

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement” or the “Agreement”) is made and entered into by and between Plaintiff Erica Hampton, individually and on behalf of the Settlement Class (“Plaintiff” or “Class Representative”), on the one hand, and Defendant Mattress Firm, Inc. (“Defendant”), on the other hand, in the action entitled *Hampton v. Mattress Firm, Inc.*, Case No. 25CU003462C, pending in the San Diego County Superior Court.

### **I. DEFINITIONS**

As used in this Agreement and all related documents, the following terms have the following meanings:

A. “**Federal Action**” means *Hampton v. Mattress Firm, Inc.*, Case No. 2:24-cv-06488 (C.D. Cal.)

B. “**Action**” means the class action lawsuit filed in San Diego County Superior Court entitled *Erica Hampton v. Mattress Firm, Inc.*, Case No. 25CU003462C.

C. “**Administration Costs**” means the actual costs reasonably charged by the Settlement Administrator for its services as provided for in this Agreement, including, but not limited to, all costs of providing notice to persons in the Settlement Class, issuing Settlement Awards, processing Claim Forms, and the cost of maintaining a designated post office box for receiving Claim Forms. Defendant agrees to pay all Administration Costs. The Parties estimate \$80,000 in Administration Costs.

D. “**Cash Benefit(s)**” means a dollar payment, in the form of an electronic payment or check, to a Settlement Class Member who elected to receive a Cash Benefit through a valid and timely Claim Form. The Cash Benefit is \$40 for each mattress purchased from MattressFirm.com during the Class Period. Defendant will pay up to \$2,000,000 in Cash Benefits to the Settlement Class. The Parties anticipate, based on the number of Settlement Class Members, the available Cash Benefits, and historical claim rates, that all Settlement Class Members who elect to receive their settlement payment in cash will receive the full \$40 per purchased mattress. If, however, the

amount of valid Claims exceeds \$2,000,000, then the Cash Benefits to Settlement Class Members will be reduced pro rata.

E. “**Credit Benefit(s)**” means the \$40 credit automatically issued to each Settlement Class Member without the requirement to submit a Claim Form (unless the Settlement Class Member elects to receive a Cash Benefit) that can be applied toward any purchase made on MattressFirm.com. Credit Benefits do not expire (i.e., non-reversionary) and are transferrable. Credit Benefits are subject to additional terms and conditions, as set forth in Section III.E.

F. “**Class Counsel**” means Gary M. Klinger and Alexander E. Wolf of Milberg Coleman Bryson Phillips Grossman PLLC.

G. “**Class Period**” means August 1, 2020 through July 16, 2024.

H. “**Claim(s)**” or “**Claim Form(s)**” means the claim form submitted by a Settlement Class Member, substantially in the form attached hereto as “**Exhibit C.**” Each Settlement Class Member who elects to receive the Cash Benefit must attest under penalty of perjury that they were a California resident who purchased one or more mattresses from MattressFirm.com during the Class Period. Failure to submit a completed Claim Form with all requested information shall result in such Settlement Class Member receiving Credit Benefit as the default option.

I. “**Claim Deadline**” means the date by which Claims must be submitted to be determined valid, which shall be **sixty (60) days** after the Notice Deadline.

J. “**Claim Period**” means the time period in which Settlement Class Members may submit a Claim Form. The Claim Period begins on the Notice Deadline and expires on the Claim Deadline.

K. “**Claims Process**” means the process for Settlement Class Members’ submission of Claims, as described in Section III.

L. “**Class Notice**” means all types of notice that will be provided to the Settlement Class, as described in Section IV and ordered by the Court.

M. “**Court**” means the San Diego County Superior Court.

N. **“Effective Date”** means (1) if there are no objections to the Settlement at or before the Final Approval Hearing, the date of Final Approval, and (2) if there are objections to the Settlement at or before the Final Approval Hearing, the last of the following dates: (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order, (b) the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of any appeals(s) of the Final Approval Order, (c) the date of final dismissal of any appeal of, or the final dismissal or resolution of any proceeding on certiorari with respect to, the Final Approval Order, or (d) the date upon which the final objection is withdrawn.

O. **“Email Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit A”**.

P. **“Fairness Hearing”** or **“Final Approval Hearing”** means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the Settlement set forth herein as fair, reasonable, and adequate and to enter the Final Approval Order.

