

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

**NICOLE DICKENS, HALEH
ALLAHVERDI, HALEY BURGESS,
JILLIAN BLENIS, and LILI
MITCHELL**, individually and on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THINX, INC.,

Defendant.

CASE NO. 1:22-cv-04286-JMF

**MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

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Plaintiffs Nicole Dickens, Haleh Allahverdi, Haley Burgess, Jillian Blenis, and Lili Mitchell (“Plaintiffs” or “Class Representatives”), on behalf of themselves and all other members of the proposed Settlement Class, respectfully submit this memorandum in support of their unopposed motion for preliminary approval of the proposed Settlement.

I. INTRODUCTION

This case involves Defendant Thinx Inc.’s (“Defendant” or “Thinx”) sale of its proprietary line of menstrual underwear (“Thinx Period Underwear”)¹, which is marketed and sold to women as a safe and sustainable way to manage menstruation. The case arises out of Plaintiffs’ allegations that Thinx Period Underwear contains harmful per-and polyfluoroalkyl substances (“PFAS”).

Plaintiffs, individually and on behalf of all others similarly situated, and Defendant have entered into a Settlement Agreement and Release² to resolve Plaintiffs’ claims on a classwide basis that provides for the establishment of a common fund of up to Five Million Dollars (\$5,000,000) (“Settlement Amount”), comprising a \$4,000,000 Cash Minimum Amount and \$1,000,000 Replenishment Amount. The final Settlement is the result of: (i) significant pre-suit investigation of Plaintiffs’ claims, including extensive chemical analysis of the products at issue, legal research, consultation with experts, and consumer interviews; (ii) the filing of three class actions which were ultimately consolidated in this Court; (iii) hard-fought litigation of nearly two years, including successfully opposing Defendant’s motion to dismiss through substantial briefing in the first-filed Central District of California action; (iv) written discovery; (v) the exchange of relevant information

¹ This action concerns the following styles of Thinx Period Underwear: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.

² The Settlement Agreement and its exhibits are attached as Exhibit 1. Capitalized terms not defined in this brief shall have the same definitions and meanings ascribed to them in the Settlement Agreement.

pursuant to Fed. R. Evid. 408; (vi) a full-day mediation with a certified mediator; and (vii) lengthy settlement negotiations that spanned nearly one year. The Settlement is an outstanding result for Settlement Class Members, particularly given the costs and risks of further litigation, and represents a substantial, immediate recovery.

The Settlement satisfies Rule 23(e)(1) for the issuance of Notice, including each of the Rule 23(e)(2) factors and the Second Circuit factors set forth in *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement so that Notice may be provided to the Settlement Class. Plaintiffs request that this Court enter the agreed-upon form of Order Preliminarily Approving Settlement and Providing for Notice, submitted as Exhibit F to the Settlement Agreement, which will:

1. Preliminarily approve the Settlement;
2. Preliminarily certify the Settlement Class;
3. Appoint proposed Class Counsel as Class Counsel and Plaintiffs as Class Representatives;
4. Approve the form and content of the Notices and Claim Forms attached as Exhibits A-E to the Settlement Agreement;
5. Find that the proposed procedures for dissemination of the Notices and Claim Forms constitute the best notice practicable under the circumstances, and comply with due process and Fed. Rule Civ. P. 23;
6. Set a date and time for the Final Approval Hearing, at which the Court will consider final approval of the Settlement, Class Certification, and Class Counsel's application for attorneys' fees and expenses and Class Representatives' application for service awards.

II. SUMMARY OF THE ACTION

A. Summary of the Allegations

Thinx designs, manufactures, markets, advertises, distributes, and sells Thinx Period Underwear, an absorbent underwear which is used in place of traditional feminine hygiene products to collect and/or absorb menstrual fluid. (Consolidated Amended Complaint ("CAC"), ECF No. 16,

at ¶¶ 1-2.) Thinx Period Underwear is a washable, reusable alternative to traditional single-use feminine hygiene products like tampons. (*Id.* at ¶ 3.) Consumers are willing to pay a premium for Thinx Period Underwear compared to cheaper disposable alternatives based on the belief that Thinx Period Underwear provides an easier, safer, and more sustainable way to manage menstruation. (*Id.*)

Plaintiffs allege that Thinx’s marketing, including its packaging and labeling, has uniformly represented Thinx Period Underwear as safe, sustainable, free from harmful chemicals and nanoparticles, and—with regard to certain styles—organic. (*Id.* at ¶¶ 31-33.) Each of the Plaintiffs were exposed to these representations regarding Thinx Period Underwear. (*Id.* at ¶¶ 107, 120, 121, 130, 135, 151.)

Plaintiffs purchased Thinx Period Underwear because they were seeking a safe, reusable, and sustainable form of menstrual protection. (*Id.* at ¶¶ 108, 129, 136, 150, 161.) Plaintiffs purchased Thinx Period Underwear in reliance on Thinx’s specific representations, including that Thinx Period Underwear did not contain “harmful chemicals,” was organic, and did not contain heavy metals or nanoparticles. (*Id.* at ¶ 161.) These representations were material to Plaintiffs when purchasing Thinx Period Underwear. (*Id.*)

Plaintiffs sought independent third-party testing to determine whether Thinx Period Underwear contained any harmful chemicals. (*Id.* at ¶ 35.) Plaintiffs’ testing revealed the presence of short chain PFAS. (*Id.* at ¶ 37.) PFAS are a category of man-made chemicals that can be used to enhance the performance of textiles and apparel, including by making them waterproof and/or stain resistant. (*Id.* at ¶¶ 39-40.) Plaintiffs allege, however, that PFAS present a danger to both humans and the environment due to their persistent, bioaccumulative nature, and have been associated with a variety of negative health effects in humans, and are therefore “harmful chemicals.” (*Id.* at ¶¶ 44-48.) During the class period, Thinx also sold several styles of Thinx Period Underwear which were

advertised as “organic.” (*Id.* at ¶ 69.) Plaintiffs allege that the presence of PFAS in Thinx Period Underwear contradicts these organic representations. (*Id.* at ¶ 79.)

In addition to PFAS, Thinx Period Underwear also contains Agion, an antimicrobial treatment made from silver and copper nanoparticles which is designed to reduce odor in clothing. (*Id.* at ¶ 56.) Plaintiffs allege the use of Agion directly contradicted Thinx’s representations that Thinx Period Underwear is free from non-migratory nanoparticles and harmful chemicals. (*Id.* at ¶ 68.)

After Plaintiffs initiated this action, Thinx revised its website and removed many of the representations regarding the presence of chemicals in Thinx Period Underwear. *See* Exhibit 2, Joint Declaration of Class Counsel (“Joint Decl.”) at ¶ 14. Thinx also discontinued production of its “organic” line of Thinx Period Underwear. *Id.*

B. Relevant Background

1. The Three Class Actions

On November 12, 2020, Destini Kanan³ filed a class action lawsuit in the Central District of California alleging that Thinx misrepresents the true nature of Thinx Period Underwear by representing that it is, among other things, free from harmful chemicals and organic. (*Allahverdi, et al. v. Thinx, Inc.*, 2:20-cv-10341-SSS-JPR (C.D. Cal.) (the “California Action”) (ECF No. 1)). Prior to filing this action, proposed Class Counsel spent many hours investigating the claims against Thinx. Proposed Class Counsel conducted extensive research into the design and manufacturing of Thinx Period Underwear, including analysis of Thinx’s patent applications and investigation of its suppliers and manufacturers. Joint Decl. at ¶ 3. Given the novelty of consumer class action claims related to the presence of PFAS in consumer goods, proposed Class Counsel also engaged in extensive research on the applicable science related to PFAS, including its function in consumer goods like Thinx Period

³ On September 23, 2021, Plaintiffs filed a Second Amended Complaint, removing Destini Kanan as a Plaintiff and replacing her with Haleh Allahverdi. (California Action, ECF No. 60).

Underwear. *Id.* In order to determine the precise nature of the PFAS present in Thinx Period Underwear, proposed Class Counsel also engaged two certified laboratories to conduct analytical testing that was consistent with acceptable methods for detecting PFAS in textiles. *Id.* at ¶¶ 2, 5. Proposed Class Counsel also consulted with an expert in the field of chemistry, who spent significant time investigating Thinx Period Underwear and the presence of PFAS. *Id.* at ¶ 5. Further, proposed Class Counsel analyzed nearly seven years of Thinx’s representations regarding Thinx Period Underwear, including its website content, social media posts, print advertising, blog posts, articles, and other marketing materials dating back to the company’s inception. *Id.* at ¶ 3.

Proposed Class Counsel’s investigation was essential in identifying potential concerns resulting from the presence of PFAS in Thinx Period Underwear, analyzing the nature of Thinx’s conduct, and evaluating potential claims and remedies. *Id.* at ¶ 13. Prior to filing the California Action, proposed Class Counsel spent a significant amount of time analyzing testing reports and working with an expert to develop a broad understanding of the methodologies used to detect PFAS in textiles like Thinx Period Underwear. *Id.* at ¶ 5. Proposed Class Counsel also expended significant resources researching and developing the legal claims at issue. *Id.* at ¶ 4.

The complaint in the California Action was amended on March 16, 2021 to add Haley Burgess as a plaintiff. (California Action, ECF No. 29.) On April 15, 2021, Thinx filed a motion to dismiss Plaintiffs’ First Amended Complaint. (California Action, ECF No. 38.) On June 23, 2021, the court granted the motion in part, but allowed Plaintiffs Kanan and Burgess to proceed with their claims for breach of express warranty; unjust enrichment (in the alternative); and violations of California Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. § 1750 et seq.), Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code § 17200 et seq.), and False Advertising Law (“FAL”) (Cal. Bus. & Prof. Code § 17500 et seq.). (California Action, ECF No. 46.)

After the court's ruling on the motion to dismiss, the parties continued litigating the California Action. Joint Decl. at ¶ 12. Plaintiffs consulted with numerous experts to aid in the evaluation and development of Plaintiffs' claims, including experts in the fields of biochemistry, reproductive and environmental toxicology, pharmacology, sustainability and chemical management, and textile manufacturing. *Id.* at ¶ 13. The parties also worked to negotiate a scheduling order pursuant to Rule 26(f) along with a Stipulated Protective Order. (California Action, ECF Nos. 51, 61.) The parties began exchanging written discovery requests in September 2021 and served responses and objections to these requests. Joint Decl. at ¶ 12. At that time, Thinx noticed depositions for Plaintiffs Destini Kanan and Haley Burgess. In turn, Plaintiffs served a notice for a Fed. R. Civ. P. 30(b)(6) deposition of Thinx. *Id.*

On June 18, 2021, just before the court in the Central District of California ruled on Defendant's motion to dismiss in the California Action, Plaintiffs Jillian Blenis and Lili Mitchell filed similar claims in the District of Massachusetts. (*Blenis, et al. v. Thinx, Inc.*, 1:21-cv-11019-IT (D. Mass.) (the "Massachusetts Action") (ECF No. 1).) Plaintiffs Blenis and Mitchell's claims were: breach of express warranty; unjust enrichment (in the alternative); negligent failure to warn; and negligent design. (Massachusetts Action, ECF No. 1.) These claims were alleged on behalf of a class of Massachusetts consumers. (*Id.*) On August 31, 2021, Plaintiffs filed an amended complaint to add claims for violation of Massachusetts Gen. Law c. 93A and breach of implied warranties. (Massachusetts Action, ECF No. 15.) On September 30, 2021, Defendant filed a Motion to Dismiss or Stay the action. (Massachusetts Action, ECF No. 19.) The parties fully briefed the motion, which was pending hearing prior to Plaintiffs' voluntary dismissal of the action. (Massachusetts Action, ECF Nos. 26, 31.)

On September 23, 2021, Plaintiffs in the California Action filed a Second Amended Complaint removing Destini Kanan as a Plaintiff and replacing her with Haleh Allahverdi. (California Action, ECF No. 60.)

