

1 **BURSOR & FISHER, P.A.**

2 L. Timothy Fisher (State Bar No. 191626)

3 1990 North California Blvd., Suite 940

4 Walnut Creek, CA 94596

5 Telephone: (925) 300-4455

6 Facsimile: (925) 407-2700

7 E-Mail: ltfisher@bursor.com

8 *Attorneys for Plaintiffs*

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 IMANI WHITFIELD, SHAWANNA McCOY,
14 and JOSEY PARSONS AUGHTMAN, on behalf
15 of themselves and all others similarly situated,

16 Plaintiffs,

17 v.

18 YES TO, INC.,

19 Defendant.

20 Case No. 2:20-cv-00763-AB-AS

21 **STIPULATION OF SETTLEMENT**
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1 This Stipulation of Settlement (the “Stipulation”) is made by Imani Whitfield, Shawanna
2 McCoy, and Josey Parsons Aughtman (the “Plaintiffs” or “Class Representatives”), on behalf of
3 themselves and the Settlement Class (defined below), on the one hand, and Defendant Yes To, Inc.
4 (hereinafter “Defendant”), on the other hand, (collectively referred to as the “Parties”) subject to and
5 conditioned upon Court approval of the terms and conditions hereof.

6 **RECITALS**

7 A. On January 24, 2020, Plaintiff Imani Whitfield commenced an action entitled
8 *Whitfield v. Yes To, Inc.* (United States District Court, Central District of California, Case No. 2:20-
9 cv-763) (the “Action”), as a proposed class action, asserting claims for breach of express warranty,
10 breach of implied warranty, violation of Pennsylvania’s Unfair Trade Practices and Consumer
11 Protection Law, 73 P.S. §§ 201-1, *et seq.* (“UTPCPL”), fraudulent concealment, fraud, unjust
12 enrichment, and conversion. Plaintiff alleges, *inter alia*, that Defendant manufactured and sold a
13 defective product known as the “Yes To Grapefruit Vitamin C Glow-Boosting Unicorn Paper
14 Mask,” which was sold both as a standalone product and bundled with other products (“Unicorn
15 Mask”). Plaintiff alleges that the Unicorn Mask caused skin irritation and/or burns to her face.

16 B. On February 19, 2020, Plaintiffs Imani Whitfield and Shawanna McCoy filed a First
17 Amended Complaint (“FAC”) asserting the same allegations that the Unicorn Mask caused facial
18 irritation and/or burns, and advanced the same claims, adding causes of action for violation of
19 California’s Consumers Legal Remedies Act (“CLRA”) (injunctive relief), Cal Civ. Code §1750, *et*
20 *seq.*, California’s False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.* (the “FAL”), and
21 violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200. Dkt. No. 9.

22 C. On March 20, 2020, Plaintiffs Imani Whitfield and Shawanna McCoy filed a Second
23 Amended Complaint (“SAC”) asserting the same claims and adding a prayer for damages for the
24 CLRA claim. Dkt. No. 20.

25 D. On March 17, 2020, the *Whitfield* action was consolidated with the related *Aughtman*
26 *v. Yes To, Inc.* (United States District Court, Central District of California, Case No. 2:20-cv-01223-
27 AB-AS) action. Dkt. No. 19.

28 E. On May 15, 2020, Plaintiffs Imani Whitfield, Shawanna McCoy, and Josey Parsons

1 Aughtman filed a Consolidated Class Action Complaint (“CCAC”) asserting the same claims for
2 relief as in the Complaint, FAC and SAC. Dkt No. 23.

3 F. Defendant answered the CCAC on June 12, 2020, denying liability. Dkt. No. 25.

4 G. The Parties then began engaging in fact discovery. Plaintiffs propounded requests
5 for production of documents.

6 H. Class Counsel (defined below) conducted an examination and investigation of the
7 facts and law relating to the matters alleged in this Action, including, but not limited to, engaging in
8 discovery, review and analysis of Defendant’s documents and data. Class Counsel also evaluated
9 the merits of the Parties’ contentions and evaluated this Settlement, as it affects all parties, including
10 Settlement Class Members. The Class Representatives and Class Counsel, after taking into account
11 the foregoing, along with the risks and costs of further litigation, and the desire to provide prompt
12 and effective relief to the Settlement Class Members, represent that they are satisfied that the terms
13 and conditions of this Settlement are fair, reasonable, and adequate, and that this Settlement is in the
14 best interest of the Settlement Class Members (defined below).

15 I. Defendant has expressly denied and continues to deny all claims, contentions and
16 charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts
17 and/or omissions alleged, or that could have been alleged in the Action. Defendant likewise denies
18 that the current action could be certified as one or more classes for litigation purposes.
19 Notwithstanding their denial of all allegations of wrongdoing and all liability with respect to all
20 claims, Defendant considers it desirable to resolve the action to avoid further expense,
21 inconvenience, and burden, and therefore have determined that this settlement on the terms set forth
22 herein is appropriate. Neither the Stipulation nor any actions taken to carry out the Settlement are
23 intended to be, nor may they be deemed or construed to be, an admission or concession of liability,
24 or of the validity of any claim, defense, or of any point of fact or law on the part of any party.
25 Defendant denies the material allegations of all complaints in this action, including the CCAC.
26 Neither the Stipulation, nor the fact of settlement, nor settlement proceedings, nor the settlement
27 negotiations, nor any related document, shall be used as an admission of any fault or omission by
28 Defendant, an admission of fact or law, or be offered or received in evidence as an admission,

1 concession, presumption, or inference of any wrongdoing by Defendant in any proceeding.

