

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
CASE NO. 3:22-cv-07011-TLT

ELLA HENNING and LEA AMMIANO,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

LUXURY BRAND PARTNERS, LLC,

Defendant.

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**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Settlement” or “Agreement”),<sup>1</sup> dated as of February 7, 2024, is entered into between Plaintiffs, Ella Henning and Lea Ammiano, on behalf of themselves and the Settlement Class, on the one hand, and Defendant, Luxury Brand Partners, LLC, on the other hand. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

**I. Procedural History**

1. On October 31, 2022, Valisure submitted a Citizens Petition to the Food and Drug Administration, alleging that it tested several brands and batches of dry shampoo products and allegedly found that many contained harmful levels of the alleged carcinogen benzene, and requested governmental intervention and action.

2. LBP was one of the businesses whose products were allegedly tested and allegedly found to contain harmful levels of benzene. As a result, LBP was named a defendant in this Action

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below or as defined elsewhere in the Agreement.

arising from its alleged manufacture, distribution, and sale of allegedly contaminated dry shampoo products. LBP at all times has denied and disputed the allegations in this Action.

3. On November 8, 2022, Plaintiff Henning filed a Class Action Complaint in this Action against LBP in the United States District Court for the Northern District of California. *See Henning v. Luxury Brand Partners, LLC*, No. 3:22-cv-07011 (N.D. Cal.).

4. In doing so, Plaintiff Henning asserted claims on behalf of herself and a nationwide class, a California subclass, and a consumer fraud multi-state subclass against LBP for violation of California's False Advertising Law, Business & Professions Code Section 17500, violation of California's Unfair Competition Law, Business & Professions Code Section 17200 et seq., violation of California's Consumers Legal Remedies Act, Civil Code Section 1770, unjust enrichment, and violation of state consumer fraud acts.

5. LBP filed its Motion to Dismiss on February 1, 2023.

6. On February 24, 2023, Plaintiff Henning and LBP filed a Joint Case Management Statement.

7. On March 1, 2023, Plaintiff Henning filed her Opposition to LBP's Motion to Dismiss.

8. On March 2, 2023, the Court held an initial Case Management Conference.

9. On March 8, 2023, the Court issued a Case Management and Scheduling Order.

10. On March 15, 2023, LBP filed a Notice of Supplemental Authority in support of its Motion to Dismiss.

11. On March 22, 2023, LBP filed its Reply in Support of its Motion to Dismiss.

12. On May 11, 2023, the Court issued an Order granting in part and denying in part LBP's Motion to Dismiss.

13. On June 9, 2023, Plaintiff Henning and LBP filed a joint case management statement.

14. On June 23, 2023, Plaintiff Henning and LBP participated in a full day mediation with this District's ADR Multi-Option Program. In advance of the mediation, LBP provided Class Counsel with sales data and other related information. While unsuccessful, the Parties continued to engage in settlement discussions and case discovery over the following months.

15. On November 28, 2023, the Court issued an Order of Reference to Magistrate Judge for Settlement, referring the case to Magistrate Judge Lisa J. Cisneros.

16. On December 20, 2023, Plaintiff Henning and LBP appeared for a telephonic pre-settlement conference with Magistrate Judge Cisneros.

17. On January 3, 2024, Plaintiff Henning and LBP filed a Notice of Settlement and Joint Stipulation Staying Pre-Trial Deadlines.

18. On February 8, 2024, Plaintiffs filed a First Amended Class Action Complaint.

19. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. LBP has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. LBP does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint (or any previous complaints filed by Class Counsel) or Valisure's October 31, 2022 Citizens Petition, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Action. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be

offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Action lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, LBP, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

**II. Definitions**

29. “Action” means the lawsuit entitled *Ella Henning, et al. v. Luxury Brand Partners, LLC*, No. 3:22-cv-07011-TLT (N.D. Cal.).

30. “Attorneys’ Fees and Cost Award” means the amount of attorneys’ fees and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

31. “CAFA Notice” means the Class Action Fairness notice which the Settlement Administrator shall serve upon the appropriate state and federal officials, providing notice of the proposed settlement. The Settlement Administrator shall provide a declaration attesting to compliance with 28 U.S.C. § 1715(b), which will be filed with the Motion for Final Approval.

32. “Cash Payment” means the cash payment out of the Settlement Fund to which Settlement Class Members who have purchased IGK Products and have submitted a Valid Claim are entitled as a benefit under this Settlement.