On May 25, 2022, Plaintiff Nicole Dickens filed this lawsuit (the “New York Action”), alleging similar statutory consumer protection and common law claims arising out of Thinx’s marketing and sale of Thinx Period Underwear. (ECF. No. 1.)

The California and Massachusetts Plaintiffs voluntarily dismissed their respective cases in order to consolidate their claims in with the New York Action. (California Action, ECF No. 71; Massachusetts Action, ECF No. 39.) The operative consolidated class action complaint was filed on August 8, 2022 in anticipation of settlement, consolidating Ms. Dickens’ claims with those of the California and Massachusetts Plaintiffs. (ECF. No. 16.)

2. The Parties’ Mediation and Settlement Efforts

In or around October 2021, while discovery was ongoing, the parties began discussing settlement in earnest. Joint Decl. at ¶ 15. The parties agreed to engage in a formal mediation with the Hon. Jay Gandhi (Ret.) of JAMS ADR. *Id.* at ¶ 16. In preparation for mediation, the parties exchanged discovery pursuant to Fed. R. Evid. 408, which allowed them to fully evaluate a potential settlement. *Id.* at ¶ 17. Additionally, the parties drafted confidential mediation briefs which were submitted to Judge Gandhi to aid in settlement discussions. *Id.*

As a result of extensive expert investigation, as well as independent investigation of proposed Class Counsel regarding the representations at issue, Plaintiffs and proposed Class Counsel entered these settlement negotiations with substantial information about the nature and extent of the challenged practices, as well as the merits of the legal claims and factual allegations. *Id.* at ¶ 19. Plaintiffs and proposed Class Counsel also had the ability to review key documents and information in this matter. *Id.* Review of this information positioned proposed Class Counsel to evaluate with

confidence the strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary judgment, and trial. *Id.*

On December 8, 2021, the parties participated in a full-day mediation with Judge Gandhi but were unable to reach a settlement at that time. *Id.* at ¶ 18. However, the parties continued to engage in settlement discussions, which included producing additional discovery relevant to settlement. *Id.* at ¶ 20. These discussions continued over a period of many months, and included numerous phone calls, video conferences, and written exchanges in an attempt to reach a resolution. *Id.* at ¶ 21.

The parties continued to engage in negotiations after the filing of the *Dickens* action before finally reaching a settlement in principle in June 2022, including with respect to the monetary benefit for Settlement Class Members. *Id.* at ¶ 22. Over the subsequent months, the parties have continued to finalize the details of the Settlement Agreement, including the terms of injunctive relief, the release, claims administrator, notice plan, and schedule. *Id.* at ¶ 23. During this process, the parties had regular Zoom conferences and continued to exchange redlines and drafts of documents. *Id.* Accordingly, the terms of the Settlement Agreement were negotiated at arm's length.

III. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. Material Terms of the Settlement

The Settlement Agreement provides for a common fund of up to Five Million Dollars (\$5,000,000) ("Settlement Amount"), comprising a \$4,000,000 Cash Minimum Amount and \$1,000,000 Replenishment Amount. The Class Benefit provides two monetary options for Settlement Class Members. In addition to the monetary value of the proposed Settlement, Thinx will take measures to help ensure that PFAS are not intentionally added to Thinx Period Underwear at any stage of production, and has taken additional steps to help ensure supplier compliance. Thinx has also removed various marketing statements from its website relating to Agion.

1. The Settlement Fund

Defendant will establish a Cash Minimum Fund, subject to replenishment by the Replenishment Amount, providing for payment of valid claims by Settlement Class Members, Notice and administration costs, and attorneys' fees, costs, and service awards approved by the Court as follows:

- a. A non-reversionary cash fund in the amount of \$4,000,000 providing for payment of valid claims by Settlement Class Members, Notice and administration costs, and attorneys' fees, costs, and service awards approved by the Court ("Cash Minimum Fund"). Thinx shall pay into the Cash Minimum Fund a portion of the Cash Minimum Amount sufficient to cover the estimated costs of Notice and settlement administration, as provided by the Settlement Administrator, within 21 days after Preliminary Approval.
- b. Replenishment fund in the amount of up to \$1,000,000 in addition to the Cash Minimum Fund amount ("Maximum Cap") to cover additional valid claims by Settlement Class Members. Thinx shall in no event be required to pay any amounts above the Cash Minimum Fund amount other than for such actual valid claims.
- c. If total valid claims, Notice and administration costs, and attorneys' fees, costs, and service awards approved by the Court are less than the amount of the Cash Minimum Fund, the amount remaining shall be paid to a *cypres* charity to be agreed upon by the parties and approved by the Court.
- d. If, after payment of Notice and administration costs and any attorneys' fees, costs, and service awards approved by the Court, payment of total valid claims would exceed the Maximum Cap, the payments to Settlement Class Members shall be prorated.

2. The Settlement Class

Plaintiffs seek preliminary approval of the Settlement on behalf of the following Settlement Class:

All natural persons who purchased, not for resale, the following Thinx Period Underwear in the United States from November 12, 2016, to the date of entry of the Preliminary Approval Order: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.

Excluded from this Settlement Class are:

Thinx, as well as its parents, subsidiaries, affiliates, officers, directors, investors, and employees; any entity in which Thinx has a controlling interest; any judge presiding over this Action, their staff, and the members of the judge's immediate family, all persons who request exclusion from (opt-out of) the Settlement.

There is no dispute that the Settlement Class includes tens of thousands of members.

Personal injury claims are not being released as part of the Settlement.

3. Class Benefits

Each Settlement Class Member who timely submits a valid Claim Form shall have the option to receive either cash reimbursement for past purchases of Thinx Period Underwear (up to three pairs total), or a voucher for future purchases of Eligible Voucher Products as defined below ("Class Benefit"), on the following terms:

- Cash Reimbursement. The amount of cash reimbursement for past purchases of Thinx Period Underwear will be contingent upon whether the Settlement Class Member provides a valid proof of purchase. Settlement Class Members will not, however, be required to provide proof of purchase for purchases of Thinx Period Underwear reflected in Thinx's records.
 - Cash reimbursement with proof of purchase: Each Settlement Class Member will receive a \$7.00 refund for Thinx Period Underwear that are reflected in Thinx's records, or for which they submit a valid proof of purchase together with the Claim Form. The maximum cash reimbursement available for purchases reflected in Thinx's records or with proof of purchase will be \$21.00.
 - Cash reimbursement without proof of purchase: Each Settlement Class Member will receive a \$3.50 cash refund for Thinx Period Underwear that are not reflected in Thinx's records without proof of purchase but must provide details regarding the style(s) purchased and the approximate date, and location, of their purchases, and attest to the purchases under penalty of perjury. The maximum cash reimbursement available without proof of purchase will be \$10.50.
- Voucher. Settlement Class Members may choose to receive a single-use voucher for a discount of 35% off total purchases of Eligible Voucher Products (as defined below) in a single purchase transaction of up to \$150 on the Thinx website (thinx.com). The maximum discount available shall be up to \$52.50. Vouchers will not be transferable, subject to standard terms and conditions, and will be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products only, and may not be combined with any other offers, discounts, or promotions.

- “Eligible Voucher Products” are the products below:
 - Super Hiphugger
 - Heavy Hiphugger
 - Hiphugger
 - Sport
 - Heavy Boyshort
 - Boyshort
 - Super Hi-Waist
 - Heavy Hi-Waist
 - French Cut
 - Cheeky
 - Thong
 - Modal Super Cotton Brief
 - Modal Heavy Cotton Brief
 - Modal Cotton Brief
 - Modal Cotton Boyshort
 - Modal Cotton Bikini
 - Modal Cotton Thong
 - Air Hiphugger
 - Air Bikini

Thinx also affirms that it will continue to take the measures it implemented following the institution of the California and Massachusetts Actions to help ensure that PFAS are not intentionally added to Thinx Period Underwear at any stage of production, including maintaining production controls and material reviews. Thinx will continue to have suppliers of raw materials for Thinx Period Underwear review and sign a Supplier Code of Conduct and Chemical Supplier Agreement, which require suppliers to attest that PFAS are not intentionally added to Thinx Period Underwear. Thinx will disclose the use of anti-microbial treatments and the purpose for which they are used and will no longer refer to the antimicrobial components of Agion as “non-migratory.”

4. Class Notice

Defendant will pay all costs related to the Notice Plan from the Cash Minimum Fund. The Notice Plan will include direct email notice to purchasers, in addition to postcard notice (as needed), a settlement website, and publication notice in the form of an online banner advertisement campaign on certain websites to be determined by the parties with input from the Settlement Administrator.

The Notices, in forms substantially similar to the ones attached to the Settlement Agreement (Ex. 1) as Exhibits C-E, will inform the Settlement Class of the general terms of the Settlement, including a description of the case, information regarding the identity of the Settlement Class, and what claims will be released. Additionally, exclusion from the Settlement and opt-out procedures will be explained as well as how Settlement Class Members may exercise their right to object to the proposed Settlement at the Final Approval Hearing. Lastly, the Notice will include information on how to access Claim Forms, in forms substantially similar to the ones attached to the Settlement Agreement (Exhibit 1) as Exhibits A and B, which will be how Settlement Class Members can submit a claim for the Class Benefit.

5. Claims Process

To be entitled to receive the Class Benefit, Settlement Class Members must accurately and timely submit the Claim Form and any required documentation within sixty (60) days following the Notice Date. The Settlement Administrator will review all Claim Forms and proofs of purchase to determine their validity, eligibility, and the type and amount of Class Benefit to which the Settlement Class Member is entitled. The Settlement Administrator will provide Valid Claimants with their elected choice of Class Benefit within twenty-one (21) days after the Effective Date.

6. Attorneys' Fees and Costs and Service Awards

The amount of any Attorneys' Fee and Expense Payment shall be determined by the Court. After the Court preliminarily approves the Settlement, proposed Class Counsel may submit a fee application to the Court. As discussed below, proposed Class Counsel intends to apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed \$1,500,000 in the aggregate. In addition, proposed Class Counsel intends to move for service awards of \$2,500 for each of the named Plaintiffs (for a total of \$12,500).

The enforceability of the Agreement is not contingent on the amount of attorneys' fees or costs or service awards to Plaintiffs that may be approved by the Court.

B. Legal Standards for Preliminary Approval of a Proposed Settlement

Pursuant to Federal Rule of Civil Procedure 23(e), approval of a class action settlement generally occurs in two stages: (1) the preliminary approval stage, where the Court makes an initial evaluation of the settlement's fairness before notifying the class and (2) the final approval stage when class members and the parties are given an opportunity to be heard before the Court approves the settlement. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (citations omitted). At the preliminary approval stage, the Court must consider whether the proposed settlement is "likely" able to be approved under Rule 23(e)(2). *Hart v. BHH, LLC*, 334 F.R.D. 74, 76 (S.D.N.Y. 2020). A court should preliminarily approve a proposed settlement which "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *Id.* (quoting *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)).

The Second Circuit's settlement approval analysis generally relies on two overlapping multi-factor tests. Federal Rule of Civil Procedure 23(e)(2) supplies the first test, which requires the Court, in evaluating the fairness, reasonableness, and adequacy of a settlement, to consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019).

Courts supplement the 23(e)(2) analysis with the *Grinnell* factors, which include:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 117 (2d Cir. 2005) (citing *Grinnell*, 495 F.2d at 463); *see also In Re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 29. Thus, the Court considers both the requirements of Rule 23(e)(2) and the *Grinnell* factors when evaluating whether to grant preliminary approval. *See In re GSE Bonds* at 692.