2 J. Substantial settlement negotiations have taken place between the Parties. In addition
3 to informal settlement discussions, on November 11, 2020, the Parties attended a virtual mediation
4 with Jill Sperber Esq. of Judicate West. After a full day of mediation, the Parties were able to reach
5 a resolution.

6 K. In consultation with their respective legal counsel and in consideration of the
7 covenants and agreements set forth herein, and of the releases and dismissals of claims as described
8 below, and other good and valuable consideration, the receipt and sufficiency of which hereby is
9 acknowledged by each of the Parties, the Class Representatives and in consultation with their
10 respective legal counsel, on behalf of themselves and the Settlement Class Members, and Defendant
11 agree for settlement purposes only to the Settlement described herein, subject to Court approval,
12 under the following terms and conditions:

13 **I. DEFINITIONS**

14 1.1 “Claim Form” means the document to be submitted by Settlement Class Members
15 seeking cash payment pursuant to this Stipulation. The Claim Form will be available online at the
16 Settlement Website (defined below) and the contents of the Claim Form will be approved by the
17 Court. The Parties shall request the Court approve the Claim Form substantially in the form
18 attached hereto and made a part hereof as Exhibit A.

19 1.2 “Claimant” means a Settlement Class Member who submits a claim for cash
20 payment as described in Section II of this Stipulation.

21 1.3 “Class Counsel” means the law firms of Bursor & Fisher, P.A., Milstein Jackson
22 Fairchild & Wade, LLP, and Golomb & Honik, P.C.

23 1.4 “Class Notice” means the Court-approved notice plan described in Section IV below.

24 1.5 “Class Representatives” means Plaintiffs Imani Whitfield, Shawanna McCoy, and
25 Josey Parsons Aughtman.

26 1.6 “Court” means the United States District Court, Central District of California.

27 1.7 “Defendant’s Counsel” means the law firm of Troutman Pepper Hamilton Sanders
28 LLP.

1 1.8 “District Court Final Approval Date” means the day on which the Court’s Settlement
2 Approval Order and Final Judgment (defined below) is entered.

3 1.9 “Fee and Expense Award” means the amount that may be awarded to Class Counsel
4 by the Court for attorneys’ fees, costs, and expenses.

5 1.10 “Final Settlement Approval Date” means the later of thirty (35) days after entry of
6 the Settlement Approval Order and Final Judgment or expiration of the time to appeal from the
7 Settlement Approval Order and Final Judgment without any appeal being taken, or if an appeal or
8 request for review (including but not limited to a request for reconsideration or rehearing, or a
9 petition for a writ of certiorari) has been taken, the date on which the Settlement Approval Order
10 and Final Judgment has been affirmed by the court of last resort to which an appeal or request for
11 review has been taken and such affirmance is no longer subject to further appeal or review, or the
12 date of denial of review after exhaustion of all appellate remedies.

13 1.11 “Incentive Award” means any award not to exceed \$5,000 per Plaintiff (\$15,000
14 total), sought by application to and approved by the Court that may be payable to the Class
15 Representatives from the Settlement Fund.

16 1.12 “Long Form Notice” means the Court-approved long form of notice to be posted to
17 the Settlement Website (defined below), pursuant to the Media Plan (defined below). The Parties
18 shall request the Court approve the Long Form Notice substantially in the form attached hereto and
19 made a part hereof as Exhibit B.

20 1.13 “Media Plan” means the Settlement Administrator’s plan to disseminate Class Notice
21 to Settlement Class Members. The Media Plan will be designed to reach no fewer than seventy-five
22 (75) percent of the Settlement Class Members and will be created with the collaboration and
23 approval of Yes To.

24 1.14 “Notice and Other Administrative Costs” means all costs and expenses actually
25 incurred by the Settlement Administrator (defined below) in the publication of Class Notice,
26 establishment of the Settlement Website (defined below) and the processing, handling, reviewing,
27 and paying of claims made by Claimants.

28 1.15 “Parties” means Plaintiffs Imani Whitfield, Shawanna McCoy, Josey Parsons

1 Aughtman and Defendant Yes To, Inc.

2 1.16 “Preliminary Approval” means that the Court has entered an order preliminarily
3 approving the terms and conditions of this Stipulation, including the manner of providing and
4 content of notice to Settlement Class Members. The Parties shall request the Court to enter the
5 proposed Preliminary Settlement Approval Order substantially in the form attached hereto and
6 made a part hereof as Exhibit C.

7 1.17 “Preliminary Approval Date” means the date on which the Court enters an Order
8 granting Preliminary Approval.

