

SETTLEMENT AGREEMENT

Ceceña v. Winston Brands, Inc.
San Diego County Superior Court
Case No. 37-2020-00022900-CU-BT-CTL

This Settlement Agreement (“Agreement,” the terms of which are sometimes referred to as the “Settlement”) is entered into by and between plaintiffs Elisa Ceceña (“Ceceña”), Melvina Leon (“Leon”), Sandra Bernier (“Bernier”), and Jeanine Brice (“Brice”) (collectively, “Plaintiffs”), on the one hand, and defendant Winston Brands, Inc. (“Winston Brands” or “Defendant”), on the other hand. Each of the foregoing is a “Party” (collectively, the “Parties”).

I. RECITALS

A. On July 2, 2020, a Complaint was filed in the Superior Court of the State of California, County of San Diego, entitled *Ceceña v. Winston Brands, Inc.*, Case No. 37-2020-00022900-CU-BT-CTL (the “Action”) (ROA# 1). The Complaint alleged that, with respect to Defendant’s Collections Etc. Premier Savings membership program (the “Premier Savings” program), Defendant violated the California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”) and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

B. On October 22, 2020, Ceceña and Winston Brands participated in a mediation before the Honorable Carl J. West, a retired Los Angeles County Superior Court judge now associated with JAMS. The case did not settle at that mediation.

C. On November 19, 2020, Winston Brands filed a motion to compel arbitration of Ceceña’s claims (ROA# 18-21). After briefing and oral argument, the Court issued an order denying the motion on February 4, 2022 (ROA# 61).

D. A First Amended Complaint (“FAC”) was filed on February 8, 2022 (ROA# 64). Among other things, the FAC added Leon, Bernier, and Brice as named plaintiffs.

E. On March 14, 2022, Winston Brands filed its Answer to the FAC (ROA# 68).

F. On April 4, 2022, Winston Brands filed a notice of appeal of the order denying the motion to compel arbitration of Ceceña's claims (ROA# 75).

G. On April 26, 2022, the Parties participated in a mediation before the Honorable Joan M. Lewis (Ret.), a retired San Diego Superior Court judge now associated with Judicate West. The Parties were able to reach a resolution of the action on the terms set forth in this Agreement.

H. This Agreement represents a compromise of disputed claims. Defendant denies any and all allegations of liability, fault, or wrongdoing and denies that any claims alleged in the Action are suitable for class certification other than for purposes of this Settlement. The Parties enter into the Settlement described herein to fully and finally resolve their disputes.

Therefore, the Parties agree as follows:

II. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SETTLEMENT

A. The Settlement will become final and effective upon the occurrence of all of the following events:

1. The San Diego County Superior Court (the "Court") enters an order preliminarily approving the Settlement and conditionally certifying the Class as defined in Section III. The date the Court enters an order granting preliminary approval of the Settlement will be referred to as the "Preliminary Approval Date."

2. The Court enters an order and judgment granting final approval of the Settlement. The date the Court enters the judgment will be referred to as the "Judgment Entry Date."

3. The Effective Date occurs. The "Effective Date" will be determined as follows:

(a) The Effective Date will be the Judgment Entry Date unless a Class Member, as defined in Section III.A., files a timely objection to the Settlement that is not withdrawn on or before the Judgment Entry Date.

(b) If a Class Member files a timely objection to the Settlement that is not withdrawn on or before the Judgment Entry Date, then the Effective Date will be sixty-one (61) days following the Judgment Entry Date, unless that Class Member files a timely notice of appeal of the judgment.

(c) If a Class Member who has filed a timely objection to the Settlement also files a timely notice of appeal of the judgment, then the Effective Date will be the date the appeal is dismissed or the judgment is affirmed and no longer subject to mandatory or discretionary appellate review.

B. The Parties and their respective counsel will cooperate with each other and do all things reasonably necessary to obtain preliminary approval of the Settlement, obtain final approval of the Settlement, protect and support the Settlement if an appeal is taken or any other form of judicial review is sought, and otherwise seek to ensure that the Effective Date occurs.

C. Class Counsel will have the right to appeal any award of attorneys' fees, litigation expenses, or service payment, but any such appeal, if taken, will not otherwise affect the binding nature of the Settlement, including the release of claims set forth in Section IX below. In the event of any such appeal of an order regarding attorneys' fees, litigation expenses, or a service payment, the Parties will cooperate to carry out the other terms of the Settlement that are unaffected by that appeal.

