) to consider whether to enter the Final Approval Order.

3.18 "FAQs" means the proposed Frequently Asked Questions and Answers form to be approved by the Court as part of the Preliminary Approval Order and posted on the Settlement Website in accordance with this Agreement.

3.19 "Fee Application" means the application to be filed by Class Counsel no later than twenty-one (21) days prior to the Objection Deadline by which they will seek an award to be paid by Defendant of attorneys' fees and reimbursement of costs and expenses, as well as the Service Award to be paid to the Class Representative.

3.20 "Final Approval Order" means the proposed Order Granting Final Approval to the Class Action Settlement and Entry of Final Judgment, to be entered by the Court following the Fairness Hearing.

3.21 "Fogging Issue" or "Fogging Issues" means fogging of the inside of the watch crystal after the watch has been exposed to a significant temperature decrease to below approximately 40 degrees Fahrenheit or exposed to temperatures above approximately 90 degrees Fahrenheit, and which persists for more than 20 minutes after the watch is returned to room temperature.

3.22 "Lumondi" means Defendant.

3.23 "Lumondi Authorized Dealer" means a retailer from the list of authorized retailers maintained on the Settlement Website, which will include all Lumondi Authorized Dealers from June 1, 2018 through the Notice Date.

3.24 “Lumondi Authorized Repair Center” means the repair center listed on the Settlement Website.

3.25 “Named Plaintiff” means Scott Biddick.

3.26 “Notice Administrator” means the third-party provider, who upon approval by the Court, shall be responsible for administering and overseeing, among other things, the notice of the Settlement. The Parties agree, subject to the Court’s approval, that Kroll Settlement Administration shall serve as the Notice Administrator.

3.27 “Notice of Claim Denial” means the form that Defendant will send, by first-class United States Mail or electronic mail, to each Person who has submitted a Claim that the Defendant has determined not to be a Valid Claim.

3.28 “Notice Date” means the Court-ordered deadline by which the Notice Administrator and any third parties must complete the mailing or emailing of Settlement Notice to Class Members and initiate the Notice Plan, which shall be no later than 90 days following the Court’s entry of the Preliminary Approval Order.

3.29 “Notice Plan” means the plan for providing Settlement Notice to members of the Class, as set forth in Section VII of this Agreement.

3.30 “Objection Deadline” means the Court-ordered deadline by which members of the Settlement Class must file any written objection or opposition to this Agreement or any part or provision of this Agreement, as set forth in Section VIII, which shall be at least sixty (60) days following the Notice Date.

3.31 “Opt-Out Request” means a valid written request submitted to the Notice Administrator, pursuant to the provisions of Section VIII of this Agreement, indicating that the Class Member wishes to be excluded from the Settlement.

3.32 “Opt-Out Request Deadline” means the Court-ordered deadline by which members of the Settlement Class must postmark and mail, or electronically deliver, an Opt-Out Request pursuant to the provisions of Section VIII of this Agreement, which shall be at least sixty (60) days following the Notice Date.

3.33 “Parties” means the parties to this Agreement, Plaintiff and Defendant.

3.34 “Person” means any natural person, including his or her beneficiaries, heirs, assigns, or executors, or any legal entity, including its predecessors, successors, affiliates, or assigns.

3.35 “Plaintiffs” means the Named Plaintiff asserting claims in the Lawsuit, Scott Biddick, as well as all Class Members.

3.36 “Plaintiffs’ Counsel” shall mean all Plaintiffs’ attorneys of record in the Lawsuit.

3.37 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court.

3.38 “Proof of Purchase” includes:

- i. An original or clearly legible copy of a valid, fully completed Official Lumondi Warranty Card, including the Lumondi Authorized Dealer’s name and address as listed on the Settlement Website, model/series number, and date of purchase;
- ii. A legible, itemized receipt or copy of a receipt from a Lumondi Authorized Dealer as listed on the Settlement Website for the purchase of the Watches; or
- iii. If no warranty card or receipt is available, a certification by Claimant, under oath: (a) that the Watch was purchased from a

Lumondi Authorized Dealer as listed on the Settlement Website; (b) the identity of the Lumondi Authorized Dealer (if known); and (c) the approximate date of purchase or receipt.

3.39 “Released Claims” means, as to Plaintiffs, all claims released under the release and waiver set forth in Section XI of this Agreement. Released Claims does not include personal injury claims.

3.40 “Released Parties” means (a) Defendant, as defined herein; and (b) each of its respective past, present, and future officers, directors, board members, agents, representatives, servants, employees, attorneys, and insurers.

3.41 “Releasing Parties” means Plaintiffs and each of their respective heirs, executors, representatives, agents, assigns, and successors.

3.42 “Service Award” means a reasonable payment, subject to Court approval, made to the Named Plaintiff to compensate for his time and effort in pursuing the Lawsuit.

3.43 “Settled Class Claims” means the claims brought by the Named Plaintiff and on behalf of the Class included in this Settlement, including (a) Violation of New York General Business Law, Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349 (“NYGBL”); (b) Breach of Express Warranty – Magnuson Moss Warranty Act; (c) Breach of Express Warranty; (d) Violation of California’s Consumer Legal Remedies Act, California Civil Code § 1750 *et seq.*; (e) Violation of California’s Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*; (f) Breach of Implied Warranty of Merchantability; and (g) Breach of Implied Warranty of Fitness for a Particular Purpose, as well as such other related claims that could have been brought or joined to those in the Lawsuit based on the allegations in the Complaint, all of

which are included in the Released Claims, except for personal injury claims which are excluded from the definition of Released Claims.

3.44 “Settlement” means the settlement provided for in this Agreement.

3.45 “Settlement Class” means Class Representative and the Class.

3.46 “Settlement Notice” means the proposed forms of notice or such other forms as may be approved by the Court, which inform the Class Members of (a) the certification of the Class for Settlement purposes; (b) the date and location of the Fairness Hearing; and (c) the elements of the Settlement Agreement—all in accordance with Section VII of this Agreement. The current form of the Settlement Notice is attached as Exhibit 1, hereto.