When determining whether to certify a class for purposes of settlement, the Court must also determine at the preliminary approval stage whether it will “likely be able to ... certify the class for

purposes of judgment on the proposal.” See Fed. R. Civ. P. 23(e)(1)(b). This requires an evaluation of whether the proposed class meets the requirements of Rule 23(a) and (b). Rule 23(a)’s requirements are “(1) numerosity (‘the class is so numerous that joinder of all members is impracticable’), (2) commonality (‘there are questions of law or fact common to the class’), (3) typicality (‘the claims or defenses of the representative parties are typical of the claims or defenses of the class’), and (4) adequacy of representation (‘the representative parties will fairly and adequately protect the interests of the class’).” *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 249 (2d Cir. 2011) (quoting Fed. R. Civ. P. 23(a)). In addition, the class must meet the implied requirement of “ascertainability.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.* 330 F.R.D. at 50. Where, as here, certification is sought pursuant to Rule 23(b)(3), the Court must make the preliminary determination “that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

“The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation.” *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014); *see also Wal-Mart Stores, Inc.*, 396 F.3d at 116-17 (“We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy.”) (internal quotation marks and citation omitted). Thus, the procedural and substantive fairness of a settlement should be examined “in light of the strong judicial policy in favor of settlement of class action suits.” *Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *2 (S.D.N.Y. Apr. 2, 2013) (quotation omitted).

C. The Settlement Satisfies the Rule 23(e) Factors

1. Plaintiffs and Proposed Class Counsel Have Adequately Represented the Class

Plaintiffs and proposed Class Counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently prosecuting this litigation on behalf of Plaintiffs and the Settlement Class, which included significant investigation; the filing of three class actions which were consolidated in this Court; hard-fought litigation of nearly two years; a full-day mediation with a certified mediator; and lengthy settlement negotiations that spanned nearly one year. Moreover, proposed Class Counsel has achieved a significant \$5,000,000 settlement which will provide immediate relief to the class.

Plaintiffs also respectfully submit that they have retained counsel who are qualified, experienced and fully capable of prosecuting this litigation on behalf of the Class. Milberg has a proven track record in the prosecution of complex class actions nationwide. *See* Firm Resume, attached to Joint Declaration of Class Counsel (Ex. 2) as Exhibit A. The involvement of “experienced, capable counsel” gives the resulting agreement a “presumption of correctness.” *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 575 (S.D.N.Y. 2008) (internal quotation marks omitted). Milberg has extensive experience and success in litigating product liability class actions has been recognized by numerous courts. *See Cleveland v. Whirlpool Corp.*, No. 20-CV-1906 (WMW/JFD), 2022 WL 2256353 (D. Minn. June 23, 2022); *Hamm v. Sharp Electronics Corp.*, No. 5:19-cv-00488, ECF No. 62 (M.D. Fla. Jan. 7, 2021); *Sarah Hill et al v. Canidae Corporation*, 5:20-cv-01374-JGB-SP, ECF No. 79 (C.D. Cal. Sept. 29, 2021); *Shaw et al v. Costco Wholesale Corporation et al*, 2:20-cv-01620-RAJ, ECF No. 64 (W.D. Wash. Oct. 4, 2021); *Ellen Berman, et al. v. General Motors LLC*, Case No. 2:18-cv-14371, ECF No. 161 (S.D. Fla. Nov. 18, 2019).

Bringing this experience and knowledge to bear, proposed Class Counsel believes that the Settlement is in the best interests of the Settlement Class. Courts recognize that counsel’s judgment

is entitled to significant weight. *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *13 (S.D.N.Y. Nov. 8, 2010) (“Moreover, great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”); *see also Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019) (recognizing “great weight is accorded to counsel’s recommendation” if the proposed settlement is reached by experienced counsel after arm’s-length negotiations).

Further, the class representatives assert the same general injury as the rest of the class—economic loss caused by Defendant’s alleged misrepresentations. Plaintiffs therefore have an “interest in vigorously pursuing the claims of the class.” *In re GSE Bonds Antitrust Litig.*, 414 F.Supp. 3d at 692.

2. The Proposed Settlement Was Negotiated at Arm’s Length

Next, the Court considers whether the proposed settlement is the product of an arm's length negotiation. Fed. R. Civ. P. 23(e)(2)(B). The Settlement results from extensive, arm’s length negotiations conducted by experienced counsel for all parties with the assistance of Judge Gandhi of JAMS ADR, an independent mediator. The use of a mediator in settlement negotiations further supports the presumption of fairness and the conclusion that the Settlement achieved was free of collusion. *See D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure”). The parties each submitted written statements to Judge Gandhi, briefing him on relevant facts and legal issues, and a full-day remote mediation session took place on December 8, 2021. During the mediation, the parties discussed their respective views regarding the merits of the action, including Defendant’s defenses, and issues relating to materiality and damages. Although the parties were unable to reach an agreement in the initial mediation session, after six months of further negotiations following this mediation, they agreed in principle to settle this action as to all claims for

the Settlement Amount. Thereafter, the parties spent an additional five months negotiating the finer details of the settlement agreement. At no point did Defendant concede that a single aspect of Plaintiffs' claims was meritorious.

3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

In assessing the Settlement, the Court should balance the benefits afforded to Settlement Class Members, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with this litigation. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). This factor overlaps with the first (the complexity, expense, and likely duration of the litigation) and fourth (the risks of establishing liability and damages) *Grinnell* factors. Settlement is favored when the alternative—litigating the case—will be long, complex, and expensive. *See In re GSE Bonds Antitrust Litig.*, 414 F.Supp. 3d at 693-94.

While Plaintiffs believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability or even proceeding to trial. Joint Decl. at ¶ 25. Among other things, Defendant denies all allegations of liability and has strenuously contended that Plaintiffs would be unable to prove that Defendant made any false or misleading material statements. In addition, in the California Action, Thinx challenged Plaintiffs' claims on several grounds, including with respect to the type, level, and amount of PFAS allegedly found through Plaintiffs' testing and whether they pose any risk of harm. (California Action, ECF No. 38.) These issues, which go to the merits of the case, would be central to Thinx's defense, and pose hurdles for Plaintiffs to succeed.

Without the Settlement, the parties faced the certainty that litigating this action through the completion of fact discovery, class certification, expert discovery, summary judgment, trial, and appeals, which would be complex, time-consuming, and expensive. Joint Decl. at ¶ 27. Here, the Settlement provides a substantial monetary benefit to Settlement Class Members without the risk and

delays of continued litigation. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (“...if a shareholder or class member was willing to assume all the risks of [Litigation]...the passage of time would introduce yet more risks...and would, in light of the time value of money, make future recoveries less valuable than this current recovery.”).

Plaintiffs also faced risks in establishing loss causation and damages. Plaintiffs would have been forced to undertake a fact-intensive economic inquiry to show the damages claimed would compensate consumers for the value they would have received absent the misrepresentations. Defendant would have likely opposed the validity of Plaintiffs’ damage model and its ability to be calculated with proof common to the class. As with contested liability issues, issues relating to loss causation and damages would have likely come down to an unpredictable and hotly disputed “battle of the experts.” Further, Plaintiffs’ case was particularly susceptible to a danger inherent in reliance on expert witness testimony, namely that Thinx would almost certainly challenge Plaintiffs’ experts under *Daubert*. If, for some reason, the Court determined that even one of Plaintiffs’ experts should be excluded from testifying at trial, Plaintiffs’ case would become much more difficult to prove. If any of these arguments prevailed at class certification, summary judgment, or trial, Settlement Class Members could have recovered significantly less or, indeed, nothing.

4. The Proposed Method for Distributing Relief is Effective

As demonstrated below, the method and effectiveness of the proposed notice and claims administration process are effective pursuant to Fed. R. Civ. P. 23(e)(2)(C)(ii). The plan has the “reasonable, rational basis” required for approval. *In Re Payment Card*, 330 F.R.D. at 40 (internal quotation marks omitted). The Settlement, like most class action settlements, will be effectuated with the assistance of Epiq, an experienced claims administrator. The Claims Administrator will employ a well-tested protocol for the processing of claims. Namely, Settlement Class Members will submit, either by mail or online using the Settlement Website, the Court-approved Claim Form. Based on the

information provided by claimants, the Settlement Administrator will determine each claimant's eligibility to receive either a \$7 refund for each purchase of Thinx Period Underwear with proof of purchase up to \$21, \$3.50 refund for each purchase of Thinx Underwear without proof of purchase up to \$10.50, or a single use voucher of up to \$52.50. Ex. 1 at 5-6. Settlement Class Members will be notified of any defects or conditions of ineligibility and be given the chance to contest the rejection of their claims. *Id.* at 8.

After the Settlement reaches its effective date and the claims process is completed, Plaintiffs will seek Court approval to distribute the Settlement Amount. If approval is granted, Valid Claimants will be issued payments as described in the Settlement Agreement. If there are unclaimed funds, the parties will request Court approval of a *cy pres* beneficiary. The Settlement also provides for non-monetary relief which Thinx has already implemented, including increased production controls and material reviews, enforcement of a Supplier Code of Conduct and Chemical Supplier Agreement, and changes to marketing practices related to anti-microbial treatments (including Agion). *Id.* at 7-8.

5. Attorneys' Fees and Expenses

The terms of any proposed award of attorneys' fees under the proposed Settlement, including timing of payment, are sufficiently reasonable to warrant preliminary approval. Fed. R. Civ. P. 23(e)(2)(C)(iii). Proposed Class Counsel will request compensation from the Cash Minimum Fund under the common fund doctrine. Proposed Class Counsel intends to apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed \$1,500,000 in the aggregate. This fee represents approximately 30% of the \$5,000,000 Settlement Amount. This fee request is in line with other settlements recently approved in this district. *See, e.g., Hawaii Structural Ironworkers Pension Trust Fund v. AMC Entertainment Holdings, Inc., et al.*, No. 1:18-cv-00299-AJN, slip op. (S.D.N.Y. Feb. 14, 2022) (awarding one-third of \$18 million recovery, plus expenses); *In re BHP Billiton Ltd. Sec. Litig.*, No. 1:16-cv-01445- NRB, slip op. (S.D.N.Y. Apr. 10, 2019) (awarding 30% of \$50 million

recovery, plus expenses); *Landmen Partners, Inc. v. Blackstone Group L.P.*, 2013 WL 11330936, at *3 (S.D.N.Y. Feb. 18, 2013) (awarding one-third of \$85 million recovery, plus expenses). Furthermore, courts in the Second Circuit frequently approve fees that are 33.33% of the settlement amount. *See, e.g., Guevoura*, No. 1:15-CV- 07192-CM, 2019 WL 6889901, at *15 (granting fee of 33.33% of \$7.5 million settlement); *Fogarazzo v. Lehman Bros. Inc.*, No. 03 Civ. 5194, 2011 WL 671745, *4 (S.D.N.Y. Feb. 23, 2011) (awarding 33.3% of \$6.75 million settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (awarding 33% of \$13 million settlement); *In re Van Der Moolen Holding N.V. Sec. Litig.*, No. 03 Civ. 8284, slip. op. at 2 (S.D.N.Y. Dec. 7, 2006) (awarding 33 1/3% of \$8 million settlement) (ECF No. 45); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 368 (S.D.N.Y. 2002) (awarding fee of 33.33% of the settlement). Approval of the attorneys' fees sought is not a condition of the Settlement.

6. Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), looks at whether class members are treated equitably. The Settlement does not improperly grant preferential treatment to either Plaintiffs or any portion of the Settlement Class. Rather, all Settlement Class Members, including Plaintiffs, will receive a distribution from the Settlement Amount depending on the Class Benefit they choose, and, if they choose cash reimbursement, whether they have proof of purchase or do not have proof of purchase. Thus, all Settlement Class Members “will be subject to the same formula for the distribution from the fund.” *See Micholle v. Ophthotech Corp.*, No. 17 cv 1758 (VSB), 2022 WL 1158684, at *2 (S.D.N.Y. Mar. 14, 2022) (granting preliminary approval and finding the requirements of Rule 23(e) satisfied where settlement agreement used a formula to ensure settlement proceeds were distributed equally among class members). Many courts within this District and the Second Circuit have approved settlements that differentiate refund amounts for those who have proof of purchase from those without proof of purchase. *See, e.g., Hart v. BHH, LLC*, No. 15CV4804, 2020 WL 5645984

(S.D.N.Y. Sept. 22, 2020); *Mayhew v. KAS Direct, LLC*, No. 16 CV 6981 (VB), 2018 WL 3122059 (S.D.N.Y. June 26, 2018); *In re Sinus Buster Prod. Consumer Litig.*, No. 12-CV-2429 (ADS)(AKT, 2014 WL 5819921 (E.D.N.Y. Nov. 10, 2014).