D. If the Effective Date does not occur because the Superior Court or a reviewing court enters a final order or decision disapproving of the Settlement with prejudice, or if for other reasons it becomes certain that the Effective Date cannot occur: (1) this Agreement will be void *ab*

initio and without any further force or effect; (2) any conditional certification of the Class pursuant to a preliminary approval order shall be withdrawn; (3) the Second Amended Complaint filed pursuant to this Agreement will be withdrawn; and (4) the Settlement Administrator will, after deducting any settlement administration expenses incurred as of that date, return any Settlement funds in its possession to Defendant. If the Settlement is not granted final approval, the Parties shall be deemed to have preserved all of their rights or defenses as of the date of this Agreement, and shall not be deemed to have waived any substantive or procedural rights of any kind.

III. CLASS CERTIFICATION

A. Solely for the purpose of effectuating the Settlement, and subject to Court approval, the Parties stipulate to class certification of the following Class (the members of which are referred to as the “Class Members”):

All California residents who, between October 9, 2018 and April 26, 2022, were both (i) enrolled in the Collections Etc. Premier Savings program and (ii) charged at least one membership fee for such program. Excluded from the Class are all employees of Winston Brands, all employees of Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.

B. Solely for the purpose of effectuating the Settlement, the Parties stipulate to the filing of a Second Amended Complaint which sets forth the foregoing definition of the Class. As part of the motion for preliminary approval, the Parties will request that the Court grant leave for the filing of the Second Amended Complaint and that Defendant be deemed to have denied all material allegations of the Second Amended Complaint without the necessity of filing an Answer.

C. Solely for the purpose of effectuating the Settlement, and subject to Court approval, the Parties stipulate that the law firm of Dostart Hannink LLP will be appointed as counsel for the Class (“Class Counsel”).

D. Solely for the purpose of effectuating this Settlement, and subject to Court approval, the Parties stipulate that Ceceña, Leon, Bernier, and Brice will be appointed as the Class Representatives.

E. Subject to Court approval, and subject to the Parties' right to jointly propose a different administration firm, the Parties agree that CPT Group, Inc. will be the Settlement Administrator. The Settlement Administrator will be responsible for, *inter alia*: disseminating the Summary Class Notice; establishing and maintaining the Settlement Website; researching and updating addresses through skip-traces and similar means, if and to the extent necessary; receiving and validating claims; preparing a declaration regarding its due diligence; transmitting settlement payments to Class Members; and doing such other things as the Parties or the Court may direct in order to effectuate the Settlement.

F. Plaintiffs shall promptly submit this Agreement to the Court along with a motion for preliminary approval of class action settlement, conditional certification of the Class, and approval of class notice of the proposed settlement (proposed forms for the emailed Summary Notice, the mailed Summary Notice, the Long Form Notice, and the paper Claim Form are attached hereto as Exhibits A, B, C, and D, respectively). The preliminary approval motion will also ask the Court to schedule a fairness hearing on the question of whether the proposed settlement, including payment of attorneys' fees and costs and class representative service payments, should be finally approved as fair, reasonable, and adequate as to the Class.

IV. SETTLEMENT CONSIDERATION

A. Monetary Consideration. The monetary consideration to be paid by Defendant is the principal amount of Six Hundred Ninety Thousand Dollars (\$690,000.00) (the "Settlement Amount"). Defendant will pay the entire Settlement Amount to the Settlement Administrator by wire transfer no later than fourteen (14) days following the Preliminary Approval Date. The

Settlement Administrator shall hold said funds in an interest-bearing account (“Settlement Fund”), to be distributed only as set forth in this Agreement. If the Settlement is not granted final Court approval for any reason, the entire remaining balance of the Settlement Fund shall be returned to Defendant. Under no circumstances shall Defendant be obligated to pay any monetary amount pursuant to this Settlement in excess of the Settlement Amount.