33. “Claim” means the submission of a Claim Form by a Claimant.

34. “Claim Form” means the proof of claim, substantially in the form attached hereto as *Exhibit C*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator, and pursuant to which Settlement Class members may apply for a Cash Payment.

35. “Claim Form Deadline” shall be the date of the originally scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment.

36. “Claimant” means a Settlement Class member who submits a Claim Form.

37. “Class Counsel” means: Kristen Lake Cardoso of Kopelowitz Ostrow P.A., Trent Kashima of Milberg Coleman Bryson Phillips Grossman, PLLC, and Sarah N. Westcot of Bursor & Fisher, P.A.

38. “Class Period” means the period extending from the earliest date of any allowable claim pursuant to the applicable statutes of limitation with respect to the Released Claims up to and including the date of Preliminary Approval.

39. “Class Representatives” means Ella Henning and Lea Ammiano.

40. “Complaint” means the First Amended Class Action Complaint filed in the Action on February 8, 2024.

41. “Court” means the United States District Court for the Northern District of California and the Judge(s) assigned to the Action.

42. “LBP” means Defendant, Luxury Brand Partners, LLC.

43. “Defendant” means Luxury Brand Partners, LLC.

44. “Defendant’s Counsel” or “LBP’s Counsel” means Ropes & Gray LLP.

45. “Effective Date” means 5 days after the entry of the Final Approval Order,

provided no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (a) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

46. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for Final Approval.

47. “Final Approval Hearing” means the hearing held before the Court during which the Court will consider granting Final Approval and to further determine the amounts of attorneys’ fees and costs to be awarded to Class Counsel and the amount of Service Awards to the Class Representatives.

48. “Final Approval Order” means the order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Awards to the Class Representatives.

49. “IGK Product(s)” means and includes all products within the scope of the claims asserted in the Complaint or Action, including all Direct Flight, Jet Lag, and First Class dry shampoo product lines manufactured, distributed, marketed, offered for sale, or sold by the Released Parties.

50. “Long Form Notice” means the long form notice of the Settlement, substantially

in the form attached hereto as *Exhibit B*, that shall be posted on the Settlement Website and shall be available to Settlement Class members by mail on request made to the Settlement Administrator.

51. “Motion for Attorneys’ Fees, Costs, and Service Awards” means the motion that Plaintiffs and Class Counsel will file with the Court seeking attorneys’ fees, costs and Service Awards. The Motion for Attorneys’ Fees, Costs, and Service Awards will be filed with the Court no less than 45 days before the Final Approval Hearing.

52. “Motion for Final Approval” means the motion that Plaintiffs and Class Counsel will file with the Court seeking Final Approval of the Settlement. The Motion for Final Approval will be filed with the Court no less than 45 days before the Final Approval Hearing.

53. “Motion for Preliminary Approval” means the motion that Plaintiffs and Class Counsel will file with the Court seeking Preliminary Approval.

54. “Notice” means the Long Form Notice and Publication Notice that Plaintiffs and Class Counsel will ask the Court to approve in connection with the Motion for Preliminary Approval.

55. “Notice Program” means the methods provided for in this Agreement for giving Notice and consists of the Long Form Notice and Publication Notice.

56. “Notice of Missing or Inaccurate Information” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted a Claim Form with inaccurate, disqualifying, incomplete, or missing information that is required for the Settlement Class member to be considered eligible for a Cash Payment.

57. “Objection Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval

Hearing.

58. “Opt-Out Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

59. “Party” means each of the Plaintiffs and Defendant, and “Parties” means Plaintiffs and Defendant collectively.

60. “Plaintiffs” means Ella Henning and Lea Ammiano.

61. “Preliminary Approval” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

62. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program.

63. “Proof of Purchase” means documentation evidencing the purchase of an IGK Product such as a store receipt.

64. “Publication Notice” means the Notice that will be published in digital media to be agreed upon by the Parties and the Settlement Administrator. The Publication Notice shall be substantially in the form attached as *Exhibit A*.

65. “Releases” means the releases and waiver of claims set forth in Section XII of this Agreement.

66. “Released Claims” means the claims described in Section XII of this Agreement.