9 1.18 “Released Persons” means and includes Defendant, Travelers Indemnity Company
10 of Connecticut, Travelers Property Casualty Company of America, and any and all manufacturers,
11 suppliers, and retailers of the Unicorn Mask, and each of their past and present respective parents,
12 subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control
13 in the past or in the present, as well as their respective assignors, predecessors, successors, and
14 assigns, and all past or present partners, shareholders, managers, members, directors, officers,
15 employees, agents, attorneys, insurers, accountants, and representatives of any and all of the
16 foregoing.

17 1.19 “Settlement Administrator” means Heffler Claims Group and its successors and
18 assigns.

19 1.20 “Settlement Class Members” or “Settlement Class” means:

20 All persons in the United States who purchased or used the Yes To
21 Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask.
22 Excluded from this definition are the Released Persons, any person
23 or entity that purchased the Yes To Grapefruit Vitamin C Glow-
24 Boosting Unicorn Paper Mask for purposes of resale and not for
his/her/its own consumption (i.e., “Resellers”), and any judicial
officer assigned to this case.

25 1.21 “Settlement Fund” means the total commitment of Defendant for purposes of this
26 settlement, as described in Section II of this Stipulation, with a total value of \$750,000.00, paid by
27 Defendant for purposes of effectuating the settlement of this Action, the payment and disposition of
28 which is subject to the provisions of this Stipulation, including paragraphs 2.4, 2.5, 2.6, 2.7, 2.8, 2.9,

1 3.1, and 3.2, below.

2 1.22 “Settlement Approval Order and Final Judgment” means an order and judgment
3 issued and entered by the Court, approving this Stipulation as binding upon the Parties and the
4 Settlement Class Members and dismissing the Action with prejudice, and setting the amount for an
5 award of attorneys’ fees not to exceed one-third of the total \$750,000.00 value of the Settlement
6 Fund, plus any award of costs and expenses, to Class Counsel as determined by the Court. The
7 Settlement Approval Order and Final Judgment shall constitute a judgment within the meaning and
8 for purposes of Rule 54 of the Federal Rules of Civil Procedure. The Parties shall request the Court
9 to enter the proposed Settlement Approval Order and Final Judgment substantially in the form
10 attached hereto and made a part hereof as Exhibit D.

11 1.23 “Settlement Website” means a website operated and maintained by the Settlement
12 Administrator solely for purposes of making available to the Settlement Class Members the
13 documents, information, and online claims submission process referenced in paragraphs 2.4 through
14 2.6 below.

15 1.24 “Short Form Notice” means the Court-approved form of notice for publication to
16 Settlement Class Members, pursuant to the Media Plan. The Parties shall request the Court approve
17 the Short Form Notice substantially in the form attached hereto and made a part hereof as Exhibit E.

18 1.25 As used herein, the plural of any defined term includes the singular thereof and the
19 singular of any defined term includes the plural thereof, as the case may be.

20 **II. SETTLEMENT CONSIDERATION**

21 2.1 Benefit to Settlement Class Members from the Settlement Fund. The Settlement
22 Fund will be used to provide benefits to or on behalf of the Settlement Class. Defendant will
23 contribute \$750,000.00 for payment of the following: (i) valid claims for benefits submitted by
24 Settlement Class Members pursuant to paragraph 2.4 below; (ii) the Notice and Other
25 Administrative Costs actually incurred by the Settlement Administrator as described in paragraph
26 4.5 below; (iii) the Fee and Expense Award, as may be ordered by the Court and as described in
27 paragraph 3.1 below, and (iv) any Incentive Award to the Class Representatives, not to exceed
28 \$5,000 per Plaintiff as may be ordered by the Court and as described in paragraph 3.2 below.

1 2.2 Total Financial Commitment. Defendant and its insurer’s total financial
2 commitment and obligation under this Stipulation, subject to Court approval, shall not exceed
3 \$750,000.00.

4 2.3 Schedule of Payments into Settlement Fund. Defendant or its insurer shall make
5 payments into the Settlement Fund in accordance with the following schedule:

6 a. *Notice and Other Administrative Costs.* Amounts equal to the cost of
7 publishing the Class Notice and other administrative costs, to be paid within thirty (30) days of
8 when such amounts are invoiced to Defendant for work completed and become due and owing.

9 b. *Fee and Expense Award.* An amount equal to the Fee and Expense Award, to
10 be paid as described at paragraph 3.1, below.

11 c. *Incentive Award.* An amount equal to any Incentive Award, not to exceed
12 \$5,000 per Plaintiff (\$15,000 total), as may be ordered by the Court and as described at paragraph
13 3.2, below.

14 d. *Payment of Valid Claims.* An amount equal to \$750,000, less the sum of (i)
15 the total Notice and Other Administrative Costs, (ii) the Fee and Expense Award, and (iii) the
16 Incentive Award, which amount is to be paid to the Settlement Administrator within ten (10) days
17 of the Final Settlement Approval Date.

18 2.4 Claims Process. Each Settlement Class Member shall be entitled to submit a claim
19 for reimbursement, consistent with this paragraph.