B. As provided in Sections V, VI, VII, and VIII below, the Settlement Amount will be used to pay Class Counsel’s attorneys’ fees and litigation expenses (as approved by the Court), any service payments awarded by the Court to the Class Representatives, the expenses of settlement administration (including class notice), and the settlement payments to Class Members. If any funds are remaining by reason of uncashed settlement checks or otherwise, the remaining funds will be paid to one or more *cy pres* recipient(s) mutually proposed by the Parties and approved by the Court, unless the Court orders otherwise. Provided that the Effective Date occurs, no portion of the Settlement Amount will revert to Defendant.

C. Injunctive Relief and Change of Business Practices. To the extent applicable, Defendant shall comply with the ARL. Nothing in this Paragraph shall constitute an admission or concession that any of Defendant’s offer materials or procedures heretofore have not been in compliance with the ARL. Because this Settlement is a compromise of disputed allegations and claims, Defendant’s agreement to this Section IV.C is expressly for the purposes of settlement and is not an admission of any wrongdoing, fault, or liability.

V. ATTORNEYS’ FEES AND LITIGATION EXPENSES

Class Counsel will file a motion for an award of attorneys’ fees of up to thirty-eight percent (38%) of the Settlement Amount, plus actual litigation expenses not to exceed \$50,000 incurred in connection with the Action. Defendant will take no position regarding these requests, provided the requests made to the Court are consistent with this Section. Within fourteen business

days following the Effective Date, the Settlement Administrator will pay to Class Counsel from the Settlement Amount the attorneys' fees and litigation expenses awarded by the Court.

VI. SERVICE PAYMENTS

Class Counsel will file a motion requesting service payments to Ceceña, Leon, Bernier, and Brice, such service payments not to exceed \$20,000 in the aggregate. Defendant will take no position regarding these requests, provided the requests made to the Court are consistent with this Section. Within fourteen business days following the Effective Date, the Settlement Administrator will pay from the Settlement Amount any service payments awarded by the Court.

VII. SETTLEMENT ADMINISTRATION

A. Confirmatory Discovery. In connection with the mediation, Winston Brands provided to Class Counsel information concerning the number of individuals who, between October 9, 2018 and April 12, 2022, were both (i) enrolled in the Premier Savings program and (ii) charged at least one membership fee for such program; as well as the aggregate dollar amount of all Premier Savings membership fees collected from, and/or refunded to, those individuals. As confirmatory discovery, on or before June 17, 2022, Winston Brands will provide to Class Counsel a declaration under penalty of perjury, that verifies the accuracy of the summary class data that was provided to Class Counsel in advance of the mediation, including the fact that the Premier Savings program was not offered prior to October 9, 2018. The declaration shall also state the number of individuals in California who, between October 9, 2018 and April 12, 2022, were both (i) enrolled in the Premier Savings program and (ii) charged at least one membership fee for such program; (iii) the aggregate dollar amount of Premier Savings membership fees collected from those individuals between October 9, 2018 and April 12, 2022; and (iv) the aggregate dollar amount of Premier Savings membership fees refunded to those individuals between October 9, 2018 and April 12, 2022. The declaration and data shall be designated as Confidential and used

only for purposes of this settlement. This settlement is conditioned on the summary class data provided under this paragraph being consistent with the information Winston Brands provided to Class Counsel prior to or at the mediation.

B. Class List. Within seven (7) days after notice of entry of an order granting preliminary approval, Defendant will provide to the Settlement Administrator an Excel spreadsheet that includes, for each Class Member, the individual's name, last known U.S. mailing address, and email address (to the extent such information is available in Defendant's business records) (the "Class List"). The Class List shall be designated as Confidential and used only for purposes of this settlement, including settlement administration. Upon inquiry directly from a Class Member or potential Class Member to Class Counsel or the Settlement Administrator, the Settlement Administrator is authorized to provide to Class Counsel the name and contact information for such individual as reflected in the Class List, provided, however, that at least two business days before the Settlement Administrator provides any such information to Class Counsel, the Settlement Administrator shall notify Defendant's counsel of the contact.