D. The Settlement Also Meets the Remaining *Grinnell* Factors

1. The Complexity, Expense, and Likely Duration of the Litigation

As there is considerable overlap between the Rule 23(e) factors and the *Grinnell* factors, the Court may limit its analysis to areas where the *Grinnell* factors provide additional guidance. *Gordon v. Vanda Pharms. Inc.*, No. 19 CV 1108 (FB)(LB), 2022 WL 4296092, at *5 (E.D.N.Y. Sept. 15, 2022). As discussed in more detail above, the immediacy and certainty of a recovery, when balanced against the significant costs, risks, and delay of proceeding with this litigation, weigh in favor of settlement. *See* Section III. C. 3., *supra*.

2. The Reaction of the Class to Settlement

With respect to the second *Grinnell* factor (the reaction of the Settlement Class), the Notice regarding the Settlement has not yet been distributed. In the event any objections are received after the Notice is disseminated, they will be addressed by Class Counsel in connection with Plaintiffs' final approval papers.

3. The Stage of the Proceedings

Plaintiffs and proposed Class Counsel's knowledge of the merits as well as the strengths and weaknesses of their claims is certainly adequate to support the Settlement. This knowledge is based, in part, on the extensive investigation undertaken by proposed Class Counsel in preparing the initial complaint in addition to subsequent complaints filed in other districts and numerous amended complaints. After the motion to dismiss was denied in the California Action, the parties engaged in written discovery. As a result of the extensive investigation and the discovery conducted on issues at the heart of the Complaint's allegations, Plaintiffs and proposed Class Counsel were in a position to

intelligently weigh the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendant. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004) (“Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims.”); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. at 177 (finding that even where “no merits discovery occurred in this case to date,” lead counsel was “knowledgeable with respect to possible outcomes and risks in this matter and, thus, able to recommend the Settlement”).

Indeed, prior to mediation, the parties exchanged significant information, which allowed the parties to assess the strengths of their positions and attacked each other’s potential weaknesses. During mediation, the parties thoroughly discussed and vetted the facts and law, as Judge Gandhi engaged in a critical analysis of the parties’ arguments. The parties continued to engage in settlement discussion, including the exchange of additional discovery, in the months following mediation.

This factor strongly supports preliminary approval of the Settlement.

4. The Risks of Maintaining the Class Action Through Trial

As discussed in more detail above, the risks of establishing liability and damages, in addition to the risks of maintaining a class action through trial, weigh in favor of preliminary approval. *See* Section III. C. 3., *supra*. Although Plaintiffs are confident in the merits of their claims, they also recognize that the Action presented many risks to achieving class certification and establishing both liability and damages.

5. The Ability of Defendant to Withstand a Greater Judgment

A court may also consider a defendant’s ability to withstand a judgment greater than that secured by settlement, although it is not generally one of the determining factors. *See D’Amato*, 236 F.3d at 86. While Defendant here is able to withstand a judgment in excess of the Settlement Amount, courts generally do not find this to be an impediment to settlement when the other factors favor the

settlement. *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *6 (E.D.N.Y. Oct. 23, 2012) (acknowledging that “in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and . . . this fact alone does not undermine the reasonableness of the instant settlement”).

6. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The adequacy of the amount offered in settlement must be judged “not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs’ case.” *In re “Agent Orange” Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff’d*, 818 F.2d 145 (2d Cir. 1987). The Court need only determine whether the Settlement falls within a “range of reasonableness”—a range which “recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Global Crossing*, 225 F.R.D. at 461 (noting that “the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery”); *In re Indep. Energy Holdings PLC Sec. Litig.*, 2003 WL 22244676, at *3-*4 (S.D.N.Y. Sept. 29, 2003) (noting few cases tried before a jury result in full amount of damages claimed).

In addition, in considering the reasonableness of the Settlement, the Court should consider that the Settlement provides for payment to Settlement Class Members now, rather than a speculative payment years down the road. *See In re Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) (where settlement fund is in escrow earning interest, “the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery”). Given that the average price of the products included in the Settlement retails for \$28, that Settlement Class Members may receive 25% of their damages with proof of purchase or approximately 12% of their damages without proof of purchase for up to 3 pair is a very favorable recovery under any

circumstances. (Joint Decl. at ¶ 2, fn. 2.; Ex. 1 at 5.) This percentage of recovery is well above the recovery range of settlements that have received approval within this District. *See, e.g., In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 762 (2d Cir. 2020) (affirming district court's approval of settlement representing 6.1% of the class's maximum potentially recoverable damages); *Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *6 (S.D.N.Y. Dec. 14, 2017) (approving settlement representing 6.5% of the maximum recoverable damages); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement that was "between approximately 3% and 7% of estimated damages").

Although Plaintiffs and Defendant disagree about the amount of maximum recoverable damages, the common fund of up to Five Million Dollars (\$5,000,000), comprising a \$4,000,000 Cash Minimum Amount and \$1,000,000 Replenishment Amount is a substantial recovery regardless of which party's damages metric is used. Here, Plaintiffs faced numerous legal, procedural, and practical hurdles, including issues related to materiality of the alleged non-conforming ingredients at issue, that, if not overcome, could preclude any recovery for Plaintiffs and the Settlement Class. Thus, the Settlement Amount is reasonable.

IV. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE

There are no "rigid rules" when measuring the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules; rather, the court should look to its reasonableness. *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 2007 WL 313474, at *8 (S.D.N.Y. Feb. 1, 2007). "Notice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members." *Id.*

The proposed Email Notice, Postcard Notice, and Detailed Notice, attached as Exhibits C-E to the Settlement Agreement (attached hereto as Ex. 1) as well as the plan for Publication Notice

respectively satisfy due process and the Federal Rules of Civil Procedure. “Due process requires that the notice to class members fairly apprise the ... members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.” *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (internal quotation marks and citations omitted). Rule 23(c)(2)(B) requires notice of the pendency of the class action to be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” It must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Collectively, as required by Rule 23(c)(2)(B), the proposed forms of notice here “clearly and concisely state in plain, easily understood language,” the: (1) nature of the action; (2) definition of the certified class; (3) the class claims, issues, or defenses; (4) that a class member may appear through counsel; (5) that a class member will be excluded at his request; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment under Rule 23(c)(3). *See In re Take Two Interactive Sec. Litig.*, No. 06 CIV. 1131 (RJS), 2010 WL 11613684, at *12–13 (S.D.N.Y. June 29, 2010).

Upon entry of the Preliminary Approval Order, the Settlement Administrator will engage in a few activities to disseminate notice to the Settlement Class. First, the Settlement Administrator will create a Settlement Website which will be optimized for viewing on both mobile devices and personal computers. Ex. 1 at 10. The Settlement Website will include, without limitation, the Detailed Notice, the Agreement, the operative Consolidated Class Action Complaint, the Preliminary Approval Motion and Order as entered, Plaintiffs’ Motion for Attorneys’ Fees and Expenses, Plaintiffs’ Motion for Final Approval of Class Action Settlement, answers to a set of

frequently asked questions, and information on how to object or request exclusion, as well as contact information for proposed Class Counsel and the Settlement Administrator. *Id.* The Settlement Website will include a readily accessible means for members of the Settlement Class to electronically submit a Claim Form or request for exclusion, as well as an address to which Claim Forms or requests for exclusion may be mailed. *Id.* Second, the Settlement Administrator will also email each member of the Settlement Class whose email is known to the Defendant and the Email Notice that contains a link to the Settlement Website. *Id.* Third, the Settlement Administrator will mail to each member of the Settlement Class in which Defendant does not have a valid email address for or for whom the email notice was returned as undeliverable a postcard notice with the terms of the Settlement. *Id.* at 11. Lastly, the Settlement Administrator shall implement banner advertisements on certain websites which will continue for a period of 30 days to reach the portions of the Settlement Class for whom Defendant does not have contact information. *Id.*

Plaintiffs also request that the Court appoint Epiq as the Claims Administrator to provide all Court-approved notices to the Settlement Class, to process Claim Forms, and to administer the Settlement. Epiq is a nationally-recognized notice and claims administration firm that has successfully administered numerous product mislabeling class action settlements, and was selected by the parties through a competitive bidding process.

V. CERTIFICATION OF THE CLASS IS APPROPRIATE

A. The Rule 23(a) Requirements are Satisfied

The parties have agreed that the Court may certify the Settlement Class for the purposes of the Settlement and appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel. *Id.* The Settlement Class is defined as "All natural persons who purchased, not for resale, the following Thinx Period Underwear in the United States from November 12, 2016, to the date of entry of the Preliminary Approval Order: Cotton Brief, Cotton Bikini, Cotton Thong, Sport,

Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.” *Id.* at 4. Excluded from the Settlement Class are (i) Thinx; (ii) its parents, subsidiaries, affiliates, officers, directors, investors, and employees; (iii) any entity in which Thinx has a controlling interest; and (iv) any judge presiding over this Action, their staff, and the members of the judge’s immediate family.” *Id.*

The Second Circuit has long acknowledged the propriety of certifying a class solely for purposes of a class action settlement. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982). Indeed, certification of a settlement class “has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants.” *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995). A party seeking class certification must first show that the class action satisfies the following four prerequisites set forth in Rule 23(a): (i) numerosity; (ii) commonality of questions of law or fact; (iii) typicality of the named plaintiff’s claims and defenses; and (iv) the adequacy of the named plaintiff. *See Fed. R. Civ. P. 23(a)*. Additionally, the party must show that the predominance and superiority requirements of Rule 23(b)(3) are met. However, the manageability concerns of Rule 23(b)(3) are not at issue for a settlement class. *See Amchem*, 521 U.S. at 620 (“a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”).

Courts within this District and the Second Circuit have generally found mislabeling cases to be particularly well-suited for class action treatment because they allow for consumer fraud laws to be enforced in circumstances where there are numerous purchasers with small individual claims that otherwise would effectively be barred from litigation. This action is no exception. *See, e.g., Kurtz v. Kimberly-Clark Corp.*, 321 F.R.D. 482 (E.D.N.Y. 2017); *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, 317 F.R.D. 374 (S.D.N.Y. 2016); *In re Kind LLC "Healthy & All*

Natural" Litig., 337 F.R.D. 581 (S.D.N.Y. 2021); *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397 (S.D.N.Y. 2015).

1. The Settlement Class is so numerous that joinder is impracticable

Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. For purposes of Rule 23(a)(1), however, “[i]mpracticable does not mean impossible,” *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993), but “only that the difficulty or inconvenience of joining all members of the class make the use of the class action appropriate.” *Central States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 244-245 (2d Cir. 2007). Numerosity is presumed when a class consists of forty members or more. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

Here, purchasers of Thinx Period Underwear during the relevant time period are indisputably in the tens of thousands and are geographically located throughout the United States, thus making joinder impracticable. Joint Decl. at ¶ 17. Thus, the numerosity requirement is easily met.

2. There are questions of law and fact common to the Settlement Class

The commonality requirement is satisfied where, as here, there are “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). To establish commonality, class members must have “suffered the same injury,” and “[t]heir claims must depend upon a common contention.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2545, 2551 (2011). Class members’ “common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke.” *Id.* at 2551.

Mislabeling cases like this one easily meet the commonality requirement, which is satisfied where “putative class members have been injured by similar material misrepresentations and

omissions.” *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 85 (S.D.N.Y. 2007), adhered to on reconsideration, No. 01 CIV. 3020 (SAS), 2007 WL 844710 (S.D.N.Y. Mar. 20, 2007); see *In re Oxford Health Plans, Inc.*, 191 F.R.D. 369, 374 (S.D.N.Y. 2000) (“Where the facts as alleged show that Defendants’ course of conduct concealed material information from an entire putative class, the commonality requirement is met.”).