67. “Released Parties” means LBP, and its present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, officials, principals, employees,



stockholders, heirs, agents, servants, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, manufacturers, suppliers, wholesalers, resellers, distributors, retailers, subrogees, trustees, executors, administrators, predecessors, successors and assigns, and any other person acting on LBP's behalf, in their capacity as such. It is expressly understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

68. "Releasing Parties" means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entireties, agents, attorneys, (iii) any entities in which a Plaintiff and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (iv) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

69. "Service Award" means the payment the Court may award the Plaintiffs for serving as Class Representatives. The Service Award shall be paid out of the Settlement Fund.

70. "Settlement Administrator" means Angeion Group.

71. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and settlement administration. All Settlement Administration Costs shall be paid out of the Settlement Fund.

72. “Settlement Fund” shall mean the gross amount of \$850,000.00 USD that shall represent Defendant’s maximum financial obligation in this matter. In no event shall the total out-of-pocket costs paid by Defendant exceed the Settlement Fund. The following shall be subject to and capped by the gross amount of Settlement Fund: (i) all Approved Claims for Cash Payments; (ii) any Fee Award approved by the Court; (iii) any incentive awards approved by the Court; and (iv) any Settlement Administration Expenses approved by the Court.

73. “Settlement Class” means all persons in the United States who, during the Class Period, purchased one or more of the IGK Products for personal, family, or household use and not for resale. Excluded from the Settlement Class are (a) all persons who are employees, directors, officers, and agents of LBP, or its subsidiaries and affiliated companies; (b) persons or entities who purchased the IGK Products primarily for the purposes of resale to consumers or other resellers; (c) governmental entities; and (d) the Court, the Court’s immediate family, and Court staff.

74. “Settlement Class Member” means any member of the Settlement Class who has not opted-out of the Settlement.

75. “Settlement Class member” means a member of the Settlement Class.

76. “Settlement Website” means the website the Settlement Administrator will establish as a means for Settlement Class members to submit Claim Forms and obtain Notice and information about the Settlement, including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, Claim Form, Motion for Final Approval, and Final Approval

Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for six months after Final Approval.

77. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) accurately, fully and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Missing or Inaccurate Information for additional information may result in a determination that the Claim is not a Valid Claim.

### **III. Certification of the Settlement Class**

78. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes. LBP agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any class certification shall be null and void and, for the avoidance of doubt, LBP shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

**IV. Settlement Consideration**

**79. Monetary Relief**

a. *Settlement Fund in the amount of \$850,000.00* – The Settlement Fund shall be used to pay: (1) Cash Payments; (2) Service Awards; (3) attorneys’ fees and costs awarded by the Court to Class Counsel; and (4) all Settlement Administration Costs.

b. *Cash Payments*

i. To qualify for a Cash Payment, a Claimant must submit a Claim Form no later than the Claim Form Deadline, including Proof of Purchase, or if the Claimant does not have Proof of Purchase, the Claimant may attest under oath that he or she purchased an IGK Product(s).

ii. If a Claimant includes Proof of Purchase with the Claim Form, the Claimant will be entitled to a full refund of the purchase price for as many IGK Products for which Proof of Purchase is provided.

iii. If the Claimant does not include Proof of Purchase with the Claim Form, but attests to purchasing an IGK Product(s), the Claimant shall be entitled to \$4.00 for each IGK Product purchased, for a maximum of five IGK Products, or \$20.00.

c. The amount of each Settlement Class Member’s Cash Payment will be determined once all Valid Claims are approved. There may be a pro rata reduction to the amount of each Settlement Class Member’s Cash Payment, depending upon the total number and total dollar value of Valid Claims.

d. Other than the Settlement Fund, LBP shall not be required to make any other payments as part of this Settlement.

e. Within 10 business days of the Final Approval Order, Defendant shall wire the Settlement Fund to an escrow bank account established by the Settlement Administrator and approved by the Parties.

f. The escrow bank account in which the Settlement Fund is deposited shall at all times be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendant with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively, “Taxes”), will be paid out of the Settlement Fund. Defendant and its counsel, and Plaintiffs and Class Counsel, will have no liability or responsibility for any of the Taxes. The Settlement Fund will indemnify and hold harmless Defendant and its counsel, and Plaintiffs and Class Counsel, for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

**V. Settlement Approval**

80. Upon execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant’s Counsel.

81. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable terms; (2) provisionally certify the Settlement Class for settlement

purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form submission process; (5) approve the procedures set forth herein for Settlement Class members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) stay the Action pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and LBP's Counsel, at which the Court will conduct a further inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's Motion for Attorneys' Fees, Costs, and Service Awards.