3.47 “Settlement Website” means the website www.lumondiwatchsettlement.us, which will be created by the Notice Administrator to facilitate notice and for other administrative purposes related to the Settlement, as detailed in Section VII of this Agreement. The Settlement Website shall be maintained until at least 33 months following the Effective Date and shall include instructions and active url links as appropriate to facilitate Claimants’ ability to make a claim for the Extended Limited Warranty Benefit and the Replacement Luminox Watch Benefit.

3.48 “Settling Parties” means, collectively, Plaintiffs and Defendant.

3.49 “Valid Claim” is one in which the Class Member complies with all requirements in sections 6.3 or 6.9 to submit an Extended Warranty Claim or a Replacement Watch Claim.

IV. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

4.1 Solely for the purposes of implementing this Agreement and the Settlement, and for no other purpose, Defendant will not oppose the conditional certification of the Settlement Class on a nationwide basis. Defendant does not concede that class certification would be warranted or appropriate absent a settlement. If for any reason this Agreement should fail to become effective, Defendant’s lack of opposition to certification of the nationwide Settlement

Class shall be null and void, and the Parties shall return to their respective positions in the Lawsuit as those positions existed immediately before the execution of this Agreement, including their positions regarding suitability of class certification in the Lawsuit.

4.2 If for any reason this Agreement should fail to become effective, neither this Agreement nor any document referred to in, or incorporated into, the Agreement is or may be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that the Named Plaintiff can serve as an adequate class representative, other than for settlement purposes, or that certification of any class is proper or permissible.

V. REQUIRED EVENTS: PRELIMINARY AND FINAL APPROVAL

5.1 On or around November 22, 2021, the Named Plaintiff shall file with the Court a motion seeking entry of the Preliminary Approval Order, which shall:

- a. Conditionally certify the Settlement Class as a nationwide class solely for the purpose of effecting the Settlement;
- b. Designate the Class Representative as the representative of the Settlement Class;
- c. Designate Class Counsel as counsel for the Settlement Class;
- d. Preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable to the Settlement Class;
- e. Designate the Notice Administrator and instruct the Notice Administrator to perform the following functions in accordance with the terms of this Agreement, the Notice Plan, the Preliminary Approval Order, and the Final Approval Order:

- i. No later than sixty (60) days following the Court's entry of the Preliminary Approval Order, begin disseminating the Settlement Notice pursuant to the Notice Plan, substantially in the form provided in Section VII and, to the extent applicable and practicable;
- ii. No later than sixty (60) days following the Court's entry of the Preliminary Approval Order, establish the Settlement Website with information the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings as available such as the Class Action Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Application, FAQs, plus relevant orders of the Court. This shall be accomplished before or concurrently with emailing or mailing the Settlement Notice;
- iii. Process requests for exclusion from the Settlement in accordance with Section VIII of this Agreement;
- iv. Process objections to the Settlement in accordance with Section VIII of this Agreement; and
- v. No later than fourteen (14) days before the Fairness Hearing, provide to the Court, Defendant, and Class Counsel a statement, under penalty of perjury, declaring that it has accomplished the relevant requirements of Section 5.1e; and providing the total number of requests for exclusion received.

- f. Approve the Notice Plan, including the form, contents, and methods of notice to be given to the Class and the Settlement Class as set forth in Section VII of this Agreement, and direct the Notice Administrator to provide and file with the Court a declaration of compliance with the Notice Plan set forth in Section VII of this Agreement (including the statement from the Notice Administrator referenced in Section 5.1.e.v.);
- g. Establish procedures and schedule deadlines for Class Members to object to the Settlement or certification of the Settlement Class, to exclude themselves from the Settlement, and to submit Claims, all consistent with Sections VI and VIII of this Agreement; and
- h. Schedule deadlines for the filing of: (i) papers in support of final approval of the Settlement, the certification of the Settlement Class, the designation of the Class Representative as the representative of the Settlement Class, and the appointment of Class Counsel as counsel for the Settlement Class; (ii) Class Counsel's Fee Application; and (iii) objections to the Settlement, certification of the Settlement Class, to the designation of the Class Representative as the representative of the Settlement Class, or to the appointment of Class Counsel as counsel for the Settlement Class.

5.2 Subject to Court approval, the proposed deadlines and requirements to be established in the Preliminary Approval Order are:

- a. No later than sixty (60) days following the Court's entry of the Preliminary Approval Order: The Notice Administrator shall mail and email the initial Settlement Notices as required by Section 7.3.

- b. Twenty-one (21) days prior to the Objection Deadline: Class Counsel shall file their Fee Application.
- c. No later than fourteen (14) days prior to the Fairness Hearing: Class Counsel shall file the proposed Final Approval Order and memorandum in support of Final Approval and response to any objections.
- d. Twenty-one (21) days after Class Counsel files their Fee Application: Any Class Member shall file objections with the Court and serve a copy of that filing on Class Counsel and Defendant. Objections must be in writing and must contain the following information:
 - i. the full name, address, telephone number, and email address of the objector;
 - ii. the model/series number(s) for the objector's Watch(es);
 - iii. a clear written statement as to the date of purchase of the Watch(es) and the Lumondi Authorized Dealer, as listed on the Settlement Website, from which the Watch(es) were purchased;
 - iv. a clear written statement of all grounds for the objection accompanied by any factual and legal support for such objection;
 - v. copies of any papers, briefs, or other documents on which the objection is based;
 - vi. a list of all cases in which the objector and/or objector's counsel have filed or in any way participated in, financially or otherwise, any objection to a class action settlement in the preceding five years;

- vii. the name, address, email address, and telephone number of all attorneys representing the objector;
- viii. a statement indicating whether the objector and/or the objector's counsel intends to appear at the Fairness Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and,
- ix. the objector's signature.

This Section applies to all objections, including all objections to certification of the Settlement Class, the designation of the Class Representative, the appointment of Class Counsel, the Settlement, this Agreement, or Class Counsel's Fee Application.