Q. **“Final Approval”** means the date the Court finally approves the Settlement of this Action, including but not limited to, the terms and conditions of this Agreement, and enters the Final Approval Order.

R. **“Final Approval Order”** means the order and judgment that the Court enters upon finally approving the Settlement in connection with the Fairness Hearing.

S. **“Long Form Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit B”**.

T. **“Mail Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members by first class mail, if necessary after the failure of Email Notice, in substantially the same form as **“Exhibit D”**.

U. **“Notice Deadline”** or **“Notice Date”** means the date on which the notice described in Section IV of the Agreement is first issued, which shall be **twenty-one (21) days** after Preliminary Approval.

V. **“Objection/Exclusion Deadline”** means the deadline to object or seek exclusion from the Settlement, which shall be **sixty (60) days** after the Notice Deadline.

W. **“Parties”** mean the Class Representative and Defendant.

X. **“Preliminary Approval”** means the date the Court preliminarily approves the Settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

Y. **“Preliminary Approval Order”** means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as **“Exhibit E”**.

Z. **“Released Claims”** means all claims to be released pursuant to Section III.D of this Agreement.

AA. **“Settlement Administrator”** means the third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that, subject to the Court’s approval, Simpluris shall be retained to implement the Class Notice and Claims administration requirements of this Agreement.

BB. **“Settlement Award”** means a Credit Benefit or Cash Benefit provided to an eligible Settlement Class Member pursuant to Section III.E. of this Agreement.

CC. **“Settlement Class”** means “All persons in California who purchased between one to four mattresses in a single transaction from [www.MattressFirm.com](http://www.MattressFirm.com) during the Class Period.” Excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of their respective officers and directors; and the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff.

DD. **“Settlement Class Member(s)”** means any member of the Settlement Class.

EE. **“Settlement Costs”** means (a) any award of attorneys’ fees, costs, and expenses to Class Counsel approved by the Court; (b) any incentive award to Plaintiff approved by the Court; and (c) all Administration Costs.

FF. “**Settlement Website**” means the website to be established by the Settlement Administrator for purpose of providing notice, Claim Forms, and other information regarding this Agreement, as described in Section IV.

GG. “**Total Settlement Value**” means the total economic benefits provided under this Settlement Agreement. The Total Settlement Value is \$6,411,000, consisting of: (1) \$5,476,000 in automatically distributed Credit Benefits of \$40 each (with an option to elect Cash Benefits of \$40 each), (2) \$850,000 in attorneys’ fees and costs, (3) a service award to Plaintiff of \$5,000, and (4) the costs of notice and administration estimated at \$80,000. *See* Sections III.E.1. (\$5,476,000 in direct benefits), III.H.1. (\$850,000 in attorneys’ fees and costs), III.H.2. (\$5,000 service award), and I.C. (\$80,000 in notice and administration).

HH. “**Website Notice**” means the notice made available on the Settlement Website pursuant to Section IV of this Agreement, including the Long Form Notice.

## **II. LITIGATION BACKGROUND**

A. Plaintiff alleges that, during the Class Period, Defendant deceptively advertised various discounts of its mattress products on its website, [www.MattressFirm.com](http://www.MattressFirm.com). Based on these allegations, the Federal Action was filed on August 1, 2024. The Federal Action alleged violations of certain California consumer protection statutes and unjust enrichment, among other claims, and sought injunctive relief, compensatory damages, and restitution in amounts by which Defendant was allegedly unjustly enriched based on its product sales. After extensive arm’s-length negotiations, the Federal Action was voluntarily dismissed without prejudice and was refiled as the Action in California state court on behalf of a California-only class and included claims under the California Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.) and False Advertising Law (Bus. & Prof. Code §§ 17500 et seq.) for which this Court has jurisdiction.

B. Defendant expressly denies any liability or wrongdoing of any kind or that Plaintiff or any putative class member has been damaged in any amount or at all in connection with the claims alleged in the Action, and further contends that, for any purpose other than Settlement, this Action is not appropriate for class treatment. Defendant does not admit or concede any actual or

potential fault, wrongdoing, or liability against it in the Action or any other actions. Defendant maintained during the entire pendency of the Action, and continues to maintain, that the challenged advertising practices are not deceptive or misleading as a matter of law and caused no pecuniary harm.