20 a. *Cash Payment.* Each Settlement Class Member may submit a claim, either
21 electronically through a settlement website or by mail, for each of the Yes To Grapefruit Vitamin C
22 Glow-Boosting Unicorn Paper Mask products he, or she, purchased or used, provided such claim
23 includes attestation to the purchase(s) or use under penalty of perjury. Reimbursements will be
24 made for \$3.00 to each Settlement Class Member who submits a valid claim. A Settlement Class
25 Member’s claim for reimbursement pursuant to this paragraph shall be considered a “Claim.” The
26 amount payable to each Settlement Class Member making a valid Claim shall be determined by the
27 Settlement Administrator. If the amount of cash available for the Settlement Fund is insufficient to
28 pay all valid Settlement Class Member Claims, individual payment amounts for Claims shall be

1 reduced on a pro-rata basis as described in paragraph 2.7 below. If the amount of cash available
2 from the Settlement Fund is more than the total cash value of valid Claims, cash payments will be
3 increased on a pro-rata basis, such that the Settlement Fund will be completely exhausted.

4 b. *Payment from Fund.* Claims will be paid, after the Claim Period Close Date
5 (as defined in paragraph 2.6) and after the Final Settlement Approval Date, whichever is later, from
6 the Settlement Fund. Claims will be paid from the amount of the Settlement Fund remaining after
7 payment of the Fee and Expense Award, Notice and Other Administrative Costs, and the Incentive
8 Award.

9 2.5 Proof of Claim. Claims for Yes To Grapefruit Vitamin C Glow-Boosting Unicorn
10 Paper Mask products purchased will be paid without submission of proof of purchase. A Claimant
11 must include information in the Claim Form – completed online or in hard copy mailed to the
12 Settlement Administrator – confirming under penalty of perjury that they purchased or used at least
13 one unit of the Yes To Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask products in the
14 United States.

15 2.6 Review of Claims. The Settlement Administrator shall be responsible for reviewing
16 all claims to determine their validity. The Settlement Administrator shall reject any claim that does
17 not comply in any material respect with the instructions on the Claim Form or the terms of
18 paragraphs 2.4 and 2.5, above, or is submitted after the close of the claim period set by the Court
19 (“Claim Period Close Date”). The Settlement Administrator shall promptly inform the Parties as
20 soon as the number of valid opt-outs equals or exceeds fifty (50) individuals (if at all).

21 2.7 Pro-Rata Distribution of Benefits. Receipt of total valid Settlement Class Member
22 Claims, determined in accordance with paragraphs 2.4 and 2.5 above, exceeding the available
23 portion of the Settlement Fund (after payment of the Fee and Expense Award, Notice and Other
24 Administrative Costs, and the Incentive Award) will reduce the cash payout for each class member
25 on a pro rata basis. Similarly, receipt of total valid Settlement Class Member Claims less than the
26 available portion of the Settlement Fund (after payment of the Fee and Expense Award, Notice and
27 Other Administrative Costs, and the Incentive Award) will increase the cash payout for each class
28 member on a pro rata basis.

1 2.8 Uncleared Checks. Those Settlement Class Members whose cash benefit checks are
2 not cleared within one hundred eighty (180) days after issuance shall be ineligible to receive a cash
3 settlement benefit and Defendant shall have no further obligation to make any payment pursuant to
4 this Stipulation or otherwise to such Settlement Class Members. All unpaid funds from uncleared
5 checks shall remain in the Settlement Fund pending further order of the Court. Class Counsel shall
6 make an application to the Court to seek approval for a proposed disposition of the unpaid funds
7 from uncleared checks.

8 2.9 Notice to Attorneys General. Not later than ten (10) days after the Motion for
9 Preliminary Approval of the Settlement is filed in court, the Settlement Administrator shall provide
10 notice of the proposed class action settlement to the appropriate state officials (i.e. each state
11 attorney general) and the Attorney General of the United States pursuant to 28 U.S.C. § 1715, and
12 the costs of such notice shall be paid from the Settlement Fund.

13 **III. CLASS COUNSEL ATTORNEYS' FEES AND EXPENSES AND CLASS**
14 **REPRESENTATIVE INCENTIVE AWARD**

15 3.1 Attorneys' Fees, Costs and Expenses. Class Counsel shall apply to the Court for
16 payment of an award of attorneys' fees, of up to one-third of the total \$750,000.00 value of the
17 Settlement Fund. Class Counsel shall also apply separately for an award of their costs and
18 expenses from the Settlement Fund. Such fees, costs and expenses, if approved by the Court, shall
19 be payable within 30 days following the District Court's fee award, which shall under no
20 circumstances occur prior to the Settlement Approval Order and Final Judgment, subject to Class
21 Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking")
22 attached hereto as Exhibit F, and providing all payment routing information and tax I.D. numbers
23 for Class Counsel. Notwithstanding the foregoing, if the final Settlement Approval Order and
24 Final Judgment or any part of it is vacated, overturned, reversed, or rendered void or unenforceable
25 as a result of an appeal, or the Stipulation is voided, rescinded, or otherwise terminated for any
26 other reason, then Class Counsel shall, within thirty (30) days, repay to Defendant the full amount
27 of the attorneys' fees and costs paid by Defendant to Class Counsel. In such event, the following
28 persons shall be jointly and severally liable for the return of such payments: (a) Bursor & Fisher,

1 P.A., (b) Milstein Jackson Fairchild & Wade, LLP, and (c) Golomb & Honik. To effectuate this
2 provision, Bursor & Fisher, P.A., Milstein Jackson Fairchild & Wade, LLP, and Golomb & Honik
3 shall, within ten (10) calendar days of the Preliminary Approval Order, execute and deliver to
4 Defendant the Undertaking in the form attached as Exhibit F.