- e. Twenty-one (21) days after Class Counsel files their Fee Application: Requests by Class Members to be excluded from the Settlement must be either postmarked by the United States Postal Service (in the case of mailed exclusions) or actually received by the Notice Administrator (in the case of electronically submitted exclusions). The Notice Administrator must file a list of all exclusions (including Class Members submitting Opt-Out Requests and who also object) with the Court no later than fourteen (14) days before the Fairness Hearing.
- f. Twenty-one (21) days after Class Counsel files their Fee Application: Any Person or attorney seeking to appear at the Fairness Hearing must file with the Court and serve on Class Counsel and Defendant an entry of appearance in the Lawsuit and notice of intention to appear at the Fairness Hearing. This includes any person objecting to any or all of certification of the

Settlement Class, designation of Class Representatives, appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Fee Application.

- g. No later than fourteen (14) days before the Fairness Hearing: the Notice Administrator shall file with the Court a declaration of compliance with the notice requirements set forth in Section VII of this Agreement.

5.3 Defendant may, at its discretion, file a memorandum in support or statement of non-opposition of the motion seeking entry of the Preliminary Approval Order.

5.4 At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order that:

- a. Grants final approval of the certification of the Settlement Class;
- b. Designates the Class Representative as the representative of the Settlement Class and Class Counsel as counsel for the Settlement Class;
- c. Grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class;
- d. Provides for the release of all Released Claims and enjoins Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future;
- e. Orders the dismissal with prejudice of all claims alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its, his, or her own costs and attorney fees, except as provided in Section X below;

- f. Orders Defendant to honor valid Extended Warranty Claims and Replacement Watch Claims;
- g. Approves the Service Award to the Named Plaintiff and Attorneys' Fees and Expenses to Class Counsel in an amount to be determined by the Court consistent with the terms of this Agreement; and
- h. Preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

5.5 Named Plaintiff, Class Counsel, and Defendant will cooperate and make their best efforts to secure preliminary and final approval for and to effectuate the Settlement, including cooperating in drafting the documents necessary for preliminary and final approval and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuit. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Plaintiffs, Class Counsel, and Defendant will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order or Final Approval Order, the Parties will return to their positions in the Lawsuit as they were immediately prior to the execution of this Settlement Agreement and confer on a revised schedule for the completion of fact and expert discovery and class certification.

5.6 If an appeal results in an order materially modifying, setting aside, or vacating this Agreement in whole or in part, with the exception of any order that relates to the amount of Attorneys' Fees and Expenses to be paid to Class Counsel or the amount of any Service Award to the Named Plaintiff, each Party adversely affected by such order shall have the right at its sole discretion to treat the order as an event permanently preventing entry of a Final Approval Order. To exercise this right, the Party must inform the other Party and the Notice Administrator, in

writing, of the exercise of this right within ten (10) business days after any order modifying, setting aside, or vacating this Agreement in whole or in part becomes final and non-appealable. If either Party exercises this right, the Party exercising such right agrees to work with the other Party in good faith to attempt to negotiate terms mutually acceptable to both Parties that address any such material alteration or modification caused by the appeal.

VI. BENEFITS AVAILABLE TO MEMBERS OF THE SETTLEMENT CLASS

6.1 **Extended Limited Warranty Benefit.** Class Members shall receive a 12-month limited warranty extension on their Luminox watches covered by this Settlement (“Extended Warranty”). The Extended Warranty shall begin to run from the Effective Date of the proposed Settlement or the end of their Original Warranty, whichever date is later, and shall be limited to cover the Fogging Issues, defined as fogging of the inside of the watch crystal after the watch has been exposed to a significant temperature decrease to below approximately 40 degrees Fahrenheit or exposed to temperatures above approximately 90 degrees Fahrenheit, and which persists for more than 20 minutes after the watch is returned to room temperature. Each Class Member shall receive this Extended Warranty regardless of whether the Original Warranty has expired or is still valid as of the Effective Date.

6.2 Class Members who do not opt out of the proposed Settlement will receive the Extended Warranty.

6.3 The requirements to file a Valid Claim under the Extended Warranty are that the Class Member must:

(1) (a) present an original or clearly legible copy of a valid, fully completed Official Lumondi Warranty Card; (b) present a legible, itemized receipt or copy of a receipt from a Lumondi Authorized Dealer, as listed on the Settlement Website; or (c) if no warranty card or receipt is available, certify under oath: (i) that the watch was purchased from a Lumondi

Authorized Dealer as listed on the Settlement Website; (ii) the identity of the Lumondi Authorized Dealer, if known; and (iii) the approximate date of purchase or receipt);

(2) comply with the on-line warranty claim process set forth on the Settlement Website;

(3) certify under oath that: (a) he or she is not aware of any physical damage to the Luminor Watch; and (b) he or she has experienced multiple Fogging Issues, defined as fogging of the inside of the watch crystal after the watch has been exposed to a significant temperature decrease to below approximately 40 degrees Fahrenheit or exposed to temperatures above approximately 90 degrees Fahrenheit, and which persists for more than 20 minutes after the watch is returned to room temperature.

(4) include a photo of the Luminor Watch showing at least one qualifying Fogging Issue as set forth in paragraph 6.3(3) with the warranty claim submission;

(5) initiate the claim prior to the end of the Extended Warranty period; and

(6) provide the watch for inspection by the Lumondi Authorized Repair Center technicians, who will confirm that no exclusions apply.

6.4 The following conditions are not covered by the Extended Warranty and do not constitute a Valid Claim: (1) normal wear and tear (or aging) of band, case, crystal, bezel, crown, push buttons, battery, or plating of metal components; (2) damage caused by tampering with, misuse or abuse; (3) damage to the watch case or movement caused by water entering the watch due to improper use or handling; (4) defects or damage resulting from battery replacement, service, or repairs performed by any non-authorized Lumondi service or repair centers as listed on the Settlement Website; or (5) a watch not obtained from an Lumondi Authorized Dealer as listed on the Settlement Website. If an exclusion is found, the Lumondi Authorized Repair Center will document the exclusion and will contact the claimant regarding next steps, which may include

repair at the claimant's expense based on a repair quote provided by the Lumondi Authorized Repair Center or return of the Luminox Watch with no further action

6.5 For accepted claims, the Lumondi Authorized Repair Center will perform Extended Warranty Service, which shall include drying the watch, as necessary, performing an ISO condensation test and ensuring proper functioning of all seals and gaskets and replacing any seals and gaskets as needed.