C. The Parties engaged in litigation and negotiations over a six-month period relating to the facts and legal issues in the Action. Although the Parties agreed to stay formal discovery and case deadlines, the Parties exchanged informal discovery, including sales records and company practices relevant to the claims and alleged damages. Class Counsel represents that they spent significant time and effort tracking and analyzing Defendant's historical advertising and marketing practices, both before and during the Federal Action and Action. Class Counsel also extensively researched the claims, defenses, and alleged damages, including an analysis of case law and academic literature. As a result, the Parties were able to engage in extensive and contentious negotiations over several weeks, until the instant Agreement was executed. As a result of these lengthy, substantive, and good faith negotiations, Class Counsel was able to assess thoroughly the claims of the Settlement Class Members, Defendant's marketing practices, and Defendant's defenses.

D. Based on the above-described investigation and litigation, the current state of the law, the expense, burden, and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of this Action considering the defenses at issue, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiff and the Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that a Settlement with Defendant on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

E. Defendant and Defendant's counsel recognize the expense and length of continued proceedings necessary to continue the Action through trial and through possible appeals. Defendant also recognizes that the expense and time spent pursuing this Action has and will further

detract from resources that may otherwise be used to run Defendant's business. While Defendant denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to Plaintiff's claims, Defendant has determined that the Settlement is fair, adequate, and reasonable.

F. Based on the foregoing, which the Parties expressly incorporate as material terms of the Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Action which exist between the Parties. Therefore, it is the intention of Plaintiff and the Settlement Class that this Agreement shall constitute a full and complete Settlement and release of the Released Claims against Defendant.

### **III. TERMS OF SETTLEMENT**

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Conditional Certification of Class. For Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Agreement, the Parties consent to and agree to the establishment of a conditional certification of the Settlement Class, pursuant to California Code of Civil Procedure § 382 or Federal Rule of Civil Procedure 23(b)(3).

B. Certification is Conditional. This certification is conditional on the Court's approval of this Agreement. In the event the Court does not approve all material terms of the Agreement, or if the Agreement is voluntarily terminated pursuant to its terms, then certification of the Settlement Class shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy. And, in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective legal positions as of the date of this Agreement, and Defendant has not and shall not be deemed to

have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment. Defendant supports certification of the Settlement Class for settlement purposes only.

C. Settlement Class Member information. Defendant will provide the Settlement Administrator a customer list of Settlement Class Members, including name, California shipping address associated with each Settlement Class Member's most recent purchase, and the most current email address, for the purpose of administering the Settlement.

D. Releases.

1. Release of Defendant. Upon the Effective Date, and in consideration for the Settlement benefits described in this Agreement, Plaintiff and the Settlement Class shall fully release and discharge Defendant and all its past and present officers, directors, shareholders, trustees, beneficiaries, members, partners, employees, predecessors, successors in interest, attorneys, agents, assigns, subsidiaries, affiliates, accountants, representatives, and any and all other entities or persons upstream and downstream in the production/distribution channels, in their capacity as such (together, the "Discharged Parties"), from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, arising under federal, state, or local law, that Plaintiff or Settlement Class Members ever had, now have, or may have against the Discharged Parties in any court, tribunal, arbitration panel, commission, or agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of or arising from the Discharged Parties' representations, advertising, marketing and/or sales on [www.MattressFirm.com](http://www.MattressFirm.com), during the Class Period, which were alleged in the operative complaint, or which arise from or relate to the facts and claims alleged in the Action. This is notwithstanding that Plaintiff and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Released Claims herein. The Released Claims include all claims that have or could have been asserted by any or on behalf of any Settlement Class Member in the Action that are based on or arise out of the same factual predicate as the Action.



2. Class Representative's Release of Unknown Claims. Plaintiff expressly understands and acknowledges that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

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

Plaintiff hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiff.

3. Release of Settlement Class Members, Class Representative, and Class Counsel. Upon the Effective Date, and in consideration for the Settlement benefits described in this Agreement, Defendant shall fully release and discharge Settlement Class Members, Class Representative, and Class Counsel from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Defendant ever had, now have, may have, or hereafter can, shall, or may ever have against Settlement Class Members, Class Representative, and Class Counsel in any other court, tribunal, arbitration panel, commission, or agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the institution or prosecution of the Action, notwithstanding that Defendant acknowledges that it may hereafter discover facts in addition to or different from those that it now knows or believes to be true concerning the subject matter of the Action and/or the Released Claims herein.