C. No later than thirty-five (35) days after notice of entry of an order granting preliminary approval, or by such other date as the Court may establish, the Settlement Administrator will email the Court-approved Summary Class Notice to the last-known email address of each Class Member, as reflected in the Class List. The date on which the email notice is disseminated to Class Members is referred to as the "Notice Date." For individuals with respect to whom the Class List does not contain an email address (if any), the Settlement Administrator will send a copy of the Summary Class Notice to the individual's last-known mailing address, to the extent that information is available in the Class List, via first class U.S. Mail, postage pre-paid. Prior to such mailing, the Settlement Administrator will run the Class Members' last-known addresses through the U.S. Postal Service's National Change of Address ("NCOA") database and

update the Class List as appropriate. If any emailed Summary Class Notice documents are “bounced back” as undeliverable so as to indicate that the email address is not valid, then within fourteen (14) days after the Notice Date, the Settlement Administrator will mail a copy of the Summary Class Notice to the person’s last-known mailing address, to the extent that information is available in the Class List, as updated by the NCOA database. The Parties shall have the right to direct the dissemination of notice by different or additional means.

D. For a period of twenty-one (21) days following the Notice Date, if any mailed Summary Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will perform a skip-trace and/or other customary address search in an attempt to locate a valid mailing address, and if a new address is obtained, will re-mail the Summary Class Notice to that address.

E. No later than the Notice Date, the Settlement Administrator will establish a Settlement Website on which it will make available the Second Amended Complaint, the Settlement Agreement, the order granting preliminary approval of the Settlement, the Summary Class Notice, the Long Form Class Notice, and any other materials agreed to by the Parties.

F. The date that is forty-five (45) days after the Notice Date shall be referred to as the “Claim/Exclusion/Objection Deadline.”

G. Any Class Member who wishes to be excluded from the Settlement must complete and return a request for exclusion via U.S. Mail, email, or personal delivery, and that request for exclusion must be validated by the Settlement Administrator as provided in this section. The request for exclusion must be in writing, must list the Class Member’s name, mailing address, and telephone number, along with the statement “I wish to be excluded from the *Ceceña v. Winston Brands, Inc.* Settlement” or words to that effect. Any request for exclusion must be personally signed by each person requesting exclusion. So-called “mass” or “class” opt-outs shall not be

allowed. To be timely, the request for exclusion must be returned to the Settlement Administrator no later than the Claim/Exclusion/Objection Deadline. If the request for exclusion is returned by U.S. Mail, the date of return will be the date of the postmark. If the request for exclusion is returned by personal delivery or email, the date of return will be the date the request for exclusion is received by the Settlement Administrator. Those Class Members who submit timely requests for exclusion will be referred to as Excluded Class Members. Excluded Class Members will not receive any consideration under the Settlement and will not be bound by any provision of the Settlement. Requests for exclusion shall be sent by regular mail, electronic mail, or hand-delivery to the Settlement Administrator, as follows: Ceceña v. Winston Brands Settlement Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606; or to an email address to be established by the Settlement Administrator.

H. In order to receive a share of the Settlement Amount, Class Members must file a timely Claim, either electronically via the Settlement Website or a paper Claim Form, and that Claim must be validated by the Settlement Administrator. Defendant will provide the Settlement Administrator with documents or data in its possession, custody, or control that are reasonably necessary to validate Claims. All such documents and data shall be Confidential and used only for implementation of the Settlement.

1. Completed Claims that are timely submitted electronically through the Settlement Website by individuals to whom the emailed or mailed Summary Class Notice was sent will be deemed valid.

2. Completed Claims that are submitted in the form of a paper Claim Form will be deemed valid if the claimant's name and the claimant's mailing address and/or email address match information in the Class List. The paper Claim Form must be completed and signed by the claimant.

I. To be timely, the Claim must be returned to the Settlement Administrator no later than the Claim/Exclusion/Objection Deadline. If the Claim is returned via the Settlement Website, the date of return will be the date of submission through the Settlement Website. If the Claim is returned by U.S. Mail, the date of return will be the date of postmark. If the Claim is returned by personal delivery or email, the date of return will be the date the Claim is received by the Settlement Administrator. The parties may jointly direct the Settlement Administrator to treat as timely a Claim received by the Settlement Administrator after the Claim/Objection/Exclusion Deadline and before the Final Approval Hearing.

J. If the Settlement Administrator disallows a Claim based on a deficiency that can be cured (such as the failure to sign the Claim Form), the Settlement Administrator may either waive the deficiency or notify the claimant by postcard of the reason for the disallowance and invite the claimant to cure the deficiency. The Settlement Administrator will consider any additional information or corrective action by the claimant so long as the additional information or corrective action is submitted within twenty-one (21) days after the mailing of the notice of deficiency.