6.6 Through the claims process, Claimants will pay for postage and handling for sending the Luminox Watch to the Lumondi Authorized Repair Center but will be reimbursed by Lumondi if the Claim is a Valid Claim. Reimbursement for postage under this section shall be at the actual cost of the postage and shall not include any mark up.

6.7 Through the claims process, Defendant will pay for postage and handling for sending the Luminox Watch back to the Claimant from the Lumondi Authorized Repair Center, regardless of whether the Claim is a Valid Claim.

6.8 Class Members who receive Extended Warranty Service will be reimbursed by Lumondi for the postage charged for mailing their Luminox Watch to the Lumondi Authorized Repair Center.

6.9 **Replacement Watch Benefit.** Class Members who make two qualifying warranty claims under the Extended Warranty shall be entitled to receive a new replacement Luminox Watch if the Extended Warranty Service (as described above in section 6.4) is unsuccessful.

6.10 An unsuccessful Extended Warranty Service means that the Luminox Watch that was serviced twice under the Extended Warranty benefit exhibits the Fogging Issue, defined as fogging of the inside of the watch crystal after the watch has been exposed to a significant temperature decrease to below approximately 40 degrees Fahrenheit or exposed to temperatures

above approximately 90 degrees Fahrenheit, and which persists for more than 20 minutes after the watch is returned to room temperature, within the later of (a) 90 days from the second Extended Warranty Service; or (b) the expiration of the Extended Warranty.

6.11 The Replacement Watch shall be limited to the same model and color as the original Luminox Watch to be replaced (“Replacement Watch”). If the same model and color as the original Luminox Watch to be replaced is not available, Lumondi shall provide the Class Member with a substantially comparable Luminox Watch.

6.12 “Substantially Comparable” means a Luminox Watch with similar design, color, features, and price as the Class Member’s original Luminox Watch.

6.13 Lumondi’s “Original Limited Warranty” terms shall apply to any Replacement Watch provided pursuant to the proposed Settlement.

6.14 To qualify for the Replacement Luminox Watch benefit, the Class Member must return the original Luminox Watch to the Lumondi Authorized Repair Center as listed in the Settlement Website. Upon receipt of the original Luminox Watch returned pursuant to this section, Lumondi shall provide the Class Member with the Replacement Luminox Watch within a reasonable period of time not to exceed 30 days from the date of receipt by the Lumondi Authorized Repair Center of the original Luminox watch.

6.15 **ReverseLogix Software.** Defendant shall utilize ReverseLogix software (or some other comparable software system) to administer, process and record all Extended Warranty Claims and Replacement Watch Claims submitted in response to this Settlement. The ReverseLogix software (or some other comparable software system) utilized to implement this Settlement shall be used by Defendant and/or the Lumondi Authorized Repair Center, as necessary, to determine whether Extended Warranty Claims and Replacement Watch Claims are

valid as per submitted documentation and information. The inspection by Lumondi Authorized Repair Center technicians is also part of the process for determining whether the claim is a Valid Claim. The ReverseLogix software (or some other comparable software system) shall include all necessary information to determine the initial validity of Extended Warranty Claims and Replacement Watch Claims, based on documentation, and is still subject to the technician's inspection of the submitted watch. The cost and expense related to the ReverseLogix software (or some other comparable software system) shall be paid by Defendant.

VII. SETTLEMENT NOTICE AND NOTICE PLAN

7.1 All decisions regarding notice and settlement administration shall be made jointly between Defendant and Class Counsel except as otherwise set forth in this Agreement. Appropriate notice of settlement shall be provided to the Class Members. The Parties and their counsel agree to cooperate in good faith in the notice and settlement administration process, and the parties shall mutually agree on the language of the Notice and the webpage. Defendant agrees to pay reasonable notice costs incurred by the Notice Administrator.

7.2 Class Counsel and counsel for Defendant shall have the ability to communicate with the Notice Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court.

7.3 No later than sixty (60) days following the Court's entry of the Preliminary Approval Order, the Notice Administrator shall do the following:

- a. The Notice Administrator shall begin sending or causing to be disseminated a copy of the Settlement Notice to every Class Member who reasonably can be identified.
- b. To the extent practicable, the Notice Administrator shall send or cause to be sent a copy of the Settlement Notice by electronic mail, or another electronic

means of personal contact, to every Class Member whose email address or other electronic contact information is known or readily identifiable. If the Notice Administrator can identify more email addresses or other electronic contact information for Class Members by performing an email address lookup or similar exercise, the Notice Administrator shall include such costs in the Administration and Notice Expenses. For all other Class Members for whom or which a mailing address, but no email address or other electronic means of contact, can reasonably be identified, the Notice Administrator shall send or cause to be sent a copy of the Settlement Notice by U.S. mail.

- c. The Notice Administrator will forward Settlement Notices that are returned by the U.S. Postal Service or electronically with a forwarding address to the Class Member. For Settlement Notices returned as undeliverable, the Notice Administrator shall make reasonable effort to determine a proper electronic mail address, other electronic contact information, or mailing address, and re-send the Settlement Notice. All costs related to this process shall be included in the Administration and Notice Expenses.

7.4 Within thirty (30) days of the entry of the Preliminary Approval Order, Defendant will provide the Notice Administrator with electronic data containing the contact information Defendant has for Class Members as well as the contact information that the Lumondi Authorized Service Center has for Class Members.