**VI. Settlement Administrator**

82. The Parties agree that, subject to Court approval, Angeion Group shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

83. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing the Cash Payments.

84. The duties of the Settlement Administrator are as follows:

- i. Provide CAFA Notice;
- ii. Complete the Court-approved Notice Program by noticing the Settlement

Class by Publication Notice, sending out Long Form Notices, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Missing or Inaccurate Information, and sending Cash Payments to Settlement Class Members who submit a Valid Claim;

iii. Establish and maintain the Settlement Fund escrow bank account approved by the Parties;

iv. Establish and maintain a post office box for opt-out requests from the Settlement Class and to receive Claim Forms;

v. Establish and maintain the Settlement Website;

vi. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;

vii. Respond to any mailed Settlement Class member inquiries;

viii. Process all opt-out requests from the Settlement Class;

ix. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, opt-out requests received that week, the total number of opt-out requests received to date, and other pertinent information;

x. In advance of the Final Approval Hearing, prepare a declaration to submit to the Court confirming that the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the amount of Valid Claims received, providing the

names of each Settlement Class member who timely and properly requested to opt-out from the Settlement Class, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

xi. Distribute, out of the Settlement Fund, Cash Payments electronically to Settlement Class Members who submit a Valid Claim for Cash Payment.

xii. Pay Court-approved attorneys' fees and costs, and Service Awards out of the Settlement Fund;

xiii. Pay Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel;

xiv. Any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

85. All costs incurred by the Settlement Administrator operating as administrator of the Settlement Fund shall be considered Settlement Administration Costs borne solely by the Settlement Fund. Any interest proceeds and/or income earned by the Settlement Fund shall remain therein and be used to pay Settlement Administration Costs.

**VII. Notice to the Settlement Class**

86. Beginning no later than 20 days following entry of the Preliminary Approval Order, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; a date by which Settlement Class members may opt-out of the Settlement Class; a date



by which Settlement Class Members may object to the Settlement and/or to Class Counsel's Motion for Attorneys' Fees, Costs, and Service Awards; the date the Final Approval Hearing is scheduled to occur; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. The Settlement Administrator shall establish the Settlement Website no later than the day Publication Notice is first made and shall have the Court-approved online Claims Form that can be submitted directly on the Settlement Website or in a printable version that can be sent by U.S. Mail to the Settlement Administrator.

87. The Long Form Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class, and the Publication Notice shall direct Settlement Class members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must state the Settlement Class member's name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Claim Form.

88. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to the Motion for Attorneys' Fees, Costs, and Service Awards, and the Publication Notice shall direct Settlement Class members to review the Long

Form Notice to obtain the objection instructions. Objections to the Settlement, and to the Motion for Attorneys' Fees, Costs, and Service Awards, must be mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

89. For an objection to be considered by the Court, the objection must also set forth:

- a. the objector's full name, mailing address, telephone number, and email address (if any);
- b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- c. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs and Service Awards;

e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

f. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

g. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

h. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

i. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

j. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or LBP may conduct limited discovery on any objector or objector's counsel.

#### **VIII. Final Approval Order and Final Judgment**

90. Plaintiffs shall file their Motion for Final Approval no later than 45 days before the Final Approval Hearing.

91. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the Final Approval Hearing.

92. At the Final Approval Hearing, the Court will hear any argument on Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also will hear any argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Motion for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

93. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to approve the Motion for Attorneys' Fees, Costs and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order;
- e. Release LBP and the other Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including LBP, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**IX. Claim Form Process and Disbursement of Cash Payments**

94. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated in the Notice.

95. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement. Claims that have been properly and timely submitted are Valid Claims. The Settlement Administrator shall examine the Claim Form before designating the claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable the mailing or electronic delivery of a Cash Payment. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

96. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate Claims. No Settlement Class Member may submit more than one Claim Form. Settlement Class Members seeking benefits from the Settlement Fund shall submit a single Claim Form encompassing the request. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

97. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can

instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

98. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator, and the Settlement Administrator shall advise the Claimant or Settlement Class member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Missing or Inaccurate Information explaining what information is missing or inaccurate and is needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Missing or Inaccurate Information is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Missing or Inaccurate Information and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator for a Cash Payment. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless LBP's Counsel and Class Counsel

otherwise agree.

99. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. The Claimant purchased products that are not covered by the Settlement;
- b. Failure to fully complete and/or sign the Claim Form;
- c. Illegible Claim Form;
- d. The Claim Form is fraudulent;
- e. The Claim Form is duplicative of another Claim Form;
- f. The Claimant is not a Settlement Class member;
- g. The Claimant submitted a timely and valid request to opt out of the

Settlement Class.

h. The person or entity submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;

i. Failure to submit a Claim Form by the Claim Form Deadline; and/or

j. The Claim Form otherwise does not comply with the requirements of this

Settlement.

100. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.

b. A request for additional information by sending a Notice of Missing or Inaccurate Information shall not be considered a rejection for purposes of this Paragraph.

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator

shall notify the Claimant using the contact information provided in the Claim Form.

d. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.

e. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

101. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by

Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

102. No person or entity shall have any claim against LBP, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

103. No later than 75 days after Final Approval or 15 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Cash Payments to Class Members.

104. The Notice and the Settlement Website will explain to Settlement Class members that they may be entitled to a Cash Payment and how to submit a Claim Form.

**X. Service Awards, Attorneys' Fees and Costs**

105. *Service Awards* – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class



Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for the Class Representatives in the amount not to exceed \$2,500.00 each. If approved, the Service Awards shall be paid by the Settlement Administrator out of the Settlement Fund within 5 business days of the Effective Date. The Service Award payments to the Class Representatives shall be separate and apart from their entitlement to benefits from the Settlement Fund.

106. *Attorneys' Fees and Costs* - Class Counsel shall apply to the Court for an award of attorneys' fees of up to 25 percent of the Settlement Fund, plus reimbursement of its litigation costs. If approved, the Attorneys' Fees and Cost Award shall be payable by the Settlement Administrator out of the Settlement Fund within 10 days of the Final Approval Order Date, and Class Counsel shall be responsible for providing to the Settlement Administrator all applicable payment routing information and tax I.D. numbers for Class Counsel. Payment of the Attorneys' Fees and Cost Award shall be made by wire transfer to Bursor & Fisher, P.A. in accordance with wire instructions to be provided to the Settlement Administrator by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the final judgment is reversed or rendered void as a result of an appeal(s), then Class Counsel shall return such funds to the Settlement Fund.

107. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after the material Settlement terms, including the amount of the Settlement Fund, were negotiated.

108. This Settlement is contingent on approval of the Settlement consideration set forth

in Section IV and the Releases set forth in Section XII of this Agreement. If the Court denies or modifies those proposed terms, the remaining provisions of the Agreement shall be null and void.

**XI. Disposition of Residual Funds**

109. Any funds remaining in the Settlement Fund following the 180-day period after the Settlement Administrator's provision of Cash Payments to Settlement Class Members on account of any unexecuted or undeliverable payments shall be distributed pro rata to Settlement Class Members who submitted Valid Claims, or shall otherwise be distributed cy pres to an organization agreed to by the Parties and agreed to by the Court.

**XII. Releases**

110. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the alleged adulteration or contamination of any of the IGK Products, including any alleged benzene adulteration or contamination, (b) any of the alleged violations of laws or regulations cited in the Complaint or otherwise asserted in the Action or any alleged violations of any materially similar laws or regulations, (c) any of the advertising, labeling, or marketing identified in the Complaint or otherwise asserted in the Action, including but not limited to the alleged failure to disclose the presence of benzene in the IGK Products, (d) any testing or data alleged in the Complaint or otherwise asserted in the Action, (e) any acts, omissions, or

misrepresentations that were raised or could have been raised within the scope of the facts asserted in the Complaint or Action, including any claim that was or could be asserted under California's Proposition 65, or (f) any event, matter, dispute, or thing that in whole or in part, directly or indirectly, relates to or arises out of said events specified in (a), (b), (c), (d), or (e) of this paragraph.

111. Plaintiffs and Settlement Class Members covenant and agree that they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

112. Settlement Class members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits under the Settlement.

113. With respect to the Released Claims, Plaintiffs and Settlement Class Members, expressly understand and acknowledge that it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and LBP with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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 SETTLEMENT WITH THE DEBTOR.

114. Plaintiffs or any Settlement Class Member expressly understand and acknowledge that they may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash Payment from the Settlement.

115. Plaintiffs expressly represent that they do not currently have any other claims as to any IGK Products.

116. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

**XIII. Termination of the Settlement**

117. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section IV and the Releases set forth in Section XII of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of approval; and
- d. The Effective Date has occurred.