K. In the event multiple or conflicting claims are submitted with respect to the same name or transaction, then subject to any order the Court may make, the Settlement Administrator shall have authority to resolve the issue as between the claimants.

L. Unless otherwise ordered by the Court, the Settlement Administrator's decision regarding the validity of any Claim will be final and not subject to review or appeal.

M. Any Class Member who wishes to object to the Settlement may do so in writing. To object to the Settlement in writing, a Class Member must file a written objection with the Court and serve copies of the objection on Class Counsel, Defendant's counsel, and the Settlement Administrator, no later than the Claim/Exclusion/Objection Deadline. The written objection must set forth the name of the lawsuit (*Ceceña v. Winston Brands, Inc.*, Case No. 37-2020-00022900-

CU-BT-CTL), the Class Member's name, address, and telephone number, and the following statement: "I declare under penalty of perjury that, to the best of my knowledge, between October 9, 2018 and April 26, 2022, I was enrolled in the Collections Etc. Premier Savings program and was charged a membership fee for such program, and I wish to object to the Settlement." The written objection must also state the factual and legal basis for the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and a statement indicating whether the objector intends to appear at the Final Approval Hearing. Any documents that the objecting Class Member wishes for the Court to consider must also be attached to the objection. Any written objection must be filed with the Court and served by mail as follows: (1) Ceceña v. Winston Brands Settlement Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606; (2) to Defendant's counsel, Christine M. Reilly, Manatt, Phelps & Phillips, LLP, 2049 Century Park East, Suite 1700, Los Angeles, California 90067; and (3) to Class Counsel, Zach P. Dostart, Dostart Hannink LLP, 4225 Executive Square, Suite 600, La Jolla, California 92037. The Settlement Administrator will promptly compare the information submitted by the objector against the Class List and advise Class Counsel and Defendant's counsel whether it appears that the objector is in fact a Class Member. Class Counsel and Defendant will respond to any written objections, as appropriate, either in briefs filed in advance of the final approval hearing or at the final approval hearing.

N. Class Members who submit a valid claim and do not submit a timely and valid request for exclusion are referred to as the "Participating Class Members." Only Participating Class Members will receive settlement payments under the Settlement, in accordance with Section VIII, below.

O. No later than ten (10) court days following the Claim/Exclusion/Objection Deadline, the Settlement Administrator will make available to Class Counsel and Defendant's counsel a report identifying the name of each Excluded Class Member and each Class Member who has objected to the Settlement.

VIII. SETTLEMENT PAYMENTS

A. Unless the Court orders otherwise, each Participating Class Member will receive an equal, pro-rata portion of the Net Settlement Amount. The "Net Settlement Amount" is the Settlement Amount (plus any accrued interest thereon) reduced by any sums awarded by the Court for attorneys' fees, litigation expenses, service payments, and all expenses of settlement administration (including expenses previously incurred and the Settlement Administrator's good faith estimate of future expenses to be incurred). The pro-rata share of each Participating Class Member shall be computed by dividing the Net Settlement Amount by the number of Participating Class Members.

B. As soon as practicable after the Effective Date, the Settlement Administrator will transmit to each Participating Class Member that person's settlement payment, which may be in the form of a check or an electronic payment such as Venmo, direct deposit/ACH, or PayPal. The settlement payment will be accompanied by a statement that the Participating Class Member should consult his or her tax advisor regarding the tax consequences of the settlement payment. In the event any check is returned to the Settlement Administrator as undeliverable, or in the event any electronic payment is unable to be processed, the Settlement Administrator will attempt to contact the Participating Class Member by telephone or email or perform a skip trace to attempt to locate a current address or other relevant information necessary to re-issue payment. Any payment instrument not negotiated within ninety (90) days of its mailing or other transmission by the Settlement Administrator will be void. Any portion of the Settlement Amount, including accrued

interest, that remains unpaid at the end of such ninety-day period will be paid to one or more *cy pres* recipients mutually proposed by the Parties and approved by the Court, unless the Court orders otherwise.