7.5 Within ten (10) days of the entry of the Preliminary Approval Order, Defendant will provide to Class Counsel contact information for the top five (5) retail sellers of the model/series of Class of Luminox Watches covered by this Agreement for 2018, 2019, 2020, and

2021. Class Counsel are authorized to issue subpoenas, as necessary, to these retailers to obtain name, address, and email information for the sole purpose of issuing class notice of this Settlement. All information obtained through these subpoenas must remain confidential and shall be subject to strict access restrictions and may only be provided to Class Counsel and to the Notice Administrator. Any information collected from these third parties pursuant to this paragraph shall be destroyed no later than five (5) days following the issuance of notice to such Class Members. The Notice Administrator shall certify to the Court prior to the Fairness Hearing that all such information received pursuant to this paragraph has been destroyed. Retail sellers of Luminor Watches who receive a subpoena pursuant to this paragraph may choose to send or email the Class Notice directly to its customers rather than provide the contact information to the Notice Administrator or Class Counsel and may seek reimbursement from the Notice Administrator for the reasonable cost of postage to do so.

7.6 To facilitate the efficient administration of this Settlement, and to promote the provision of benefits pursuant to this Settlement, the Notice Administrator will establish the Settlement Website, which will enable or facilitate Class Members to:

- a. Read the Settlement Notice and FAQs and important case documents (e.g. Settlement Agreement, Order Granting Preliminary Approval);
- b. Obtain updates on the status of the Settlement; and
- c. Submit Extended Warranty Claims or Replacement Watch Claims through the ReverseLogix process.

7.7 The Settlement website will be maintained for no less than 18 months following the Effective Date.

7.8 The Parties agree that the Settlement Notice, FAQ, and Settlement Website will provide information sufficient to inform Class Members of: (a) the essential terms of this Agreement; (b) appropriate means for obtaining additional information regarding the Agreement and the Lawsuit; (c) appropriate information about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so; and (d) appropriate means for and information about submitting a claim for benefits pursuant to the Settlement. The Parties also agree that the dissemination of the Settlement Notice and the FAQs in the manner specified in this Section VII satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

7.9 Pursuant to this Agreement, Class Counsel will request the Court to approve, in the Preliminary Approval Order, the emailing and direct mailing of the Settlement Notice and establishment of the Settlement Website, which will include the Settlement Notice, important case documents, and FAQs, all as set forth above.

7.10 As soon as practicable, but no later than ten (10) days after Plaintiffs file this Agreement in the Court, Defendant or the Notice Administrator shall serve a CAFA Notice of the Settlement as required by the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA Notice”). Defendant, working with the Notice Administrator, will prepare the substantive language of the CAFA Notice, subject to Class Counsel’s approval which shall not be unreasonably withheld.

7.11 No later than fourteen (14) days prior to the Fairness Hearing, the Notice Administrator shall file with the Court a declaration of compliance with this Notice Plan.

VIII. CLAIM ADMINISTRATION, EXCLUSION FROM THE SETTLEMENT CLASS, AND OBJECTIONS

8.1 The Notice will direct Class Members to the Settlement Website and to Defendant's website, www.lumondi.us, where a link will be provided to electronically file Extended Warranty Claims and Replacement Watch Claims. Extended Warranty Claims and Replacement Watch Claims shall be filed and processed utilizing ReverseLogix software (or an otherwise comparable software program) and shall allow Class Members to upload photos and other documentation as necessary to support their claims.

8.2 Defendant will provide a Notice of Claim Denial, in a timely fashion, to any Person who has not submitted a Valid Claim and will identify the reason(s) the Person has not submitted a Valid Claim. The Notice of Claim Denial will also notify such Persons that they have the right to have Class Counsel review whether they have submitted a Valid Claim. Defendant will copy Class Counsel on all Notice of Claim Denial correspondence. Class Counsel may dispute any Notice of Claim Denial on behalf of any Class Member within thirty (30) days of receipt of the Notice of Claim Denial. Class Counsel may also audit Claim Denials to ascertain Defendant's compliance with the Settlement Agreement.

8.3 Any Person receiving a Notice of Claim Denial that his, her, or its Claim is not a Valid Claim who wishes to contest such denial must, within thirty (30) calendar days of the date of mailing or transmission of Notice of Claim Denial, submit to Defendant and Class Counsel a statement of the reasons contesting the grounds for the rejection of his, her, or its claim or provide any missing or supplemental information necessary to perfect the claim. If a Person provides this required statement and the dispute about whether the Person has submitted a Valid Claim cannot otherwise be resolved, Class Counsel and Defendant shall promptly present the issue for review by a mutually selected independent third-party adjudicator. The independent third-party

adjudicator shall issue a decision to Class Counsel and to Defendant within thirty (30) days of receiving the submission. The independent third-party adjudicator's decision shall be final and non-appealable.

8.4 To determine whether a Person has submitted a Valid Claim, Defendant is strictly bound by the terms of this Agreement. If Class Counsel contends that Defendant is not acting in accordance with the terms of this Agreement, including in the determination of Valid Claims, then Class Counsel will meet and confer with counsel for Defendant and, if necessary, with the Court. After the exhaustion of reasonable efforts to resolve any such dispute informally, Class Counsel may bring an appropriate motion before the Court.

8.5 All proceedings with respect to the administration, processing, and determination of claims described in this Agreement and the determination of all cases or controversies relating thereto, including disputed questions of law and fact with respect to whether any claim is a Valid Claim, are subject to the jurisdiction of the Court. All persons interested in such determinations submit to the personal jurisdiction of the Court.