Defendant expressly understands and acknowledges that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

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

Defendant hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles are hereby knowingly and voluntarily waived, relinquished and released by Defendant.

E. Compensation to the Settlement Class.

1. Benefits to Settlement Class Members: Subject to the rights, terms, and conditions of this Agreement, Defendant will make a payment to each Settlement Class Member in the amount of \$40 of MattressFirm.com store credit (Credit Benefit) for each mattress purchased by the Settlement Class Member from the website during the Class Period.

Alternatively, Settlement Class Members may elect to receive \$40 cash (Cash Benefit) for each mattress purchased in lieu of the \$40 MattressFirm.com credit. Defendant will pay up to \$2,000,000 in Cash Benefits to the Settlement Class. Based on the number of Settlement Class Members, the available Cash Benefits, and historical claim rates, the Parties anticipate that all Settlement Class Members who wish to receive their Settlement Award in cash will receive the full \$40 per purchased mattress. If, however, the amount of valid Claims exceeds \$2,000,000, then the Cash Benefits to Settlement Class Members will be reduced pro rata.

Defendant represents that, based on a review of Settlement Class Member purchase data, approximately 136,900 mattresses were sold to Settlement Class Members during the Class Period, resulting in \$5,476,000 in automatically distributed Credit Benefit vouchers and optional Cash

Benefits.<sup>1</sup> In addition, without reducing the amount of Credit Benefits or Cash Benefits paid to the Settlement Class, Defendant will separately pay an estimated \$935,000, comprising attorneys' fees and costs, service awards, and the costs of notice and administration. Thus, the Total Settlement Value is \$6,411,000.

2. Credit Benefit Delivery: Unless a Settlement Class Member submits a valid and timely Claim Form electing to receive payment in the form of a Cash Benefit, the appropriate Credit Benefit amount will automatically be provided to Settlement Class Members without any requirement to fill out a Claim Form or take any other affirmative action. The Credit Benefit will automatically be distributed to Settlement Class Members via an emailed discount code sent to the email address associated with the Settlement Class Member's most recent purchase, or an updated email addresses provided by the Settlement Class Member. Alternatively, the Credit Benefit may be automatically deposited into a preexisting user account at MattressFirm.com created by the Settlement Class Member. The email containing the discount code (or, alternatively, alerting the Settlement Class Member that the Credit Benefit has been distributed) shall provide instructions on how to redeem it.

3. Use of Credit Benefits: Credit Benefits can be used toward any purchase on MattressFirm.com (including any shipping and handling fees or taxes that may apply), can be combined with any other discount or offer, are transferrable, and do not expire. Each Credit Benefit must be used in its entirety in a single order. If a Credit Benefit used in connection with an order is less than the total amount of the order, then the Settlement Class Member using the Credit Benefit is responsible for the balance of the purchase amount that exceeds the Credit Benefit amount, including any shipping and handling fees and taxes that may apply.

4. Cash Benefit Election and Delivery: If a Settlement Class Member submits a valid and timely Claim Form and elects to receive a Cash Benefit, he or she will receive the payment due under this Agreement in the form of a Cash Benefit rather than a Credit Benefit. The

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<sup>1</sup> \$40 x 136,900 [estimated number of Settlement Class Members] = \$5,476,000.

Settlement Administrator will distribute the Cash Benefit to the Settlement Class Members entitled to receive them, in the form of an electronic payment or mailed check.

5. Non-Monetary Relief to the Settlement Class: In addition to providing Cash Benefits and Credit Benefits under the Settlement, as of the end of the Class Period, Defendant has modified the frequency and nature of the promotions offered on MattressFirm.com to comply with Section 17501 of California's False Advertising Law, Bus. & Prof. Code §§ 17500 et seq.