5 3.2 Incentive Award. Class Counsel will petition the Court for approval of an Incentive
6 Award payable to the Class Representatives in an amount not to exceed \$5,000 per Plaintiff
7 (\$15,000 total). Defendant shall pay such award by wire transfer or check to Class Counsel within
8 thirty-five (35) calendar days after the Final Settlement Approval Date.

9 **IV. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT**

10 4.1 Class Notice. The Class Notice shall consist of the Long Form Notice and the Short
11 Form Notice. The Class Notice shall conform to all applicable requirements of the Federal Rules
12 of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any
13 other applicable law, and shall otherwise be in the manner and form approved by the Court. Class
14 notice and claims administration will be provided by Heffler Claims Group with a media plan
15 designed to achieve no less than seventy-five (75) percent reach.

16 4.2 General Notice Terms. The Class Notice shall:

- 17 a. inform Settlement Class Members that, if they do not exclude themselves
18 from the Class, they may be eligible to receive the relief under the proposed settlement;
- 19 b. contain a short, plain statement of the background of the Action, the class
20 certification and the proposed settlement;
- 21 c. describe the proposed settlement relief outlined in this Stipulation; and
22 d. state that any relief to Settlement Class Members is contingent on the
23 Court's final approval of the proposed settlement.

24 4.3 Notice of Exclusion and Objection Rights. The Class Notice shall inform
25 Settlement Class Members of their rights to exclude themselves from the Class or object to the
26 proposed settlement, as described in paragraph 5.3 below. The Class Notice shall further inform
27 Settlement Class Members that any judgment entered in the Action, whether favorable or
28 unfavorable to the Class, shall include, and be binding on, all Settlement Class Members who have

1 not been excluded from the Class, even if they have objected to the proposed settlement and even if
2 they have any other claim, lawsuit or proceeding pending against Defendant.

3 4.4 Time and Manner of Notice. Class Notice shall be provided as set forth in the
4 Media Plan; media delivery of Class Notice shall be completed within forty-five (45) days after the
5 Preliminary Approval Date.

6 4.5. Responsibilities of Settlement Administrator. The Parties will retain Heffler Claims
7 Group to help implement the terms of the proposed Stipulation. The Settlement Administrator
8 shall be responsible for administrative tasks, including, without limitation, (a) notifying the
9 appropriate state and federal officials about the settlement, (b) arranging for distribution of Class
10 Notice (in the form approved by the Court) and Claim Forms (in a form ordered by the Court) to
11 Settlement Class Members, (c) handling inquiries from Settlement Class Members and/or
12 forwarding such written inquiries to Class Counsel and Defendant's Counsel, (d) receiving and
13 maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence
14 regarding requests for exclusion from the settlement, (e) establishing the Settlement Website that
15 posts notices, Claim Forms and other related documents, (f) receiving and processing claims and
16 distributing payments to Settlement Class Members, and (g) otherwise assisting with
17 implementation and administration of the Stipulation terms. The actual costs and expenses of the
18 Settlement Administrator, which are referred to as the Notice and Other Administrative Costs, will
19 be paid from the Settlement Fund.

20 4.6. Performance Standards of Settlement Administrator. The contract with the
21 Settlement Administrator shall obligate the Settlement Administrator to abide by the following
22 performance standards:

23 a. The Settlement Administrator shall accurately and neutrally describe, and
24 shall train and instruct its employees and agents to accurately and objectively describe, the
25 provisions of this Stipulation in communications with Settlement Class Members;

26 b. The Settlement Administrator shall, when necessary, provide prompt,
27 accurate and objective responses to inquiries from Class Counsel or their designee, Defendant
28 and/or Defendant's Counsel, and shall report no less than bi-weekly on claims, objectors,

1 exclusions, and related matters.

2 c. The Settlement Administrator shall seek clarification, instruction or
3 authorization for performance of its duties and expenditure or disposition of cash from both Class
4 Counsel and their designee and from Defendant's and/or Defendant's Counsel or their designee.

5 **V. CLASS SETTLEMENT PROCEDURES**

6 5.1 Settlement Approval. As soon as practical after the signing of this Stipulation, the
7 Class Representatives shall move for a certification of a nationwide class for settlement purposes
8 only and Preliminary Approval Order, conditionally certifying the nationwide Settlement Class,
9 preliminarily approving the terms and conditions of this Stipulation as fair, reasonable, and
10 adequate, and in the best interests of the Settlement Class Members, approving notice to the
11 Settlement Class Members as described in Section IV above, and setting a hearing to consider final
12 approval of the Settlement and any objections thereto.