8.6 Opt-Out Requests. Class Members may opt out of the Settlement by submitting an Opt-Out Request to the Notice Administrator that is postmarked no later than sixty (60) days following the Notice Date. To be valid, an Opt-Out Request must contain the name, company name (if applicable), address, email address, telephone number, and model/series number(s) of the Class Member's Watch(es), and a clear written statement as to the date of purchase of the Watch(es) and the retailer from which the Watch(es) were purchased. Each Class Member seeking exclusion from the Settlement must personally sign the Opt-Out Request. No Opt-Out Request may be signed electronically. No Class Member may opt out by a request signed by an actual or purported agent or attorney acting on behalf of a group of Class Members. No Opt-Out Request may be made on

behalf of a group of Class Members. Class Members who do not submit a timely, personally signed, valid Opt-Out Request will be bound by the Settlement and this Agreement, including the release of Released Claims. Class Members who timely submit a valid, personally signed Opt-Out Request will have no further role in this Settlement and will not be bound by this Agreement; accordingly, such Class Members will not be permitted to assert an objection to the Settlement or this Agreement and will receive no benefit described in Section VI of this Agreement. The Settlement Notice and the FAQ will advise Class Members of their ability to opt out of the Settlement and of the consequences of opting out of the Settlement. Neither the Parties nor their counsel will solicit any Class Member to submit an Opt-Out Request.

8.7 Objections. Class Members will have until sixty (60) days following the Notice Date to file with the Court and deliver copies to the Parties' Counsel (at the addresses set forth in this Agreement) an objection to the Settlement. Only Class Members who have not submitted an Opt-Out Request to the Notice Administrator may object to the Settlement. To object, a Class Member must timely file with the Court and deliver to the Parties' counsel a written objection and a notice of intent to appear at the Fairness Hearing, if the objector chooses to appear at the Fairness Hearing. The filing date of any written objection will be the exclusive means for determining the timeliness of an objection. The Settlement Notice, the FAQs, and the Preliminary Approval Order will set forth the procedures for submitting an objection. A written objection must state: (a) the full name, address, telephone number, and email address of the objector; (b) the model/series number(s) for the objector's Watch(es); (c) a clear written statement as to the date of purchase of the Watch(es) and the Lumondi Authorized Dealer, as listed on the Settlement Website, from which the Watch(es) were purchased; (d) a clear written statement of all grounds for the objection accompanied by any legal support for such objection; (e) copies of any papers, briefs, or other

documents on which the objection is based; (f) a list of all cases in which the objector and/or objector's counsel had filed or in any way participated in—financially or otherwise—an objection to a class action settlement in the preceding five years; (g) the name, address, email address, and telephone number of all attorneys representing the objector; (h) a statement indicating whether the objector and/or the objector's counsel intends to appear at the Fairness Hearing, and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and (i) the objector's signature. Class Members who fail to make objections in the manner specified in, and in full compliance with, this Section will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement or this Agreement (whether by appeal, collateral proceeding, or otherwise). Neither the Parties nor their counsel will encourage any Class Member to object.

IX. PAYMENTS TO NAMED PLAINTIFF

9.1 The Named Plaintiff is a member of the Settlement Class and may participate in the claims process described in Section VI of this Agreement to the same extent as Class Members.

9.2 Subject to approval by the Court, Defendant will also pay the Named Plaintiff a Service Award pursuant to the provisions of this Section. The Service Award will consist of a \$5,000 payment to the Named Plaintiff solely as compensation for his time and effort associated with his participation in this Lawsuit and assisting Plaintiff's Counsel in preparing and bringing the Lawsuit. This amount is not reimbursement or compensation for any alleged injuries, damages, or any other relief sought in the Lawsuit. Even though the Named Plaintiff has signed this Agreement and supports approval of the Settlement, payment of the amount specified in this Section is not contingent on such authorization and support for the Agreement. The Court's award of the Service Award to the Named Plaintiff shall be separate from and independent of the Court's determination of whether to approve the Settlement. If the Court declines to approve the

Settlement, no Service Award shall be awarded or paid to Named Plaintiff. Class Counsel will not seek payments for the Named Plaintiff in excess of the amount in this Section. The Parties did not negotiate or agree to this Section or any of its terms until after negotiating and agreeing to the substantive terms of the Settlement.

9.3 Defendant shall pay the Service Award to the Named Plaintiff, in care of Class Counsel, within ten (10) business days following the Effective Date or following the entry of a final, non-appealable order relating to Service Awards or to Attorneys' Fees and Expenses, whichever is later. Class Counsel shall provide Defendant a W9 form from Named Plaintiff in advance of the payment.

X. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

10.1 Class Counsel shall file a Fee Application for an award of Attorneys' Fees and Expenses no later than thirty (30) days prior to the Objection Deadline pursuant to Rule 23(h), Rule 54(d)(2), and the Court's Local Rules.

10.2 Lumondi agrees to pay, subject to Court approval, Attorneys' Fees and Expenses of up to a maximum of two hundred and two thousand, five hundred dollars (\$202,500). The Court's award of any attorneys' fees and expenses to Class Counsel shall be separate from and independent of the Court's determination of whether to approve the Settlement. If the Court declines to approve the Settlement, no award of attorneys' fees and expenses shall be awarded or paid to Class Counsel. The Parties have negotiated and reached agreement on the Attorneys' Fees and Expenses only after reaching agreement on all other material terms of Settlement in this matter.

10.3 Defendant has no liability or obligation with respect to any Attorneys' Fees and Expenses or the Service Award to the Named Plaintiff except as awarded by the Court. Class Counsel agree that upon payment to Class Counsel of any amounts awarded by the Court,

Defendant's obligations to Class Counsel with respect to any Attorneys' Fees and Expenses or the Service Award to the Named Plaintiff shall be fully satisfied and discharged. Allocation and sharing of the Attorneys' Fees and Expenses as between Class Counsel shall be the sole responsibility and obligation of Class Counsel. The Parties agree that the award of Attorneys' Fees and Expenses, not to exceed two hundred and two thousand, five hundred dollars (\$202,500) constitutes Defendant's all-inclusive full payment for any and all attorneys' fees and expenses in relation to the Lawsuit, the Settlement and releases provided herein.

10.4 It is not a condition of the Settlement or this Agreement that the Court award any particular amount of Attorneys' Fees and Expenses up to a maximum of two hundred and two thousand, five hundred dollars (\$202,500) or any particular amount as a Service Award to the Class Representative up to a maximum of five thousand dollars (\$5,000).