F. Settlement Administration.

1. Claims Process. Settlement Class Members may elect to receive a Cash Benefit instead of a Credit Benefit by submitting a valid Claim Form to the Settlement Administrator via a web form on the Settlement Website during the Claim Period and choosing to receive a Cash Benefit. Settlement Class Members may, at their option, submit a paper Claim Form, which will be accepted upon receipt as valid by the Settlement Claims Administrator if the claim is otherwise timely and valid. Settlement Class Members who do not submit a Claim Form electing to receive payment in the form of a Cash Benefit shall receive payment in the form of Credit Benefit as the default option. The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims. This may include measures such as using a class member identifier to access and submit claims and/or validating claims against Defendant's records. The Settlement Administrator shall have the right to audit Claims pursuant to the Parties' direction, and the Settlement Administrator may request additional information from Settlement Class Members submitting Claims. The Settlement Administrator shall maintain records of all Claim Forms until ninety (90) days after all valid Claims have been finally resolved and the Settlement Administrator has issued payment to those Settlement Class Members who submitted valid Claims and elected to receive a Cash Benefit, and such records will be made available upon request to Class Counsel and Defendant's counsel. The Settlement Administrator also shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant request.

2. Final Tally. Within **14 days** after the close of the Claim Period, the Settlement Administrator shall provide Defendant and Class Counsel with the total number of valid and timely Claims received and approved. The Settlement Administrator shall separately provide to Defendant, but not Class Counsel, the identities of each such Settlement Class Member.

3. Calculation of Cash Benefit and Credit Benefit Amounts. Within **14 days** after the close of the Claim Period, the Settlement Administrator shall provide Defendant with (a) a schedule of the Cash Benefit amounts to be paid to each Settlement Class Member who submitted a valid and timely Claim electing the Cash Benefit option, including the total amount of such Cash Benefit payments; and (b) for each Settlement Class Member not receiving a Cash Benefit, a schedule of the Credit Benefit amounts payable to that Settlement Class Member under this Agreement. The Settlement Administrator shall separately provide to Class Counsel anonymized versions of the above-referenced schedules after removing identifying information of the Settlement Class Members from such schedules.

G. Payment Schedule. In settlement of the claims of Plaintiff and the Settlement Class Members, Defendant shall remit payment on the following schedule:

1. Within **twenty-one (21) days** of the Effective Date, Defendant shall deposit cash into a mutually agreeable bank account managed by the Settlement Administrator sufficient to pay out the amount of all valid Claims for Cash Benefits (the “Cash Settlement Fund Payment”). The Cash Settlement Fund Payment shall be used to pay all Cash Benefit amounts. Any interest earned on any amounts in the account shall be allocated to pay costs of administration, provided, however, that if there are more than \$2 million in validated Cash Benefits claims, the interest earned shall be allocated to pay Cash Benefits. The Settlement Administrator will promptly distribute the Cash Benefits to the Settlement Class Members entitled to receive them, in the form of a check or electronic payment, within **fourteen (14) days** of receipt of funds from Defendant.

2. Within **twenty-one (21) days** of the Effective Date, Defendant shall provide a Credit Benefit due to each Settlement Class Member not receiving the Cash Benefit in the manner described in Section III.E. above.

3. Within **twenty-one (21) days** of the Effective Date, Defendant shall pay (a) any award of attorneys' fees, costs, and expenses to Class Counsel approved by the Court, and (b) any incentive award to Plaintiff approved by the Court. Defendant shall make these payments directly by wire transfer to Class Counsel's Client Trust Account. Wire transfer instructions shall be provided by Class Counsel.

H. Motion for Attorneys' Fees/Costs and Class Representative Service Award.

1. After the Court preliminarily approves the Settlement, Class Counsel may move the Court for an award of attorneys' fees plus costs and expenses of no more than Eight Hundred and Fifty Thousand Dollars (\$850,000). The actual amount of attorneys' fees, costs, and expenses to be awarded is in the discretion of the Court. Any such motion shall be noticed for the same date as the Fairness Hearing and filed at least **fourteen (14) days** before the Objection/Exclusion Deadline, unless the Court orders otherwise. Defendant shall not object to or oppose such a motion so long as the amount requested for attorneys' fees plus costs and expense is less than or equal to \$850,000. Class Counsel shall not be entitled to interest on any amount sought at any time.

2. Class Counsel further agree that they will concurrently apply to the Court for an incentive award/service award to lead Plaintiff Erica Hampton in the amount of Five Thousand Dollars (\$5,000), for her participation as a Class Representative, for taking on the risks of litigation, and for settlement and release of her individual claims as a Settlement Class Member in this Action, to be paid by Defendant. Defendant shall not object to or oppose such a request so long as the amount requested is less than or equal to \$5,000.