IX. RELEASE OF CLAIMS

A. Following the Effective Date and provided that Defendant has paid the full Settlement Amount, Ceceña, Leon, Bernier, Brice, and all Class Members who have not timely requested exclusion from the Settlement, as well as their respective spouses, heirs, assigns, executors, administrators, successors, and agents acting on their behalf (collectively, the “Releasing Parties”), shall be deemed to release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). For purposes of this paragraph, “Released Parties” means Winston Brands, Inc., Clarus Commerce LLC, and any of their past or present parents, subsidiaries, affiliated companies, and corporations, and any of their past or present officers, directors, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, agents, consultants, contractors, licensors, licensees, successors, or assigns. For purposes of this paragraph, “Released Claims” means any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, restitution, disgorgement, attorneys’ fees and costs, and/or any other form of monetary consideration whatsoever, for any and all potential claims by the Class Members that have been pled in the Action, or that could have been pled in the Action based on the facts alleged, whether known or unknown, that relate to or arise from membership charges for the Collections Etc. Premier Savings program from October 9, 2018 to and including the date of preliminary approval. Each of the Released Parties shall be third-party beneficiaries to this release provision and entitled to enforce its terms.

B. The Parties expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

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.

To the extent that California or other law may be applicable to this Agreement, the Parties hereby expressly agree that the provisions, rights and benefits of Section 1542 of the Civil Code of the State of California and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable are hereby knowingly and voluntarily waived and relinquished to the fullest extent permitted by law solely in connection with unknown claims that relate to the claims or causes of action against Defendant set forth in the Action. The Parties expressly acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein. The Parties hereby agree and acknowledge that this is an essential term of this Agreement and the release provision above.

X. MISCELLANEOUS

A. The Settlement represents a compromise of disputed claims. Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendant.

B. This Agreement may be modified only by a writing signed by the Parties or their respective successors in interest.

C. This Agreement, including its exhibits, constitutes the entire agreement between the Parties concerning the subject matter hereof. This Agreement and exhibits will be construed as a whole, and with reference to one another, according to their fair meaning and intent. The Parties

agree that the rule of construction that ambiguities in agreements must be construed against the drafting party will not apply in interpreting this Agreement or its exhibits.

D. The Parties hereby agree to do such things and to execute such other and further documents, writings and/or instruments as may be necessary or convenient to the performance of this Agreement and/or to assure that its intent, purposes, and/or objects shall be fully and completely carried out. It is the intention of the Parties to comply in all respects with the requirements of California law and with any local rule of the Court with respect to this Settlement Agreement, the procedure for obtaining court approval, and the procedure for implementing the Settlement. If the Court or any appellate court denies or conditions the grant of preliminary or final approval on a rejection or modification of any provision of this Agreement other than the Class Definition (Section III.A), Settlement Consideration (Section IV), or Release of Claims (Section IX) of this Agreement, the Parties agree to negotiate in good faith to modify the Agreement to the extent necessary to conform to the Court's order or condition, in which case the remainder of the Agreement shall remain in full force and effect. Nothing prevents the parties from negotiating in good faith in response to any proposal, order or condition proposed by the Court.

E. The Parties represent and warrant that they have not assigned or transferred in any manner, including by way of subrogation or operation of law or otherwise, any claims, suits, actions, causes of action, demands, liabilities, duties, obligations, rights, damages, benefits, costs, awards, loss of service, expenses and/or compensation released by such party herein.

F. The invalidity or unenforceability of any of the provisions contained in this Agreement shall not render invalid or unenforceable any of the other provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, organization or circumstances shall to any extent be held by a court of competent jurisdiction to be

invalid, void or unenforceable, the remainder of the provisions of this Agreement or the application thereof to any person, organization or circumstance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

G. Each Party hereto hereby covenants and agrees not to bring any claim, action, suit, or proceeding against any other Party hereto, directly or indirectly relating in any way to the matters settled and released hereby, and each Party further covenants and agrees that this Agreement is a bar to any such claim, action, suit or proceeding.

H. Each of the Parties has investigated the facts pertaining to this Agreement as each deems necessary. The Parties understand that the facts with respect to which this Agreement is entered into may hereafter turn out to be other than or different from the facts now known or believed by them to be true, and each accepts and assumes the risk of the facts turning out to be different and agree that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such difference in facts.