10.5 Defendant shall pay the award of Attorneys' Fees and Expenses, as determined by the Court, to Class Counsel, care of Goldenberg Schneider, LPA, within ten (10) business days following the Effective Date or following the entry of a final, non-appealable order relating to the Attorneys' Fees and Expenses and Service Award, whichever is later. Class Counsel shall provide Defendant W9 forms from Class Counsel in advance of the payment.

XI. RELEASES

11.1 Class Members who do not timely and validly exclude themselves from the Settlement forever release and discharge the Released Parties from any and all claims, actions, causes of action, counterclaims, demands (including, without limitation, demands for arbitration), actions, suits, causes of action, allegations of wrongdoing, liabilities, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer

fraud, breach of fiduciary duty, unfair business or trade practices, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys' fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal law, state law, common law, or local law, which the Named Plaintiff and/or any Class Member had, have, or may in the future have, with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences relating to or arising out of the Fogging Issue, defined as fogging of the inside of the watch crystal after the watch has been exposed to a significant temperature decrease to below approximately 40 degrees Fahrenheit or exposed to temperatures above approximately 90 degrees Fahrenheit, and which persists for more than 20 minutes after the watch is returned to room temperature as asserted, or as could have been asserted in the Litigation or any other proceedings, and that are based on the same factual predicate asserted in the Class Action Complaint filed in the Litigation, including via the use of a class action procedural device by the Named Plaintiffs and/or Class Members whether at law or equity, against Defendant and all of the Releasees for injunctive relief, declaratory relief, and economic injury or damages. Notwithstanding the forgoing, the Release does not include claims for personal injury/ injuries.

11.2 By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, and assuming there are no appeals, the Lawsuit shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties. The Final Approval Order shall provide for and effect the full and final release by Class Members of all Released Claims. In the case of one or more appeals, all Released Claims shall be

conclusively settled, compromised, satisfied, and released as to the Released Parties upon the Effective Date.

11.3 Plaintiffs and Class Members knowingly and voluntarily waive Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred on them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States or territories, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Plaintiffs and Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release given by Plaintiffs and Class Members to the Released Parties shall be and remain in effect as a full and complete general release of all claims notwithstanding the discovery or existence of any such additional different claims or facts.

11.4 Named Plaintiff expressly consents that this release shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or causes of action as referenced above. Named Plaintiff acknowledges and agrees that this waiver is an essential and material term of this release and the compromise settlement that led to it, and that without this waiver the compromise

settlement would not have been accomplished. Named Plaintiff has been advised by his attorney with respect to this waiver and, being of competent mind, understands and acknowledges its significance.

11.5 Each Party expressly accepts and assumes the risk that, if facts with respect to matters covered by this Agreement are found to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective. It is understood and agreed that this Agreement shall constitute a general release and shall be effective as a full and final accord and satisfaction and is a bar to all actions, causes of action, costs, expenses, attorney fees, damages, claims, and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.

XII. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

12.1 Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

12.2 None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

12.3 Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.

12.4 Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.

12.5 Each term of this Agreement is contractual and not merely a recital.

XIII. MISCELLANEOUS PROVISIONS

13.1 Extensions of Time. Unless otherwise ordered by the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement and Settlement.

13.2 Default or Breach. Defendant represents that it will make good-faith efforts to meet the various deadlines that apply to them under this Agreement. Defendant's failure, for any reason, to meet any applicable deadline shall not constitute a default or breach of this Agreement without formal, written notice by Class Counsel and without a reasonable opportunity for Defendant to cure the claimed default or breach. If Class Counsel maintain that any action or inaction constitutes a default or breach of this Agreement, then the Settling Parties shall meet and confer. If reasonable efforts do not cure any claimed default or breach after a reasonable period of time, only then may a Settling Party involve the Court. The waiver by Plaintiffs of any default or breach of this Agreement shall not be deemed a waiver of any other claimed default or breach by Defendant.

13.3 Publicity or Media Inquiries about the Settlement. The Parties and their counsel shall not hold any press conference or make any press release regarding the Settlement except through the notice process approved by the Court. The Parties may make such disclosures as may be required to the Court, on websites as specified in the Notice Plan, and as may be required by law or to submit to a government agency, or as may be necessary for financial purposes (including without limitation, tax or audit), or to respond to inquiries by Class Members relating to the Settlement. To the extent any Party or their counsel desires to make any other statement regarding

the settlement, such statement must be mutually agreed upon by the Parties and their counsel prior to any such statement being made, the consent of which shall not be unreasonably withheld. In connection with any media inquiry or publicity concerning this Settlement, the Parties' and their counsel's statements will be limited to statements contained within the Settlement Notice. Defendant may continue to respond to inquiries and make statements regarding the quality, safety, and performance of its products. Where appropriate, the Parties and their counsel will direct Persons in response to inquiries to the Settlement Website.

13.4 Future Communication with Class Members. Immediately following Preliminary Approval, neither Lumondi, nor any of its repair agents, will communicate to Class Members any information that is inconsistent with the Settlement or communicate any information to Class Members to dissuade or discourage them from seeking the benefits offered by the Settlement.

13.5 Non-Disparagement. To the extent permitted by law and the applicable rules of professional conduct, the Settlement is conditioned on the agreement of Plaintiffs and their attorneys not to disparage Defendant or its products or warranty services regarding the subject matters of the Lawsuit. The foregoing shall not restrict the ability of Class Counsel to perform their responsibilities to absent Class Members in connection with settlement approval proceedings, nor shall it restrict Class Counsel's responsibilities to respond to orders of any court or other legal obligations or restrict Class Counsel's ability to support their Application for Fees and Expenses. This provision shall not be interpreted to interfere with or limit any rights or obligations under the applicable rules of professional conduct or to extend to any matter that is unrelated to the subject matters of the Lawsuit.

13.6 Confidentiality. All orders entered or agreements made during the course of the Lawsuit relating to the confidentiality of documents or information shall survive this Agreement.

13.7 Exhibits. All of the exhibits or attachments to this Agreement are material and integral parts of this Agreement and are incorporated by reference as if fully set forth here.