Here, the Consolidated Complaint alleges the Defendant sold Thinx Period Underwear with harmful and non-conforming ingredients during the Class Period, with numerous questions of law and fact common to the Settlement Class. Common questions include: (a) whether Defendant omitted material facts and/or failed to warn reasonable consumers regarding the known risks of using Thinx Period Underwear; (b) whether the representations made by Defendant were material to a reasonable consumer; (c) whether the Defendant breached warranties by selling Thinx Period Underwear with harmful and non-conforming ingredients; and (e) whether the Settlement Class has sustained damages and, if so, what is the appropriate measure of damages.

3. Plaintiffs’ claims are typical of the claims of the Settlement Class

Rule 23(a)(3), the typicality requirement, is satisfied when a plaintiff shows that “the claims of the named plaintiffs arise from same practice or course of conduct that gives rise to the claims of the proposed class members.” *In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 85 (S.D.N.Y. 2007), (citation omitted); see *Oxford Health Plans*, 191 F.R.D. at 375. “Typical” does not mean “identical.” See *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, No. 04 CIV. 8144 (CM), 2009 WL 5178546 at *10 (S.D.N.Y. Dec. 23, 2009). The focus of the typicality inquiry is not the plaintiff’s behavior, but rather the defendants’ actions. See *Teachers’ Ret. Sys. of Louisiana v. ACLN Ltd.*, No. 01 Civ. 11814 (LAP), 2004 WL 2997957, at *4 (S.D.N.Y. Dec. 27, 2004). The critical question is whether the proposed class representatives and the class can point to the same “common course of conduct” by defendants to support a claim for relief. Accordingly, “[f]actual

differences involving the date of acquisition, type of securities purchased and manner by which the investor acquired the securities will not destroy typicality if each class member was the victim of the same material misstatements and the same fraudulent course of conduct.” *Marsh & McLennan*, 2009 WL 5178546, at *10; *see also Robidoux*, 987 F.2d at 936-37 (“When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met...”)

Here, Plaintiffs’ claims, legal theories, and evidence are identical to those of other members of the Settlement Class. Plaintiffs, like all members of the Settlement Class, purchased Thinx Underwear during the Class Period and suffered damages because of Defendant’s alleged material misstatements and omissions. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

4. Plaintiffs will fairly and adequately represent the Settlement Class

Rule 23(a)(4) is satisfied if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Court must measure the adequacy of representation by two standards: (1) whether the claims of the Plaintiffs conflict with those of the class; and (2) whether the Plaintiffs’ counsel are qualified, experienced, and generally able to conduct the litigation. *See In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992); *Marsh & McLennan*, 2009 WL 5178546, at *10; *Oxford Health Plans*, 191 F.R.D. at 376.

Here, Plaintiffs’ interests are coextensive with those of the Settlement Class. Like all members of the Settlement Class, Plaintiffs have claims against Defendant in connection with their purchase of Thinx Period Underwear during the Class Period. Plaintiffs, like all members of the Settlement Class, were also allegedly injured by Defendant’s allegedly wrongful acts. Proof of Plaintiffs’ claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. Thus, Plaintiffs and the class they seek to represent have the same interests in recovering damages allegedly caused by Defendant’s wrongful conduct. *See In re*

Polaroid ERISA Litig., 240 F.R.D. 65, 77 (S.D.N.Y. 2006) (“Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members”).

Plaintiffs also respectfully submit that they have retained counsel who are qualified, experienced and fully capable of prosecuting this litigation on behalf of the Class. Milberg has a proven track record in the prosecution of complex class actions nationwide. *See* Firm Resume, attached to Joint Declaration of Class Counsel (Ex. 2) as Exhibit A. Through their efforts in this litigation, Milberg has obtained a settlement of up to \$5,000,000 for the benefit of the Settlement Class, a very substantial percentage of the alleged damages Plaintiffs sought to prove. Plaintiffs, therefore, satisfy the Rule 23(a) adequacy requirements.

B. The Requirements of Rule 23(b)(3) are Satisfied

Next, at least one of the three conditions imposed by Rule 23(b) must be satisfied. Plaintiffs respectfully submit that Rule 23(b)(3) is satisfied here, because: (1) “the questions of law or fact common to class members predominate over any questions affecting only individual members”; and (2) “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

1. Common questions predominate

The predominance inquiry “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. “Common questions of law and fact predominate when issues subject to generalized proof and applicable to the class as a whole predominate over, and are more substantial than, issues that are subject to individualized proof.” *In re Dynex Capital, Inc. Sec. Litig.*, No. 05 Civ. 1897 (HB), 2011 WL 781215, at *3 (S.D.N.Y. Mar. 7, 2011). In evaluating predominance, the Court’s inquiry “must be rigorous and may entail some overlap with the merits of the [P]laintiffs’ underlying claim,” but the Court may not “engage in free-

ranging merits inquiries at the class certification stage.” *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 465-66 (2013).

In this action, as is generally so in mislabeling class actions, each element of Plaintiffs’ claim involves common questions of law and fact because the same set of operative facts applies to the Settlement Class. Specifically, common questions include whether Thinx omitted or failed to disclose material information to Plaintiffs and the Settlement Class regarding certain harmful ingredients and whether the Settlement Class was harmed when the allegedly misrepresented and omitted facts came to light. Accordingly, whether Thinx engaged in false or misleading advertising will entail common proof. Likewise, materiality “is an objective [question], involving the significance of an omitted or misrepresented fact to a reasonable investor,” and thus “can be proved through evidence common to the class” and “is a common question for purposes of Rule 23(b)(3).” *Amgen*, 568 U.S. at 467. In *Basic v. Levinson*, 485 U.S. 224 (1988), the Supreme Court dispensed with the requirement that each settlement class member prove individual reliance on Defendant’s alleged misstatements and/or omissions. Thus, the “predominance” requirement is satisfied.

2. Class treatment of Plaintiffs’ claims is superior

Finally, Rule 23(b)(3) requires that a class action be superior to other available methods for the fair and efficient adjudication of the controversy. The rule lists several matters pertinent to this finding: (A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). Each factor weighs in favor of finding superiority here.

As to the first two factors, proposed Class Counsel is unaware of any individual Settlement Class member interested in bringing their own action against Defendant for conduct that was alleged

in Plaintiffs' Consolidated Complaint. The absence of other matters confirms the limited interest individual Settlement Class Members have in prosecuting separate actions. Absent certification, the burden and expense of litigating would not be distributed among the Settlement Class, one of the advantages of the class action mechanism.

Further, certification of the Settlement Class for the purpose of effecting the Settlement is the superior method to facilitate the resolution of the Settlement Class's claims against Defendant. Without the settlement class device, Defendant could not obtain a class-wide release, and therefore would have had little, if any, incentive to enter into the Settlement. Moreover, certification of a class for settlement purposes will allow the Settlement to be administered in an organized and efficient manner. *See Telik*, 576 F. Supp. 2d at 584. Resolution of the Settlement Class's claims against Defendant through the Settlement is superior to any other available method of resolution.

For all of the foregoing reasons, the Settlement Class meets the class certification requirements of both 23(a) and 23(b).

C. The Class is Ascertainable

The Second Circuit stated in *Brecher v. Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015) that "the touchstone of ascertainability is whether the class is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." (citations and quotation marks omitted). In *In re Petrobras Securities*, 862 F.3d 250, 269 (2d Cir. 2017), the Second Circuit clarified that the ascertainability element merely requires that a proposed class be definable "using objective criteria that establish a membership with definite boundaries." Here, ascertainability is met because the objective criteria for defining the class is consumers who purchased the Thinx Period Underwear, and determining who purchased the Thinx Period Underwear can be reliably and feasibly determined based upon Defendant's records and those of Defendant's small number of authorized retailers, as is being done with the Notice Plan.

VI. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Plaintiffs respectfully propose the following schedule for the Court’s review and approval, which summarizes the deadlines in the Preliminary Approval Order. If the Court agrees with the proposed schedule, Plaintiffs request that the Court schedule the Final Approval Hearing for a date one hundred sixty five (165) calendar days after entry of the Preliminary Approval Order, or at the Court’s earliest convenience thereafter.

Deadline for mailing individual Notices and Claim Forms (“Notice Date”)	<i>45 calendar days after entry of Preliminary Approval Order.</i>
Deadline for filing motions in support of Proposed Class Counsel’s application for fees and expenses and class representative service awards	<i>45 days after Notice Date</i>
Deadline for submission of Claim Forms, requests for exclusion, or objections	<i>Received no later than 60days after Notice Date.</i>
Deadline to file motion for Final Approval and any responses to objections	<i>No later than 20 days before the Settlement Fairness Hearing</i>
Deadline for filing reply papers in support of the motions	<i>No later than 7 calendar days before the Settlement Fairness Hearing.</i>
Settlement Fairness Hearing	<i>At the Court’s convenience, but no fewer than 165 calendar days after the entry of the Preliminary Approval Order.</i>

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court:

1. Preliminarily approve the Settlement Agreement;
2. Certify the Rule 23(b)(3) Settlement Class (defined on page 12 above);
3. Appoint Erin Ruben, Rachel Soffin, Harper Segui, and Hunter Bryson of Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel;
4. Appoint Epiq as the Claims Administrator; and

5. Enter the proposed schedule as detailed in the Proposed Order attached as Exhibit F to the Settlement Agreement (attached hereto as Exhibit 1), or another schedule, for notice, opt-out deadlines, objections deadlines, and dates for final approval briefing and hearing.

DATED: November 22, 2022

Respectfully submitted,

/s/ Erin J. Ruben

Erin J. Ruben*

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Attorneys for Plaintiffs and the Class

**Admitted Pro Hac Vice*

*** Pro Hac Vice Forthcoming*

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made and entered into by and between plaintiffs Haleh Allahverdi, Jillian Blenis, Haley Burgess, Nicole Dickens, and Lili Mitchell (collectively, “Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class as defined below, and Thinx Inc. Plaintiffs and Thinx collectively are referred to herein as the “Parties,” or, respectively, as a “Party.”

DEFINITIONS

As used herein, the following terms have the meanings set forth below:

- A. “Action” means the litigation entitled *Nicole Dickens, et al. v. Thinx Inc.*, Case No. 1:22-cv-04286-JMF, filed in the United States District Court for the Southern District of New York (the “Court”).
- B. “Attorneys’ Fee and Expense Payment” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Cash Minimum Fund.
- C. “Cash Minimum Amount” means the amount of four million dollars (\$4,000,000.00) to be deposited by Thinx in the Cash Minimum Fund.
- D. “Cash Minimum Fund” means the non-reversionary cash fund described in Section 3.2 of this Agreement to be distributed in accordance with the terms of this Agreement.
- E. “Claim Form(s)” means the form(s) for Settlement Class Members to make a claim, substantially in the form of Exhibits A and B.
- F. “Class Counsel” means Erin Ruben, Hunter Bryson, Harper Segui, and Rachel Soffin of the law firm of Milberg Coleman Bryson Phillips Grossman PLLC.
- G. “Notice” means the method of communication of this Settlement to the Settlement Class, as contemplated in Section 7 of this Agreement, and approved by the Court. The Notice shall be substantially in the forms attached as Exhibits C (“Email Notice”), D (“Postcard Notice”), and E (“Detailed Notice”).
- H. “Notice Plan” means the plan for disseminating notice of the Settlement to the Settlement Class, described in Section 7.3 of this Agreement.
- I. “Notice Date” means the first date on which notice is emailed or mailed to the Settlement Class, provided, however, that any re-emailing or re-mailing of such notice (including mailing the Postcard Notice to members of the Settlement Class for whom the Email Notice is returned as undeliverable) shall not affect or extend the Notice Date. The Notice Date shall be 45 days after the Court issues the Preliminary Approval Order.
- J. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement, Notice, and Notice Plan, substantially in the form of Exhibit F.
- K. “Released Parties” means Thinx, its past or present parent, sister and subsidiary corporations, affiliated entities, predecessors, successors, assigns, and any of their present and former directors, officers, employees, shareholders, investors, agents, partners, licensors, privies, representatives, attorneys, accountants, and all persons acting by, through, under, or in concert with them.