3. Court approval of attorneys' fees, costs, expenses, and service awards, or their amount, will not be a condition of the Settlement. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, expenses, costs, or service awards in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. Except for the fees, costs, and awards to be paid to Class Counsel and Plaintiff as described in this Agreement, Defendant does not agree to pay and shall not be responsible or liable for the

payment of any attorneys' fees and expenses of Class Counsel, Plaintiff, the Settlement Class, and Settlement Class Members.

#### **IV. NOTICE TO THE SETTLEMENT CLASS**

The Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, on the Notice Deadline.

A. Email Notice. The Settlement Administrator shall provide for Email Notice by sending an email substantially in the form of **Exhibit A** to the email addresses for Settlement Class Members identified by Defendant. This contact information will be shared with the Settlement Administrator but not Class Counsel.

B. Mail Notice. If an original Email Notice is returned as undeliverable, the Settlement Administrator will send a postcard notice in substantially the same form as **Exhibit D** via first class U.S. mail, postage pre-paid, to the California shipping address provided by Defendant and associated with the Settlement Class Member's most recent purchase on MattressFirm.com to a California address. Mail Notices will instruct Settlement Class Members to provide the Claims Administrator with a current email address for settlement purposes only.

C. Website Notice. The Settlement Administrator will establish and maintain the Settlement Website. The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms, and instructions for accessing the case docket online and/or in person. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court's website to confirm that the date has not been changed. These documents and information shall be available on the Settlement Website no later than the Notice Deadline and remain until at least 30 days after distribution of all Settlement Awards. The Settlement Website shall not include any advertising or Defendant's logo or trademarks.

D. Toll-Free Number. The Settlement Administrator shall establish and host an automated case-specific toll-free number to allow Class Members to learn more and to request further information about the Action.

E. Cooperation. Class Counsel and Defendant agree to cooperate in an effort to reasonably manage and reduce Administration Costs.

**V. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT**

A. Objections. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who wishes to object to the Settlement must do so in writing by the Objection/Exclusion Deadline. All written objections and supporting papers must (a) contain and clearly identify the case name and number; and (b) be filed with the Court, with a copy sent to the Settlement Administrator (electronically or by mail), by the Objection/Exclusion Deadline. It shall be the objector's responsibility to ensure receipt of any objections by the Court and Settlement Administrator. Written objections must also contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by legal support for the objection (if any); (3) any papers, briefs or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6) attestation of facts supporting the person's status as a Settlement Class Member or other proof of membership in the Settlement Class; (7) a list of all objections filed by the objector and his or her counsel to class action settlements in the last three years; and (8) the signature of the Settlement Class Member and her or his counsel, if any. No Settlement Class Member shall be heard at the Fairness Hearing (whether individually or through separate counsel) unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, have been timely submitted to the Court. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or



notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the Court and Settlement Administrator within **two (2) days** of the Objection/Exclusion Deadline. Settlement Class Members who fail to timely submit a written objection in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Class Counsel may, at least **seven (7) days** (or such other number of days as the Court shall specify) before the Fairness Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

B. Procedure for Requesting Exclusion. Settlement Class Members who wish to opt out of this Settlement must submit a written statement via U.S. Mail to the Settlement Administrator by the Objection/Exclusion Deadline. To be valid, each request for exclusion must: (a) state the Settlement Class Member's name, address, and phone number; (b) be personally signed by the Settlement Class Member and not the Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; (c) identify the name and case number of this Action; and (d) include the statement "I request to be excluded from the class settlement" in the Action. No "class" or "mass" exclusions shall be permitted. Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by the Settlement Administrator within **two (2) days** of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any Settlement Award, will not be bound by the Settlement, and will not have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final

judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

C. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the final judgment.

## **VI. PRELIMINARY APPROVAL OF SETTLEMENT**

Following full execution of this Agreement, Plaintiff will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for Settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for Settlement purposes only; (c) approve the forms of Class Notice and find that the notice constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process, California law, and/or Federal Rule of Civil Procedure 23, as applicable; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, by the Notice Deadline; (e) establish a procedure for persons in the Settlement Class to object to the Settlement or exclude themselves from the Settlement Class by the Objection/Exclusion Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene; (f) approve the Claim Form and the Claims Process described herein, and set a deadline for timely submission of claims; (g) pending final determination of whether the Settlement should be approved, bar all persons in the Settlement Class, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Discharged Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in

the Action except those related to effectuation of the Settlement; (i) schedule the Fairness Hearing on Final Approval of the Settlement, and rule on the Motion for Final Approval and Motion for Attorneys' Fees and Incentive Awards as soon as practicable; and (j) provide that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective legal positions as of the date of this Agreement. In the event the Court does not enter a Preliminary Approval order like that described herein, then this entire Agreement shall become null and void, unless the Parties hereto agree to proceed with this Agreement as modified.