118. If any of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

119. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Court seeking to reopen the Action. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

120. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to LBP by no later than five (5) business days from such termination. In the event the Court denies Final Approval or it is overturned on appeal, such

funds shall be returned to LBP within five (5) business days of the Court's denial or the decision overturning the Settlement.

**XIV. Effect of Termination**

121. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and LBP's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

122. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XV. No Admission of Liability**

123. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. LBP has denied and continues to deny each of the claims and contentions alleged in the Complaint. LBP specifically denies that a class could or should be certified in the Action for litigation purposes. LBP does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. LBP has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted

in the Action.

124. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

125. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

126. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, whether in the Action or in any proceeding in any court, administrative agency, or other tribunal.

127. In addition to and without waiving any other defenses LBP may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or

other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

**XVI. Miscellaneous Provisions**

128. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

129. Binding Effect. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

130. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

131. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

132. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

133. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.



134. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of California, without regard to the principles thereof regarding choice of law.

135. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

136. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

137. Notices. All notices provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs:

Kristen Lake Cardoso, Esq.  
Kopelowitz Ostrow P.A.  
1 W. Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
cardoso@kolawyers.com

Sarah N. Westcot, Esq.  
Bursor & Fisher P.A.  
701 Brickell Ave., Ste. 1420  
Miami, FL 33131  
swestcot@bursor.com

Trent Kashima, Esq.  
Milberg Coleman Bryson Phillips Grossman  
402 W. Broadway, Suite 1760  
San Diego, CA 92101  
jnelson@milberg.com

If to Defendant:

Rocky C. Tsai, Esq.  
Ropes & Gray LLP  
Three Embarcadero Center, Suite 300  
San Francisco, CA 94111  
rocky.tsai@ropesgray.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

138. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and LBP's Counsel and, if the Settlement has been approved preliminarily by the Court, as approved by the Court.

139. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

140. Authority. Class Counsel (on behalf of the Plaintiffs and the Settlement Class

members), and LBP's Counsel, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and LBP to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

141. Agreement Mutually Prepared. Neither Plaintiffs nor LBP shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

142. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge that they reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to fully resolve their disputes in connection with the Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional


facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

143. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: 02/08/2024  
\_\_\_\_\_

  
Ella Henning (Feb 8, 2024 11:50 PST)  
\_\_\_\_\_  
ELLA HENNING  
*Plaintiff*

Dated: 02/08/2024  
\_\_\_\_\_

  
Lea Ammiano (Feb 8, 2024 14:15 EST)  
\_\_\_\_\_  
LEA AMMIANO  
*Plaintiff*


Dated: 02/08/2024  
\_\_\_\_\_

  
Kristen Lake Cardoso (Feb 8, 2024 12:05 EST)  
\_\_\_\_\_  
KRISTEN LAKE CARDOSO, ESQ.  
KOPELOWITZ OSTROW P.A.  
*Class Counsel*

Dated: 02/08/2024  
\_\_\_\_\_

  
\_\_\_\_\_  
SARAH N. WESTCOT, ESQ.  
BURSOR & FISHER  
*Class Counsel*

Dated: 02/08/2024  
\_\_\_\_\_

  
\_\_\_\_\_  
TRENT KASHIMA, ESQ.  
MILBERG  
*Class Counsel*

Dated: \_\_\_\_\_

LUXURY BRAND PARTNERS, LLC

\_\_\_\_\_  
By: \_\_\_\_\_

ITS \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
ROCKY C. TSAI  
*Counsel for Defendant*

facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

143. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: \_\_\_\_\_

\_\_\_\_\_  
ELLA HENNING  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
LEA AMMIANO  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
KRISTEN LAKE CARDOSO, ESQ.  
KOPELOWITZ OSTROW P.A.  
*Class Counsel*

Dated: \_\_\_\_\_

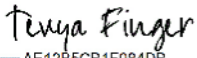
\_\_\_\_\_  
SARAH N. WESTCOT, ESQ.  
BURSOR & FISHER  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
TRENT KASHIMA, ESQ.  
MILBERG  
*Class Counsel*

Dated: 2/8/2024 | 10:53 AM EST  
\_\_\_\_\_

LUXURY BRAND PARTNERS, LLC

DocuSigned by:  
  
AE12B5CB1F884DB...  
By: Tevya Finger  
ITS President

Dated: 2/8/2024

  
ROCKY C. TSAI  
*Counsel for Defendant*