- L. “Releasing Parties” means Plaintiffs and all Settlement Class Members, including any and all of their respective heirs, executors, administrators, representatives, agents, partners, successors, or assigns.
- M. “Replenishment Amount” means the amount of up to one million dollars (\$1,000,000.00) in addition to the Cash Minimum Amount to be paid by Thinx to cover additional valid claims by Settlement Class Members. The Replenishment Amount shall in no event be paid by Thinx unless required for payment of actual valid claims that would otherwise result in exceeding the amount of the Cash Minimum Fund.
- N. “Settlement Administrator” means an independent settlement administrator to be agreed upon by the Parties and approved by the Court.
- O. “Settlement Class” means all natural persons who purchased, not for resale, Thinx Period Underwear in the United States from November 12, 2016, to the date of entry of the Preliminary Approval Order. Excluded from the Settlement Class are (i) Thinx; (ii) its parents, subsidiaries, affiliates, officers, directors, investors, and employees; (iii) any entity in which Thinx has a controlling interest; and (iv) any judge presiding over this Action, their staff, and the members of the judge’s immediate family. Thinx stipulates to this Settlement Class for settlement purposes only.
- P. “Settlement Class Members” means all members of the Settlement Class other than those persons who validly request exclusion from the Settlement Class as set forth in Section 6 this Agreement.
- Q. “Settlement Website” means a publicly-accessible website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with notice of and information about the Settlement as well as providing Claim Forms for the Settlement Class to view and submit.
- R. “Thinx’s Counsel” means the law firm of Morrison & Foerster LLP.
- S. “Thinx Period Underwear” means any of the following Thinx period underwear styles sold between November 12, 2016 and the date of entry of the Preliminary Approval Order:
- Cotton Brief
 - Cotton Bikini
 - Cotton Thong
 - Sport
 - Hiphugger
 - Hi-Waist
 - Boyshort
 - French Cut
 - Cheeky
 - Thong
- T. “Valid Claimant” means any Settlement Class Member who submitted a complete, accurate, valid, and timely Claim Form.

RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, on May 25, 2022, plaintiff Nicole Dickens filed this lawsuit against Thinx in the U.S. District Court for the Southern District of New York, individually and on behalf of a proposed nationwide class and Florida subclass, alleging state law consumer protection, warranty, and common law claims arising out of the purchase of Thinx Period Underwear. Plaintiff Dickens, together with Plaintiffs Haleh Allahverdi, Jillian Blenis, Haley Burgess, and Lili Mitchell, filed a Consolidated Class Action Complaint on August 8, 2022, on behalf of proposed nationwide and California, Florida, and Massachusetts subclasses alleging state law consumer protection, warranty, and other statutory and common law claims arising out of the purchase of Thinx Period Underwear;

WHEREAS, Plaintiffs Allahverdi and Burgess had previously filed, on November 12, 2020, a substantially similar case in the United States District Court for the Central District of California on behalf of a putative nationwide class and California subclass of purchasers of Thinx Period Underwear (*Allahverdi, et al. v. Thinx, Inc.*, 2:20-cv-10341-SSS-JPR (C.D. Cal.)), and voluntarily dismissed that case on August 8, 2022, in order to consolidate all claims in this Action;

WHEREAS, Plaintiffs Blenis and Mitchell had previously filed, on June 18, 2021, a substantially similar case in the United States District Court for the District of Massachusetts on behalf of a putative class of Massachusetts purchasers of Thinx Period Underwear (*Blenis, et al. v. Thinx, Inc.*, 1:21-cv-11019-IT (D. Mass.)), and voluntarily dismissed that case on June 27, 2022, in order to consolidate all claims in this Action;

WHEREAS, the Parties in *Allahverdi* and *Blenis* conducted a full-day mediation before the Hon. Jay Gandhi (Ret.) of JAMS on December 8, 2021, and although they were unable to reach a settlement at the mediation, they continued settlement negotiations for more than six months thereafter, including with Plaintiff Dickens, which culminated in an agreement in principle to resolve all claims of the proposed nationwide Settlement Class in this Action in the State of New York, where Thinx is headquartered, subject to Court approval;

WHEREAS, Class Representatives and Class Counsel believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class;

WHEREAS, Thinx denies all of the allegations made in the Action and denies that it did anything unlawful or improper, and its agreement to this Settlement is not an admission of guilt or wrongdoing of any kind;

WHEREAS, the Parties have each looked at the uncertainties of trial and the benefits to be obtained under the Settlement, and have considered the costs, risks, and delays associated with the continuation of this Action and the likely appeals of any rulings in favor of either Plaintiffs or Thinx; and

WHEREAS, the Parties desire to settle the Action in its entirety as to Plaintiffs, the Settlement Class Members, and Thinx with respect to all claims arising out of the facts underlying the Action, and intend this Agreement to bind Plaintiffs (both as the Class Representatives and individually), Thinx, and Settlement Class Members;

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

1. SETTLEMENT CLASS

1.1 **Certification of the Settlement Class.** For purposes of settlement and the proceedings contemplated by this Agreement only, the Parties stipulate and agree that a Settlement Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 as defined in Section 1.3, that Plaintiffs Haleh Allahverdi, Jillian Blenis, Haley Burgess, Nicole Dickens, and Lili Mitchell shall be the Class Representatives and shall represent the Settlement Class for settlement purposes, and that Erin Ruben, Hunter Bryson, Harper Segui, and Rachel Soffin of the law firm of Milberg Coleman Bryson Phillips Grossman shall be appointed as Class Counsel for the Settlement Class.

1.2 **Decertification of the Settlement Class if Settlement Not Approved.** Thinx does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement. If the Court does not enter an order granting final approval of the Settlement, or if for any other reason the Effective Date does not occur, any certification of any Settlement Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. Specifically: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Thinx did not oppose the certification of a Settlement Class under this Agreement, or that the Court preliminarily or finally approved the certification of a Settlement Class, shall not be used or cited thereafter by any person in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. In the event the terms and conditions of this Agreement are substantially modified by the Court, Thinx reserves the right to declare this Agreement null and void, in its sole discretion, within fourteen (14) days after such modification. Notwithstanding, in the event the Settlement is not approved, the parties will meet and confer in good faith, to the extent possible, to address the Court's concerns.

1.3 **Definition of Settlement Class.** The "Settlement Class" shall be defined as follows:

All natural persons who purchased, not for resale, the following Thinx Period Underwear in the United States from November 12, 2016, to the date of entry of the Preliminary Approval Order: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong. Excluded from the Settlement Class are (i) Thinx; (ii) its parents, subsidiaries, affiliates, officers, directors, investors, and employees; (iii) any entity in which Thinx has a controlling interest; and (iv) any judge presiding over this Action, their staff, and the members of the judge's immediate family.

2. CONFIDENTIALITY

2.1 The Parties, Class Counsel, and Thinx's Counsel agree that until publication of this Agreement by submission to the Court, the terms of this Agreement and all associated documents and communications, including the negotiations leading to the execution of the Agreement and all submissions and arguments related to the mediation, shall not be disclosed by the Parties, Class Counsel, and Thinx's Counsel other than as necessary to finalize the Settlement and Notice Plan. Upon publication of the Agreement by submission to the Court, the nondisclosure obligations set forth here will no longer apply to the as-filed Agreement or the terms thereof, but such obligations will continue to apply to all other materials and information covered by

this Section, including but not limited to any negotiations leading to the execution of the Agreement.

- 2.2 Either party may respond in neutral terms to inquiries from the press to communicate that the Action has been resolved between the Parties. Any response shall not contain inflammatory language about the Parties or their perceived conduct in the Action, and shall be limited to accurately describing the terms of the Settlement as reflected in the Agreement.

3. SETTLEMENT RELIEF

- 3.1 **Class Benefit.** Each Settlement Class Member who timely submits a valid Claim Form shall have the option to receive either cash reimbursement for past purchases of Thinx Period Underwear (up to three (3) pairs total), or a voucher for future purchases of Eligible Voucher Products as defined below (“Class Benefit”), on the following terms:

- 3.1.1 **Cash Reimbursement.** The amount of cash reimbursement for past purchases of Thinx Period Underwear will be contingent upon whether the Claimant provides a valid proof of purchase. Claimants will not, however, be required to provide proof of purchase for purchases of Thinx Period Underwear reflected in Thinx’s records.

3.1.1.1 Cash reimbursement with proof of purchase: Each Valid Claimant will receive a \$7.00 refund for Thinx Period Underwear that are reflected in Thinx’s records, or for which they submit a valid proof of purchase together with the Claim Form. The maximum cash reimbursement available will be \$21.00.

3.1.1.2 Cash reimbursement without proof of purchase: Each Valid Claimant will receive a \$3.50 cash refund for Thinx Period Underwear that are not reflected in Thinx’s records without proof of purchase but must provide details regarding the style(s) purchased and the approximate date, and location of their purchases, and attest to the purchases under penalty of perjury. The maximum cash reimbursement available will be \$10.50.

- 3.1.2 **Voucher.** Valid Claimants may choose to receive a single-use voucher for a discount of 35% off total purchases of Eligible Voucher Products (as defined below) in a single purchase transaction of up to \$150 on the Thinx website (thinx.com). The maximum discount available shall be up to \$52.50. Vouchers are non-transferable, subject to standard terms and conditions, and shall be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products only, and may not be combined with any other offers, discounts, or promotions. Claimants whose purchases of Thinx Period Underwear are not reflected in Thinx’s records must provide either valid proof of purchase or, if they do not have proof of purchase, details regarding the style(s) purchased, the approximate date, and location of purchase, and an attestation under penalty of perjury as to their purchases. The Thinx products available for voucher use (subject to availability on thinx.com) (“Eligible Voucher Products”) include the products below:

- Super Hiphugger
- Heavy Hiphugger
- Hiphugger
- Sport
- Heavy Boyshort
- Boyshort

- Super Hi-Waist
- Heavy Hi-Waist
- French Cut
- Cheeky
- Thong
- Modal Super Cotton Brief
- Modal Heavy Cotton Brief
- Modal Cotton Brief
- Modal Cotton Boyshort
- Modal Cotton Bikini
- Modal Cotton Thong
- Air Hiphugger
- Air Bikini

3.1.3 **Proof of Purchase.** Proof of purchase, as applicable, shall be provided and uploaded on the Settlement Website at the time the Claim Form is submitted or included with a physical Claim Form that can be mailed.

3.1.4 **Under Penalty of Perjury Attestation.** The Claim Form will only be deemed valid subject to a completed penalty of perjury attestation regarding the accuracy of the information provided in the Claim Form.

3.1.5 **Election of Class Benefit.** At the time Settlement Class Members submit a Claim Form, they must elect to receive either the cash reimbursement or voucher. Any Settlement Class Member who submits an otherwise valid Claim Form, but (1) requests both cash reimbursement and the voucher, (2) fails to choose either cash reimbursement or a voucher, or (3) submits two or more Claim Forms that do not make the same choice shall receive cash reimbursement on the terms set forth above.

3.1.6 **Dissemination of Class Benefit.** The Settlement Administrator will provide Valid Claimants with their elected choice of class benefit within twenty-one (21) days after the Effective Date.

3.2 **Cash Minimum Fund.**

3.2.1 The Settlement Administrator shall establish and maintain the Cash Minimum Fund. The Cash Minimum Fund shall be a nonreversionary common fund, no part of which shall revert to Thinx. The Settlement Administrator will hold the Cash Minimum Fund in escrow until such time as the Settlement Administrator is authorized to disseminate the funds pursuant to this Agreement, the Final Approval Order, or other order of the Court.

3.2.2 Within twenty-one (21) days after Preliminary Approval, Thinx shall pay into the Cash Minimum Fund a portion of the Cash Minimum Amount sufficient to cover the costs of Notice and settlement administration associated with Notice and claims processing, as estimated by the Settlement Administrator. Within fourteen (14) days after the Effective Date, Thinx shall deposit the balance of the Cash Minimum Amount into the Cash Minimum Fund.