13 5.2 Settlement Approval Order and Final Judgment. At or before the final approval
14 hearing, the Class Representatives shall move for entry of a Settlement Approval Order and Final
15 Judgment substantially in the form as that attached hereto and made a part hereof as Exhibit D,
16 granting final approval of this Settlement and holding this Stipulation to be fair, reasonable, and
17 adequate, and in the best interests of the Settlement Class Members, and binding (as of the Final
18 Settlement Approval Date) on all Settlement Class Members who have not excluded themselves as
19 provided below, and ordering that the Settlement relief be provided as set forth in this Stipulation,
20 ordering the releases as set forth in Section VI below to be effective on the Final Settlement
21 Approval Date, and entering judgment in the Action.

22 5.3 Exclusions and Objections. The Class Notice shall advise all Settlement Class
23 Members of their right: (a) to be excluded from the Settlement, or (b) to object to the Settlement.
24 If, within such time as is ordered by the Court and contained in the Class Notice, any Settlement
25 Class Member wishes to be excluded from the Settlement, he or she must do so by timely mailing a
26 valid opt-out notice, as described in the Class Notice. Any Settlement Class Member who timely
27 elects to opt out of the Settlement shall not be permitted to object to the Settlement. Persons falling
28 within the definition of the Settlement Class who validly and timely request exclusion from the

1 Settlement effected by this Stipulation, pursuant to the procedures set forth in this paragraph, shall
2 not be Settlement Class Members, shall not be bound by this Stipulation and shall not be eligible to
3 make a claim for any benefit under the terms of this Stipulation.

4 5.4 At least seven (7) calendar days prior to the final approval hearing, Class Counsel
5 shall prepare or cause the Settlement Administrator to prepare a list of the persons who have
6 excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and
7 Class Counsel shall file that list with the Court. If, within such time as is ordered by the Court and
8 contained in the Class Notice, any Settlement Class Member wishes to object to the Settlement
9 and/or to be heard, he or she must, on or before the deadlines established by the Court, submit to
10 the Settlement Administrator a written notice of objection and/or request to be heard. Such
11 communication shall state the name and address of the Settlement Class Member, shall include
12 information sufficient to demonstrate membership in the Settlement Class, shall state the grounds
13 for each objection asserted, and shall state whether the Settlement Class Member intends to appear
14 at the final approval hearing.

15 5.5 Defendant’s Option to Terminate Settlement. Defendant may elect, in its sole
16 discretion, to rescind and/or void this Stipulation *ab initio* if: (1) the number of individuals opting
17 out from the Class or from the Settlement of this Action is equal or greater than 175; (2) two or
18 more Settlement Class Members object to the Settlement seeking in the aggregate, more than
19 \$50,000 and the objections are sustained by the trial court. Defendant must exercise this right in
20 writing to Class Counsel within fifteen (15) calendar days after: (1) the Settlement Administrator
21 notifies the Parties of the total number of opt-out requests; or (2) the date the trial court rules on the
22 objections for objectors. Defendant’s option to rescind shall have the same effect as nonapproval
23 under paragraph 5.7. The Parties and/or their respective counsel shall not encourage objections
24 and/or opt-outs.

25 5.6 Stay of the Action. The Parties shall request that the Court, in connection with
26 Preliminary Approval, issue an immediate stay of the Action.

27 5.7 Effect If Settlement Not Approved. This Stipulation is being entered into only for
28 purposes of settlement, subject to and without waiver of the Parties’ respective rights. If the Court

1 does not enter the order granting Preliminary Approval or does not grant final approval, or if the
2 Final Settlement Approval Date does not occur, Class Counsel and Defendant’s Counsel shall
3 endeavor, consistent with the Stipulation, to cure any defect identified by the Court; provided,
4 however, that the parties hereto shall not be obligated to accept such cure if it increases the cost or
5 burden of the Stipulation to Plaintiffs, Defendant, or any of the other Released Persons or reduces
6 or otherwise affects the scope of the releases provided by this Stipulation. In the event that the
7 Stipulation is terminated for any reason, final approval does not occur for any reason, or the Final
8 Settlement Approval Date does not occur, then no term or condition of the Stipulation, or any draft
9 thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties’
10 settlement discussions shall have any effect, nor shall any such matter be admissible in evidence
11 for any purpose in the Action, or in any other proceeding, and the Parties shall be restored to their
12 respective positions immediately preceding execution of this Stipulation. If the final Settlement
13 Approval Order and Final Judgment or any part of it is vacated, overturned, reversed, or rendered
14 void as a result of an appeal, or the Stipulation is voided, rescinded, or otherwise terminated for
15 any other reason, then within thirty (30) days, Class Counsel shall return to Defendant all
16 attorneys’ fees, costs, and other payments received by Class Counsel under the Stipulation, as set
17 forth in paragraph 3.1 above. The Parties agree that all drafts, discussions, negotiations,
18 documentation, or other information prepared in relation to the Stipulation and the Parties’
19 settlement discussions shall be treated as strictly confidential and may not be disclosed to any
20 person other than the Parties’ counsel, and only for purposes of the settlement of this Action.

21 5.8 Termination. The Stipulation shall have no effect unless and until this Stipulation is
22 fully executed by all Parties.