## **VII. FINAL APPROVAL OF SETTLEMENT**

Not later than **twenty-eight (28) days** before the Fairness Hearing, Class Counsel shall file a Motion for Final Approval of the Settlement. The Fairness Hearing shall be scheduled as soon as is practicable for Class Counsel and the Court. Plaintiff shall request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class Members; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process, California law, and/or Federal Rule of Civil Procedure 23, as applicable; (c) approve the plan of distribution of the Settlement Awards; (d) finally certify the Settlement Class; (e) confirm that Plaintiff and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Discharged Parties; (f) confirm that Defendant has released Settlement Class Members,

Class Representative, and Class Counsel as set forth herein; and (g) dismiss the Action with prejudice, without costs to any Party, except as provided in this Agreement, and subject to the Court's retaining continuing jurisdiction over the Parties for the purpose of enforcement of the terms of this Agreement.

#### **VIII. UNCASHED SETTLEMENT AWARDS**

To the extent Settlement Awards are provided by check instead of electronically (if any), the expiration date for settlement checks will be 180 calendar days from the date the settlement checks are issued, unless otherwise extended by agreement of the Parties. Uncashed settlement checks may be reissued if the Settlement Class member attests that he or she never received the check, in which case the Settlement Administrator will stop payment on the uncashed check and reissue the check. Any funds remaining because of uncashed checks for 180 days shall escheat to the State of California as unclaimed funds pursuant to California Code of Civil Procedure section 1510, et seq.

#### **IX. TERMINATION RIGHTS**

In its sole discretion and at its sole option, Defendant has the unconditional right, but not the obligation, to terminate this Agreement if the total number of opt-outs exceeds 20,000 persons in the Settlement Class. Further, Defendant, Plaintiff, and Class Counsel may terminate this Agreement in the event the Court does not enter a Preliminary Approval Order or Final Approval Order like that described herein.

#### **X. PARTIES' AUTHORITY**

The signatories represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

#### **XI. MUTUAL FULL COOPERATION**

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement

and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendant and their counsel, shall take all necessary steps to secure the Court's final approval of this Agreement. Defendant agrees that Defendant will not attempt to discourage Settlement Class Members from filing claims.

## **XII. NO ADMISSION**

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims asserted in the Action. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document and shall, pursuant to Fed. R. Evid. 408 and related or corresponding state evidence laws, be inadmissible in evidence in any proceeding, action, arbitration, or hearing, including without limitation any litigation or regulatory proceeding or action, to establish liability. The preceding sentence shall not apply to an action or proceeding to approve or enforce this Agreement.

## **XIII. NOTICES**

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed served on the date of mailing by United States registered or certified mail, return receipt requested, addressed as follows:

<b><u>For The Settlement Class</u></b>	<b><u>For Defendant</u></b>
Alexander E. Wolf, Esq. awolf@milberg.com MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 402 W. Broadway, Suite 1760 San Diego, CA 92101 Telephone: (872) 365-7060	Jeffrey B. Margulies, Esq. jeff.margulies@nortonrosefulbright.com NORTON ROSE FULBRIGHT US LLP 555 South Flower Street, Forty-First Floor Los Angeles, CA 90071 Telephone: (213) 892-9200

## **XIV. CONSTRUCTION**

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations and drafting by and between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Agreement.

**XV. MATERIAL TERMS; CAPTIONS**

Each term of this Agreement is a material term of the Agreement not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder.

Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

**XVI. NON-EVIDENTIARY USE**

Neither this Agreement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Agreement.

**XVII. NO COLLATERAL ATTACK**

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the judgment and dismissal is entered. Such prohibited collateral attacks shall include claims that a Settlement Class Member's Settlement Award was improperly calculated or adjusted or that a Settlement Class Member failed to receive timely notice of the procedure for disputing the calculation of the individual Settlement Award or failed to submit a timely dispute letter for any reason.