3.2.3 The Cash Minimum Fund shall be applied as follows, in accordance with the terms and conditions set forth elsewhere in this Agreement:

3.2.3.1 To pay the costs of notice and settlement administration;

- 3.2.3.2 To pay any Attorneys' Fee and Expense Payment to Class Counsel, and any service awards to the Class Representatives, that may be approved by the Court; and
- 3.2.3.3 To distribute the net amount of the Cash Minimum Fund to Settlement Class Members in accordance with Section 3.1.6.
- 3.2.3.4 If total valid claims, notice and administration costs, Attorneys' Fee and Expense Payment, and service awards are less than the amount of the Cash Minimum Fund, the amount remaining shall be paid to a *cy pres* charity to be agreed upon by the parties and approved by the Court.

3.3 **Replenishment Amount and Maximum Cap.**

- 3.3.1 **Replenishment Amount.** If the cost of total valid claims, notice and administration costs, Attorneys' Fee and Expense Payment, and service awards exceeds the amount of the Cash Minimum Fund, Thinx shall pay a Replenishment Amount not to exceed \$1,000,000 to cover the cost of valid claims that would not otherwise be paid. Thinx shall not be required to pay any amount above the Cash Minimum Fund other than for valid claims. Thinx shall provide any applicable Replenishment Amount to the Settlement Administrator within fourteen (14) days after the Effective Date, and the Settlement Administrator shall hold such Replenishment Amount in escrow until authorized to disseminate the funds pursuant to this Agreement, the Final Approval Order, or other order of the Court.
- 3.3.2 **Maximum Cap.** In no event shall Thinx be required to pay any amount in excess of \$5,000,000 (the "Maximum Cap"). Thinx's total financial commitment under this Agreement shall be comprised of the Cash Minimum Amount and any applicable Replenishment Amount up to the Maximum Cap, and Thinx shall not be required to pay any additional amount in connection with the Agreement, the Settlement, the Action or the claims released in Section 10 of this Agreement.
 - 3.3.2.1 Vouchers issued pursuant to Section 3.1.2 of this Agreement shall not be included in determining the Cash Minimum Amount, Replenishment Amount, or Maximum Cap.
 - 3.3.2.2 If total valid claims, notice and administration costs, Attorneys' Fee and Expense Payment, and service awards would exceed the Maximum Cap, the payments to Settlement Class Members shall be reduced on a pro rata basis.

3.4 **Non-Monetary Relief.** In addition to the Class Benefit provided for in Section 3.1, Thinx agrees to the following non-monetary relief within the United States:

- 3.4.1 **Manufacturing.** Thinx will take measures to help ensure that per- and polyfluoroalkyl substances ("PFAS") are not intentionally added to Thinx period underwear at any stage of production, including maintaining production controls and material reviews.
- 3.4.2 **Chemical Supplier Agreement.** Thinx will continue to have suppliers of raw materials for Thinx period underwear review and sign a Supplier Code of Conduct and Chemical Supplier Agreement, which require suppliers to attest that PFAS are not intentionally added to Thinx period underwear.
- 3.4.3 **Marketing.** Thinx will disclose the use of anti-microbial treatments, including Agion, and the purpose for which anti-microbial treatments are used, including, if applicable,

as odor control treatments, on its website. In addition, Thinx will agree not to refer to the anti-microbial components of Agion as “non-migratory.”

- 3.5 **Claim Form.** To be entitled to receive the Class Benefit, Settlement Class Members must accurately and timely submit the Claim Form and any required documentation within 60 days following the Notice Date.

- 3.6 **Determination and Processing of Claims.** The Settlement Administrator will review all Claim Forms and proofs of purchase to determine their validity, eligibility, and the type and amount of Class Benefit to which the Claimant is entitled. The Settlement Administrator will reject any claim that does not materially comply with the instructions on the Claim Form, is not submitted by a Settlement Class Member, or is duplicative or fraudulent.

Within 15 days of receiving an insufficient Claim Form, the Settlement Administrator will send the Settlement Class Member an email, if available, or first-class United States mail if email is not available, a written notice of deficiency identifying the reason(s) that the claim was deemed insufficient, including steps the Settlement Class Member can take to cure the deficiency, if possible. The Settlement Class Member receiving such notice will be allowed fifteen (15) days from the date of emailing or mailing to cure the deficiency, if possible. If the Settlement Class Member does not or cannot cure the deficiency, the Settlement Administrator will, after consultation with Class Counsel and Thinx’s Counsel, deny the claim.

4. **OBTAINING COURT APPROVAL OF THE AGREEMENT**

- 4.1 **Preliminary Approval.** Class Counsel will draft the motion for preliminary approval and will provide that draft to Thinx’s Counsel at least ten (10) days prior to the deadline to file the motion, unless otherwise agreed to by the Parties. The motion shall be written in a neutral manner that plainly states Plaintiffs’ allegations and claims while making clear that Thinx denies every allegation of wrongdoing and admits no liability. The motion will request that the Court certify the Settlement Class. Thinx will not oppose the motion. Thinx may, however, provide feedback concerning the motion, and Class Counsel will meet and confer with Thinx’s Counsel in good faith regarding Thinx’s feedback.

- 4.2 **CAFA Notice.** Once Plaintiffs file the motion for preliminary approval, the Settlement Administrator will provide timely notice of the motion as required by the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

- 4.3 **Final Approval and Judgment.** In accordance with the schedule set in the Preliminary Approval Order, Class Counsel will draft the motion for final approval of the settlement, and will provide that draft to Thinx’s Counsel at least ten (10) days prior to the deadline to file the motion, unless otherwise agreed to by the Parties. The motion shall be written in a neutral manner that plainly states Plaintiffs’ allegations and claims while making clear that Thinx denies every allegation of wrongdoing and admits no liability. Thinx may provide feedback concerning the motion, and Class Counsel will meet and confer with Thinx in good faith regarding Thinx’s feedback.

5. **OBJECTIONS**

- 5.1 Settlement Class Members who do not submit timely and valid requests for exclusion may file objections to the Settlement, Class Counsel’s request for attorneys’ fees and expenses, and/or the requested service awards for the Class Representatives.

- 5.2 Any Settlement Class Member who intends to object to the Settlement must file with the Court a written statement that includes: a caption or title that identifies it as “Objection to Class Settlement in *Dickens et al. v. Thinx Inc.*, Case No. 1:22-cv-4286-JMF;” the Settlement Class Member’s name, address, and telephone number; all grounds for the objection, with any factual and legal support for each stated ground; the identity of any witnesses the Settlement Class Member may call to testify; copies of any exhibits that the Settlement Class Member intends to introduce into evidence at the Final Approval Hearing; a statement identifying their counsel if they are represented by counsel; and a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing with or without counsel. To be timely, the objection must (a) be submitted to the Court either by filing it in person at any location of the United States District Court for the Southern District of New York or by mailing it to the Clerk of the Court for filing, and (b) be filed or postmarked by the Objection and Exclusion deadline, which shall be no less than sixty (60) days after the Notice Date.
- 5.3 Any Settlement Class Member who fails to timely file with the Court a written objection in accordance with the terms of Section 5.2 of this Agreement and as detailed in the Notice shall waive and forfeit any and all rights the Settlement Class Member may have to object, appear, present witness testimony, and/or submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; shall be precluded from seeking review of this Agreement by appeal or other means; and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Action.
- 5.4 Class Counsel shall file their application for attorneys’ fees, costs, and service awards for Plaintiffs forty-five (45) days after the Notice Date. Once it is filed, Class Counsel’s application for attorneys’ fees, costs, and service awards shall be posted on the Settlement Website.
- 5.5 Plaintiffs and Thinx shall have the right, but not the obligation, to respond to any objection no later than twenty (20) days prior to the Final Approval Hearing. The party responding shall file a copy of the response with the Court, and shall serve a copy on the objector (or counsel for the objector).

6. EXCLUSIONS

- 6.1 **Requests for exclusion.** The Notice will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. The Settlement will not bind any individuals who timely exclude themselves from the Settlement.
- 6.2 **Requesting process.** To request to be excluded from the Settlement, members of the Settlement Class must timely submit a written request for exclusion either via the Settlement Website or by U.S. mail to the Settlement Administrator, which will be responsible for receiving and processing requests for exclusion.
- 6.3 **Deadline.** To be excluded from the Settlement, the request for exclusion must be submitted via the Settlement Website or postmarked by the Objection and Exclusion Deadline established in the Preliminary Approval Order, which shall not be less than sixty (60) days after the Notice Date.
- 6.4 **Effect of exclusion.** Any person who is a member of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Settlement; shall not be eligible to apply for or receive any benefit under the terms of the Settlement; and shall not be entitled to submit an Objection to the Settlement.

6.5 **Exclusion list.** No later than fifteen (15) days after the Objection and Exclusion Deadline, the Settlement Administrator will provide Class Counsel and Thinx's Counsel with the list of persons who have timely and validly excluded themselves from the Settlement.

6.6 **Effect of exclusions.** If 5% or more of the members of the Settlement Class validly and timely exclude themselves from the Settlement, then Thinx shall have the option to rescind this Agreement, in which case all of Thinx's obligations under this Agreement shall cease to be of any force and effect, and this Agreement shall be rescinded, cancelled, and annulled. If Thinx exercises this option, it shall provide Plaintiffs with written notice of its election within fifteen (15) days of receiving the exclusion list from the Settlement Administrator, at which point the Parties shall return to their respective positions that existed prior to the execution of this Agreement. No term of this Agreement or any draft thereof, or the negotiation, documentation, or other part of aspect of the Parties' settlement discussions, or any filings or orders respecting the Settlement or any aspect of the Settlement, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.

7. NOTICE AND SETTLEMENT ADMINISTRATION

7.1 Thinx will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses for all members of the Settlement Class for whom it has records within 30 days of the date of entry of the Preliminary Approval Order.

7.2 The Settlement Administrator will administer the Notice in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class confidential, using them only for purposes of administering this Settlement.

7.3 **Notice Plan.** The Parties agree upon and will seek Court approval of the following forms and methods of notice to the members of the Settlement Class:

7.3.1 **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement Website with a mutually acceptable domain name. The Settlement Website will be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include, without limitation, the Detailed Notice, the Agreement, the operative Consolidated Class Action Complaint, the Preliminary Approval Motion and Order as entered, Plaintiffs' Motion for Attorneys' Fees and Expenses, Plaintiffs' Motion for Final Approval of Class Action Settlement, answers to a set of frequently asked questions, and information on how to object or request exclusion, as well as contact information for Class Counsel and the Settlement Administrator. The Settlement Website will include a readily accessible means for members of the Settlement Class to electronically submit a Claim Form or request for exclusion, as well as an address to which Claim Forms or requests for exclusion may be mailed. The Settlement Website will be live on the Notice Date.

7.3.2 **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number where members of the Settlement Class can request a copy of the Detailed Notice, the Claim Form, and other case documents.

7.3.3 **Email Notice.** The Settlement Administrator will email to each member of the Settlement Class for whom Thinx has an email address a copy of the Email Notice. The email notice shall contain a link to the Settlement Website.

7.3.4 **Postcard Notice.** For members of the Settlement Class (a) who do not have valid email addresses in Thinx's records, or (b) for whom the Email Notice is returned as undeliverable, the Settlement Administrator will mail to each such member of the Settlement Class for whom a mailing address can be located a Postcard Notice. All postcard Notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to that address.

7.3.5 **Publication Notice.** The Settlement Administrator shall implement a limited online banner advertisement campaign on certain websites, to be determined by the Parties with input from the Settlement Administrator, commencing on the Notice Date and continuing for 30 days thereafter. The ads will provide a link to the Settlement Website and contact information for the Settlement Administrator. The selection of websites and the content of the ads shall be subject to Thinx's approval.

7.4 The Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement. With approval from Class Counsel and Thinx's counsel, the Settlement Administrator will withdraw from the Cash Minimum Fund funds sufficient to cover all costs and expenses related to the settlement notice and administration functions to be performed by the Settlement Administrator, including the claims administration process.