23 **VI. RELEASES**

24 6.1 Release by Settlement Class Members. Effective as of the Final Settlement
25 Approval Date, each and all of the Settlement Class Members (except any such person who has
26 filed a proper and timely request for exclusion; and any person or entity that purchased the Yes To
27 Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask for purposes of resale and not for
28

1 his/her/its own consumption (i.e., “Resellers”)) shall be deemed to have, and by operation of law
2 shall have, fully, finally and forever released, relinquished, and discharged, and shall be forever
3 barred from asserting, instituting, or maintaining against any or all of the Released Persons, any
4 and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities
5 whether legal, equitable, or otherwise, relating in any way to the claims asserted or the factual or
6 legal allegations made in the Action, including without limitation the purchase or use of the Yes To
7 Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask at any time (collectively, the “Claims”).
8 With respect to the Claims released pursuant to this paragraph, each Settlement Class Member
9 shall be deemed to have waived, relinquished and released all claims that have or could have been
10 asserted in the action consistent with the broadest scope of release permitted under *Hesse v. Sprint*
11 *Corp.*, 598 F. 3d 581, 590 (9th Cir. 2010). This release shall be interpreted to the fullest extent
12 permitted by law, and each Settlement Class Member shall be deemed to have waived any and all
13 provisions, rights and benefits conferred by California Civil Code section 1542 (and equivalent,
14 comparable, or analogous provisions of the laws of the United States of America or any state or
15 territory thereof, or of the common law or civil law). Section 1542 provides that:

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

23 Thus, as of the Final Settlement Approval Date, each Settlement Class Member shall be deemed to
24 have expressly waived and fully, finally, and forever settled and released any known or unknown,
25 suspected or unsuspected, contingent or noncontingent claim with respect to the Claims, whether or
26 not concealed or hidden, without regard to subsequent discovery of existence of different or
27 additional facts. Each and every term of this paragraph shall inure to the benefit of each and all of
28 the Released Persons, and each and all of their respective successors and personal representatives,
which persons and entities are intended to be beneficiaries of this paragraph. For avoidance of

1 doubt, this Release of Claims does not release any claims of Resellers of the Yes To Grapefruit
2 Vitamin C Glow-Boosting Unicorn Paper Mask.

3 6.2 Effectuation of Settlement. None of the above releases affects the Parties' rights or
4 claims to enforce the terms of the Stipulation.

5 6.3 No Admission of Liability. This Stipulation reflects, among other things, the
6 compromise and settlement of disputed claims among the Parties, and neither this Stipulation nor
7 the releases given herein, nor any consideration therefor, nor any actions taken to carry out this
8 Stipulation, are intended to be, nor may they be deemed or construed to be, an admission or
9 concession of any fact, liability, or the validity of any claim, defense, or of any point of fact or law
10 on the part of any party. Defendant denies the material allegations of all the complaints filed in
11 this Action. Neither this Stipulation, nor the fact of settlement, nor the settlement proceedings, nor
12 the settlement negotiations, nor any related document, shall be used as an admission of any fault or
13 omission by any or all of the Released Persons, or be offered or received in evidence as an
14 admission, concession, presumption or inference of any wrongdoing or liability by any or all of the
15 Released Persons in any civil, criminal, administrative or other proceeding in any court, agency or
16 tribunal, other than such proceedings as may be necessary to consummate, interpret or enforce this
17 Stipulation.

18 **VII. CERTIFICATION OF SETTLEMENT CLASS**

19 7.1 The Parties agree, for settlement purposes only and solely pursuant to the terms of
20 this Stipulation, that this Action shall, subject to Court approval, conditionally be certified and
21 proceed as a nationwide class action under Federal Rule of Civil Procedure 23(b)(3) for settlement
22 purposes only, with a class consisting of all Settlement Class Members, and with Imani Whitfield,
23 Shawanna McCoy, and Josey Parsons Aughtman as Class Representatives and with Class Counsel
24 as counsel for the Settlement Class Members.

25 7.2 Any certification of a conditional, preliminary or final settlement class pursuant to
26 the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the
27 part of Defendant that this Action, or any other proposed or certified class action, is appropriate for
28 nationwide class treatment pursuant to Federal Rule of Civil Procedure or any similar state or

1 federal class action statute or rule. Neither the fact of this settlement nor this Stipulation shall be
2 used in connection with efforts in any proceeding to seek nationwide or any other certification of
3 any claims asserted against Defendant.

4 7.3 In the event the Court does not approve the settlement and Stipulation, then this
5 conditional certification is null and void, shall have no force or effect, and shall not be used or
6 referred to for any purposes whatsoever in the Action or in any other case or controversy. In such
7 an event, this Stipulation and all negotiations and proceedings related thereto shall be deemed to be
8 without prejudice to the right of the Parties, who shall be restored to their respective positions as of
9 the date of this Stipulation, and Defendant shall not be deemed to have waived any opposition or
10 defenses it has to any aspect of the claims asserted in the Action or to whether those claims or the
11 Action may properly be maintained as a class action.