**XVIII. AMENDMENTS**

The terms and provisions of this Agreement may be amended only by a written agreement signed by the Parties who have executed this Agreement and, if necessary, approved by the Court. The Notices and Claim Form approved by the Court may be adjusted by the Settlement

Administrator in consultation and agreement with Class Counsel and Defendant's counsel, as may be reasonable and necessary and not inconsistent with such approval.

**XIX. ASSIGNMENTS**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party or Settlement Class Member without the express written consent of each other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Settlement Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

**XX. GOVERNING LAW**

This Agreement shall be governed by, construed, and interpreted and the rights of the Parties determined in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

**XXI. BINDING ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**XXII. CONFIDENTIALITY**

Class Counsel in the Action warrant and represent that they have not shared any information regarding the substance of this Settlement or confidential information learned in the Action with any third party to the extent prohibited by any confidentiality order or agreement in the Action.

**XXIII. TAX CONSEQUENCES**

No opinion concerning the tax consequences of this Settlement to any Settlement Class Member is given or will be given by Defendant, Defendant's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice may direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the

Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her taxes or tax reporting and other obligations respecting the Settlement, if any.

#### **XXIV. SIGNATORIES**

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the class execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

#### **XXV. MUTUAL NON-DISPARAGEMENT**

Unless made in connection with a compulsory legal process, each Party shall not make, or cause or encourage anyone to make on its behalf, any public statements, written or oral, which materially disparage or defame another Party (including but not limited to its reputation and business).

#### **XXVI. DEADLINE CALCULATIONS**

Any deadlines provided for in this Agreement which fall on a weekend or federal holiday shall be extended to the next business day.

#### **XXVII. SETTLEMENT TIMELINE**

The pertinent deadlines provided by and contained in this Agreement are listed below.

<b><u>Item</u></b>	<b><u>Deadline</u></b>
Notice Deadline/Notice Date	21 days after Preliminary Approval [§ I.U.]
Plaintiff's Motion for Attorneys' Fees and Incentive Awards	14 days prior to the Objection/Exclusion Deadline [§ III.H.1-2.] (67 days after Preliminary Approval)
Objection/Exclusion Deadline	60 days after Notice Deadline [§ I.V.]



	(81 days after Preliminary Approval)
Claim Deadline	60 days after the Notice Deadline [§ I.I.] (81 days after Preliminary Approval)
Final Tally	14 days after Claim Deadline [§ III.F.2.-3.] (95) days after Preliminary Approval)
Motion for Final Approval	28 days before Fairness Hearing [§ VII] (Approx. 120 days after Preliminary Approval)
Plaintiff's and Defendant's Responses to Objections (if any)	7 days prior to date of Fairness Hearing [§ V.A.]
Fairness Hearing	The Parties shall request that the Court hold the Fairness Hearing and rule on the Motion for Final Approval and Motion for Attorneys' Fees and Service Award as soon as practicable after filing.
Effective Date	Date of Final Approval Order (assuming no objections)
Cash Settlement Fund Payment for Settlement Awards	21 days after Effective Date [§ III.G.1.]
Payment of Attorneys' Fees and Incentive Awards	21 days after Effective Date [§ III.G.3.]
Distribution of Settlement Awards	Credit Benefits: 21 days after Effective Date [§III.G.2.]  Cash Benefits: 14 days after receipt of funds by Settlement Administrator [§ III.G.1.]

**XXVIII. TIME PERIODS**

All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class.


**XXIX. COUNTERPARTS**

This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the dates indicated below: [*Signatures on following pages.*]

**CLASS REPRESENTATIVE AND CLASS COUNSEL:**

Dated: March 4, 2025

By:   
Erica Hampton (for 4, 2025 15:21:03)  
Erica Hampton, individually and on  
behalf of the Settlement Class

Dated: March 4, 2025

MILBERG COLEMAN BRYSON PHILLIPS  
GROSSMAN PLLC

By:   
Alexander E. Wolf, Esq.  
Attorneys for Plaintiff

**DEFENDANT AND COUNSEL FOR DEFENDANT:**

Dated: March 10, 2025

MATTRESS FIRM, INC.

Signed by:  
By: Kindel Nuno  
Name: Kindel Nuno  
Title: EVP, Legal, General Counsel & Secretary

Dated: March 11, 2025

NORTON ROSE FULBRIGHT US LLP

By: Jeffrey B. Margulies  
Jeffrey B. Margulies, Esq.  
Attorneys for Defendant