I. The Parties and their respective counsel agree that they will not issue any press release or make any statements or comments to media regarding the settlement of this Action. If contacted by media or press, the Parties shall respond to the effect that the action has been settled, and/or “no comment.”

J. Neither Plaintiff nor Defendant shall make any disparaging remarks or statements towards the other.

K. The Parties have been represented by private counsel of their own choice, and the Settlement and releases referred to herein are an arm’s-length transaction.

L. Each individual signing this Agreement warrants that he or she has the authority to sign the Agreement on behalf of the Party for which he or she signs. Defendant warrants that it has

obtained all necessary authorizations under its organizational documents and under law to make this Agreement binding on Defendant.

M. The Parties agree that this Agreement, and any and all disputes that arise from or in any way relate to this Agreement, will be governed and interpreted and enforced in accordance with the laws of the State of California, but without regard to its law concerning conflict of laws.

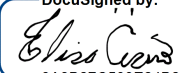
N. This Agreement may be executed in counterparts. Any signature made and transmitted electronically shall be deemed an original signature for purposes of this Agreement, and shall be binding upon the Party transmitting such electronic signature.

O. Except as otherwise specifically provided for herein, each Party will bear its own attorneys' fees, costs and expenses in relation to the Action.

P. The Superior Court of the State of California, County of San Diego, will retain continuing jurisdiction to interpret and enforce this Agreement pursuant to Code of Civil Procedure § 664.6.

IN WITNESS WHEREOF, the Parties accept and agree to this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Dated: 6/10/2022 _____

DocuSigned by:

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ELISA CECENA

Dated: _____

MELVINA LEON

Dated: _____

SANDRA BERNIER

Dated: _____

JEANINE BRICE

obtained all necessary authorizations under its organizational documents and under law to make this Agreement binding on Defendant.

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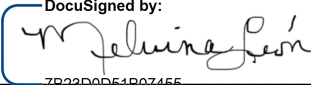
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Dated: _____

ELISA CECENA

Dated: 6/10/2022 _____

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MELVINA LEON

Dated: _____

SANDRA BERNIER

Dated: _____

JEANINE BRICE

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Dated: _____

ELISA CECENA

Dated: _____

MELVINA LEON

Dated: 6/10/2022 _____

DocuSigned by:
Sandra Bernier

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SANDRA BERNIER

Dated: _____

JEANINE BRICE

obtained all necessary authorizations under its organizational documents and under law to make this Agreement binding on Defendant.

M. The Parties agree that this Agreement, and any and all disputes that arise from or in any way relate to this Agreement, will be governed and interpreted and enforced in accordance with the laws of the State of California, but without regard to its law concerning conflict of laws.

N. This Agreement may be executed in counterparts. Any signature made and transmitted electronically shall be deemed an original signature for purposes of this Agreement, and shall be binding upon the Party transmitting such electronic signature.

O. Except as otherwise specifically provided for herein, each Party will bear its own attorneys' fees, costs and expenses in relation to the Action.

P. The Superior Court of the State of California, County of San Diego, will retain continuing jurisdiction to interpret and enforce this Agreement pursuant to Code of Civil Procedure § 664.6.

IN WITNESS WHEREOF, the Parties accept and agree to this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Dated: _____

ELISA CECENA

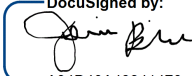
Dated: _____

MELVINA LEON

Dated: _____

SANDRA BERNIER

Dated: 6/10/2022 _____

DocuSigned by:


JEANINE BRICE

Dated: _____

WINSTON BRANDS, INC.


Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: June 10, 2022

DOSTART HANNINK LLP



ZACH P. DOSTART
Attorneys for Plaintiffs


Dated: _____

MANATT, PHELPS & PHILLIPS, LLP

CHRISTINE M. REILLY
Attorneys for Defendant
Winston Brands, Inc.

Dated: 6/13/22

WINSTON BRANDS, INC.


Name: Sue Connor
Title: SVP Finance

APPROVED AS TO FORM:


Dated: _____

DOSTART HANNINK LLP

ZACH P. DOSTART
Attorneys for Plaintiffs

Dated: 6/16/2022

MANATT, PHELPS & PHILLIPS, LLP


~~CHRISTINE M. REILLY~~ JWYN JONES RODRIGUEZ
Attorneys for Defendant
Winston Brands, Inc.