13.8 Severability. With the exception of the provision for Attorneys' Fees and Expenses to Class Counsel and the Service Award to the Named Plaintiff pursuant to Sections IX and X of this Agreement, none of the terms of this Agreement is severable from the others. If the Court or a court of appeals should rule that any term is void, illegal, or unenforceable for any reason, however, Defendant, in its sole discretion, and the Named Plaintiff, in his sole discretion (but acting in accord with his duties and obligations as Class Representative of the Settlement Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions approved by the Court.

13.9 Entire Agreement of the Parties. This Agreement constitutes and comprises the entire agreement between the Parties concerning the Settlement. No representations, warranties, or inducements have been made by any Party concerning the Settlement or this Agreement other than those contained and memorialized in this Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions concerning resolution of the Lawsuit. It may be amended only by an agreement in writing, signed by the Parties.

13.10 Binding on Agents, Successors, and Assigns. This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

13.11 Reservation of Rights. This Agreement is made without prejudice to the rights of Defendant to oppose class certification in the Lawsuit should the Effective Date not occur.

13.12 Third-Party Beneficiaries. All Released Parties other than the signatories to this Agreement are intended to be third-party beneficiaries of this Agreement.

13.13 Taxes. Members of the Settlement Class, Named Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes that may be due, if any, on account of any payment or benefit conferred pursuant to this Agreement.

13.14 Cooperation in Implementation. Defendant, Named Plaintiff, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

13.15 Proposed Settlement Implementation and Due Diligence. All of the information provided by Class Members to the Notice Administrator, Lumondi, and/or the Authorized Luminox Service Center pursuant to this Settlement shall be provided to Class Counsel and Defendant, if requested. Further, Class Counsel has the right to request and receive any information necessary to verify compliance with the terms of the Settlement, including Class Counsel's right to audit Extended Warranty Claims and Replacement Watch Claims.

13.16 Notices. Any formal or informal notices provided for, required by, or relating to this Agreement shall be provided to:

For Plaintiff and the Settlement Class:

GOLDENBERG SCHNEIDER, LPA

/s/ Jeffrey S. Goldenberg

4445 Lake Forest Drive, Suite 490

Cincinnati, Ohio 45242

(513) 345-8291

jgoldenberg@gs-legal.com

LAW OFFICES OF SEAN K. COLLINS

/s/ Sean K. Collins

184 High Street, Suite 503

Boston, Massachusetts 02110
(855) 693-9256
sean@neinsurancelaw.com

For Defendant:

CULHANE MEADOWS, PLLC

/s/ Mishell B. Kneeland
National Litigation Support Center
13101 Preston Road, Ste. 110-1510
Dallas, Texas 75240
(512) 910-5463
mkneeland@cm.com

13.17 Governing Law. This Agreement shall be construed and governed in accordance with federal procedural law and the substantive laws of the State of New York, without regard to New York's conflict-of-laws principles.

13.18 Jurisdiction. Without affecting the finality of any order, the Court shall retain jurisdiction over the Parties and the Agreement with respect to implementation and enforcement the terms of the Settlement. All Settling Parties and Class Members submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement and this Agreement and all related matters.

13.19 No Drafter. None of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement or any part of it for purposes of any rule of construction or interpretation.

13.20 Construction. This Agreement shall not be construed more strictly against one Party than another, or in favor of one Party or another, merely by virtue of the fact that it or any part of it may have been prepared by counsel for one of the Parties. This Agreement and each part of it is the result of arm's-length negotiations among the Parties.

13.21 Counterparts. This Agreement may be executed in counterparts, including signature transmitted by facsimile or in PDF format. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

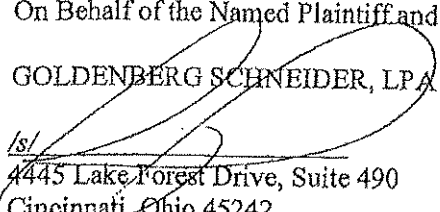
13.22 Signature. By signing, Class Counsel represent and warrant that Plaintiff Scott Biddick has approved and agreed to be bound by this settlement. By signing, all counsel and any other person signing this Agreement represent and warrant that they have full authority to do so and that they have the authority to take appropriate action to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by itself or by its duly authorized counsel of record or representative.

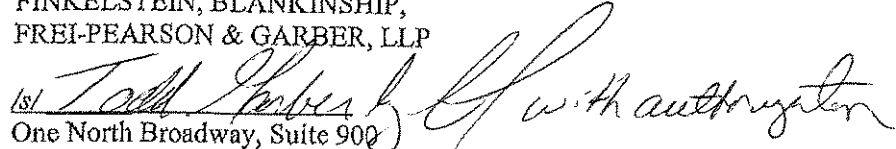
[Signature Pages to Follow]

On Behalf of the Named Plaintiff and the Settlement Class:

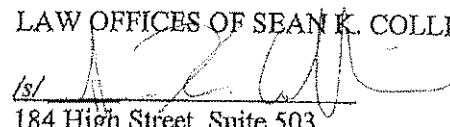
GOLDENBERG SCHNEIDER, LPA

/s/ 
4445 Lake Forest Drive, Suite 490
Cincinnati, Ohio 45242
(513) 345-8291
jgoldenberg@gs-legal.com

FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP

/s/  with authorization
One North Broadway, Suite 900
White Plains, NY 10601
(914) 298-3283
tgarber@fbfglaw.com

LAW OFFICES OF SEAN K. COLLINS

/s/ 
184 High Street, Suite 503
Boston, Massachusetts 02110
(855) 693-9256
sean@neinsurancelaw.com

On Behalf of Defendant:



By: Luis Sole
CEO, Lumondi Inc.

Approved as to Form

CULHANE MEADOWS, PLLC

/s/ 

By: Mishell B. Kneeland
National Litigation Support Center
13101 Preston Road, Ste. 110-1510
Dallas, Texas 75240
(512) 910-5463
mkneeland@cm.com