12 **VIII. MISCELLANEOUS PROVISIONS**

13 8.1 Change of Time Periods. The time periods and/or dates described in this Stipulation
14 with respect to the giving of notices and hearings are subject to approval and change by the Court or
15 by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement
16 Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to
17 grant any reasonable extension of time that might be needed to carry out any of the provisions of
18 this Stipulation.

19 8.2 Time for Compliance. If the date for performance of any act required by or under
20 this Stipulation falls on a Saturday, Sunday, or court holiday, that act may be performed on the next
21 business day with the same effect as if it had been performed on the day or within the period of time
22 specified by or under this Stipulation.

23 8.3 Governing Law. This Stipulation is intended to and shall be governed by the laws of
24 the State of California without giving effect to principles of conflicts of laws.

25 8.4 Entire Agreement. The terms and conditions set forth in this Stipulation constitute
26 the complete and exclusive statement of the agreement between the Parties relating to the subject
27 matter of this Stipulation, superseding all previous negotiations and understandings, and may not be
28 contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend

1 that this Stipulation constitutes the complete and exclusive statement of its terms as between the
2 Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial
3 proceeding, if any, involving this Stipulation. Any modification of the Stipulation must be in
4 writing signed by Class Counsel and Defendant.

5 8.5 Advice of Counsel. The determination of the terms and the drafting of this
6 Stipulation have been by mutual agreement after negotiation, with consideration by and
7 participation of all Parties and their respective counsel. The presumption found in California Civil
8 Code section 1654 (and equivalent, comparable, or analogous provisions of the laws of the United
9 States of America or any state or territory thereof, or of the common law or civil law) that
10 uncertainties in a contract are interpreted against the party causing an uncertainty to exist is waived
11 by all Parties.

12 8.6 Binding Agreement. This Stipulation shall be binding upon and inure to the benefit
13 of the respective heirs, successors, and assigns of the Parties, the Settlement Class Members and the
14 other Released Persons.

15 8.7 No Waiver. The waiver by any Party of any provision or breach of this Stipulation
16 shall not be deemed a waiver of any other provision or breach of this Stipulation.

17 8.8 Execution in Counterparts. This Stipulation shall become effective upon its
18 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and
19 execution of counterparts shall have the same force and effect as if all Parties had signed the same
20 instrument. The Parties further agree that signatures provided by portable document format (PDF)
21 or other electronic transmission shall have the same force and effect as original signatures.

22 8.9 Enforcement of this Stipulation. The Court shall retain jurisdiction, and shall have
23 exclusive jurisdiction, to enforce, interpret, and implement this Stipulation, and the terms of any
24 order entered pursuant to this Stipulation.

25 8.10 Best Efforts. The Parties and their undersigned counsel agree to undertake their best
26 efforts and mutually cooperate to promptly effectuate this Stipulation and the terms of the
27 settlement set forth herein, including taking all steps and efforts contemplated by this Stipulation
28 and any other steps and efforts which may become necessary by order of the Court or otherwise.

1 8.11 Notices. All notices to the Parties or counsel required by this Stipulation shall be
2 made in writing and communicated by email and mail to the following address:

3 If to Class Representative, Settlement Class Members, or Class Counsel:

4 L. Timothy Fisher
5 Bursor & Fisher, P.A.
6 1990 North California Blvd., Suite 940
7 Walnut Creek, CA 94596
8 Telephone: (925) 300-4455
9 E-Mail: ltfisher@bursor.com

10 If to Defendant or Defendant's Counsel:

11 Jeffrey Goldman
12 Troutman Pepper Hamilton Sanders, LLP
13 Two California Plaza
14 350 South Grand Avenue, Suite 3400
15 Los Angeles, CA 90071
16 Telephone: (213) 928-9800
17 E-Mail: jeffrey.goldman@troutman.com

18 IN WITNESS HEREOF the undersigned, being duly authorized and intending to be legally
19 bound hereby, have caused this Stipulation to be executed on the dates shown below and agree that it
20 shall take effect on the date it is executed by all of the undersigned.

21 **APPROVED AND AGREED:**

22 DATED: 1/8/2021



Plaintiff Imani Whitfield

23 DATED: _____

Plaintiff Shawanna McCoy

24 DATED: _____

Plaintiff Josey Parsons Aughtman

25 DATED: _____

Yes To, Inc.

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21 **APPROVED AND AGREED:**

22 DATED: _____

Plaintiff Imani Whitfield

23 DATED: 01/08/2021



Plaintiff Shawanna McCoy

24 DATED: _____

Plaintiff Josey Parsons Aughtman

25 DATED: _____

Yes To, Inc.

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21 **APPROVED AND AGREED:**

22 DATED: _____

23 _____
24 Plaintiff Imani Whitfield

25 DATED: _____

26 _____
27 Plaintiff Shawanna McCoy

28 DATED: 1/8/2021

29 
30 _____
31 Plaintiff Josey Parsons Aughtman

32 DATED: _____

33 _____
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21 **APPROVED AND AGREED:**

22 DATED: _____
23 Plaintiff Imani Whitfield

24 DATED: _____
25 Plaintiff Shawanna McCoy

26 DATED: _____
27 Plaintiff Josey Parsons Aughtman

28 DATED: 1/20/21 _____
Yes To, Inc. 