8. CLASS COUNSEL FEES AND EXPENSES, AND SERVICE AWARDS

8.1 Any award of Attorneys' Fees and Expenses shall be decided by the Court and payable from the Cash Minimum Fund.

8.2 The amount of attorneys' fees and expenses was negotiated at arm's length, and only after agreement was reached on all substantive terms of the settlement. Class Counsel agree not to petition the Court for more than \$1,500,000 for attorneys' fees and expenses, which Thinx agrees not to oppose. In no event shall Thinx be liable for any attorneys' fees or expenses in excess of these amounts.

8.3 The Settlement Administrator will pay Class Counsel the Court-approved Attorneys' Fee and Expense Payment within twenty-one (21) days after the Effective Date.

8.4 The Court's award of any Attorneys' Fee and Expense Payment shall be separate from the determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award Class Counsel attorneys' fees or expenses in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties to the extent permissible under applicable law.

8.5 Class Counsel may apply for a service award of no more than \$2,500 per named Plaintiff (\$12,500 total), which Thinx agrees not to oppose. The service award is not a measure of damages, but instead solely an award for the Class Representatives' services, time, and effort on behalf of the Settlement Class Members. For tax purposes, the service award will be treated as 100% non-wage claim payment. Class Counsel will provide a Form W-9 for each Plaintiff receiving a service award, and the Settlement Administrator will issue an IRS Form Misc.-1099 for the service award payments. The Settlement Administrator will pay Plaintiffs the Court-approved service awards within twenty-one (21) days after the Effective Date.

8.6 Any order or proceeding relating to the application for a service award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Agreement. The Class Representatives' approval of this Settlement is not contingent on Class

Counsel making an application for a service award, or the Court approving any application for a service award.

9. DENIAL OF LIABILITY; PROHIBITION OF USE

- 9.1 Thinx vigorously denies all of the material allegations in the Action. Thinx enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Thinx further denies the truth of any of the claims asserted in the Action, including any allegations that Plaintiffs or any member of the Settlement Class has been harmed by any conduct by Thinx, whether as alleged in the Action or otherwise. Thinx nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend this litigation and the benefits of disposing of protracted and complex litigation.
- 9.2 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Thinx, or to establish the truth of any of the claims or allegations alleged in the Action.
- 9.3 Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor as an admission of any lack of merit of the causes of action asserted in the Action.
- 9.4 To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

10. RELEASES AND WARRANTIES

- 10.1 As of the Effective Date, Releasing Parties hereby fully and irrevocably release and forever discharge Released Parties from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether state or federal, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, that have been or could have been asserted in the Action (the "Released Claims"). The Released Claims exclude claims for personal injury.
- 10.2 In consideration for this Agreement and the consideration set forth herein, Plaintiffs and the Settlement Class Members acknowledge that the release herein includes potential claims and costs that may not be known or suspected to exist, and that Plaintiffs and the Settlement Class Members hereby agree that all rights under California Civil Code § 1542, and any similar law of any state or territory of the United States, are expressly and affirmatively waived. California Civil Code § 1542 states as follows:
- A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
- 10.3 No person will have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the Settlement and the matters set forth herein, or based on

determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order and Judgment, or other order(s) of the Court.

11. EFFECTIVE DATE OF THE AGREEMENT; TERMINATION

11.1 The “Effective Date” of this Agreement shall be the first day after which all of the following events and conditions of this Agreement have been met or have occurred:

11.1.1 All of the Parties and their counsel have executed this Agreement;

11.1.2 The Court has entered the Final Approval Order finally approving the Settlement and has entered Judgment; and

11.1.3 The Judgment has become final in that the time for appeal of, or writ as to, the Judgment has expired or, if any such appeal and/or petition for review is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not become final as contemplated by this Section.

11.2 If the Judgment does not become final and/or this Agreement is terminated or fails to become effective for any reason, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc, and the Parties shall be returned to the status quo ante with respect to the Action as if this Agreement had never been entered into. In the event of a termination, the Settlement Administrator shall return any monies remaining in the settlement fund to Thinx within fourteen (14) days of receiving notice of the termination.

12. MISCELLANEOUS

12.1 **Extensions of time.** All time periods and dates described in this Agreement are subject to the Court’s approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. The time periods and dates provided for herein or in the Preliminary Approval Order may be altered by the Court or through written consent of the Parties’ counsel, without notice to the Class Members; provided, however, that any such changes in the schedule of Settlement proceedings will be posted on the Settlement Website.

12.2 **Integration.** This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

12.3 **Governing law.** This Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York, without regard to the principles thereof regarding choice of law.

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

- 12.5 **Representative capacity.** Each person executing this Agreement in a representative capacity represents and warrants that they are empowered to do so.
- 12.6 **Headings and counterparts.** The headings or captions in this agreement will not be deemed to have any effect and are provided for convenience only. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 12.7 **Cooperation of Parties.** The Parties and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 12.8 **Voluntary execution.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, the Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 12.9 **Notices.** Any notice provided in connection with the Agreement or other document to be given by any Party to any other Party shall be in writing and (i) delivered personally or by registered or certified mail, postage prepaid, to the appropriate address(es) set forth immediately below, or to other contact points as the Parties may identify by notice given in accordance with this Section; and also (ii) transmitted by email to the appropriate email address(es) set forth immediately below.


Notice to Class Counsel:	Notice to Thinx:
Erin J. Ruben MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN 900 W. Morgan Street Raleigh, NC 27603 ERuben@milberg.com	Purvi G. Patel MORRISON & FOERSTER, LLP 707 Wilshire Boulevard Los Angeles, CA 90017-3543 PPatel@mofo.com

The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.

- 12.10 **Modification or amendment.** Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by the Parties' counsel.
- 12.11 **Continuing jurisdiction.** Any and all disputes arising from or related to the Settlement or this Agreement must be brought by the Parties, Class Counsel, Thinx's Counsel and/or each member of the Settlement Class, exclusively in the Court. The Parties, Class Counsel, Thinx's Counsel, and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement.

Date: November __, 2022

HALEH ALLAHVERDI

By: 
Haleh Allahverdi (Nov 21, 2022 13:37 PST)

Date: November __, 2022

JILLIAN BLENIS

By: _____
Jillian Blenis

Date: November __, 2022

HALEY BURGESS

By: _____
Haley Burgess

Date: November __, 2022

NICOLE DICKENS

By: _____
Nicole Dickens

Date: November __, 2022

LILI MITCHELL

By: _____
Lili Mitchell

Date: November __, 2022

THINX INC.

By: _____
Nathan Fox
Chief Financial Officer

Date: November __, 2022

HALEH ALLAHVERDI

By: _____
Haleh Allahverdi

Date: November 21, 2022

JILLIAN BLENIS

By: *Jillian Blenis*
Jillian Blenis (Nov 21, 2022 16:57 EST)
Jillian Blenis

Date: November __, 2022

HALEY BURGESS

By: _____
Haley Burgess

Date: November __, 2022

NICOLE DICKENS

By: _____
Nicole Dickens

Date: November __, 2022

LILI MITCHELL

By: _____
Lili Mitchell

Date: November __, 2022

THINX INC.

By: _____
Nathan Fox
Chief Financial Officer

Date: November __, 2022

HALEH ALLAHVERDI

By: _____
Haleh Allahverdi


Date: November __, 2022

JILLIAN BLENIS

By: _____
Jillian Blenis

Date: November ^{HB} __, 2022

HALEY BURGESS

By:  _____
Haley Burgess (Nov 21, 2022 13:40 PST)
Haley Burgess

Date: November __, 2022

NICOLE DICKENS

By: _____
Nicole Dickens

Date: November __, 2022

LILI MITCHELL

By: _____
Lili Mitchell

Date: November __, 2022

THINX INC.

By: _____
Nathan Fox
Chief Financial Officer

Date: November __, 2022

HALEH ALLAHVERDI

By: _____
Haleh Allahverdi

Date: November __, 2022

JILLIAN BLENIS

By: _____
Jillian Blenis

Date: November __, 2022

HALEY BURGESS

By: _____
Haley Burgess

Date: November __, 2022

NICOLE DICKENS

By:  _____
nicole dickens (Nov 21, 2022 16:37 EST)
Nicole Dickens

Date: November __, 2022

LILI MITCHELL

By: _____
Lili Mitchell

Date: November __, 2022

THINX INC.

By: _____
Nathan Fox
Chief Financial Officer

Date: November __, 2022

HALEH ALLAHVERDI

By: _____
Haleh Allahverdi

Date: November __, 2022

JILLIAN BLENIS

By: _____
Jillian Blenis

Date: November __, 2022

HALEY BURGESS

By: _____
Haley Burgess


Date: November __, 2022

NICOLE DICKENS

By: _____
Nicole Dickens

Date: November __²¹²¹², 2022

LILI MITCHELL

By:  _____
Lili Mitchell (Nov 21, 2022 10:41 EST)
Lili Mitchell

Date: November __, 2022

THINX INC.

By: _____
Nathan Fox
Chief Financial Officer

Date: November __, 2022

HALEH ALLAHVERDI

By: _____
Haleh Allahverdi

Date: November __, 2022

JILLIAN BLENIS

By: _____
Jillian Blenis

Date: November __, 2022

HALEY BURGESS

By: _____
Haley Burgess

Date: November __, 2022

NICOLE DICKENS

By: _____
Nicole Dickens

Date: November __, 2022

LILI MITCHELL

By: _____
Lili Mitchell


Date: November 21, 2022

THINX INC.

By:  _____
Nathan Fox
Chief Financial Officer

APPROVED AS TO FORM:

Date: November 21, 2022

By: 
Erin J. Ruben
Milberg Coleman Bryson Phillips Grossman
Attorneys for Plaintiffs and the Settlement Class

Date: November __, 2022

By: _____
Purvi G. Patel
Morrison & Foerster LLP
Attorneys for Thinx Inc.

APPROVED AS TO FORM:

Date: November __, 2022

By: _____
Erin J. Ruben
Milberg Coleman Bryson Phillips Grossman
Attorneys for Plaintiffs and the Settlement Class



Date: November 22, 2022

By: _____
Purvi G. Patel
Morrison & Foerster LLP
Attorneys for Thinx Inc.

EXHIBIT A

THINX PERIOD UNDERWEAR CLASS ACTION CLAIM FORM

Nicole Dickens, et al. v. Thinx Inc., Case No. 1:22-cv-04286-JMF
United States District Court for Southern District of New York

If mailed, this Claim Form must be postmarked no later than [date].
If submitted online, it must be submitted by 11:59 p.m. ET on [date].

By timely submitting this Claim Form, you will be included in the Settlement Class identified in the Notice and the Class Action Settlement Agreement and Release. **If you also submit a Request for Exclusion (in other words, if you ask to “opt out” of the Settlement Class), this Claim Form will be deemed invalid.**

CLAIM FORM INSTRUCTIONS

IMPORTANT: Please read the instructions below before completing this Claim Form. In completing the Claim Form, you must elect to receive one of two class benefits. You have the option to choose either cash reimbursement for past purchases (up to three (3) pairs in total) or a single-use voucher towards a future purchase of Thinx Period Underwear. **Thinx Period Underwear means: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.**

- **Cash reimbursement:** You may receive a \$7.00 refund for each purchase of up to three (3) pairs of Thinx Period Underwear reflected in Thinx’s records, or for which you provide a valid proof of purchase. **Section B** will indicate whether Thinx has a record of your purchases or if you need to provide proof of purchase.
- **Cash reimbursement without proof of purchase:** You may receive a \$3.50 refund for each purchase of up to three (3) pairs of Thinx Period Underwear that are not reflected in Thinx’s records and for which you do not have proof of purchase, but which you attest to purchasing under penalty of perjury. **Section B** will indicate whether Thinx has a record of your purchases or if you need to provide proof of purchase.
- **Voucher:** You may choose to receive a voucher for a discount of 35% off total purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50). Vouchers are not transferable, subject to standard terms and conditions, and will be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products only, and may not be combined with any other offers, discounts, or promotions. Go to [website] for a list of Eligible Voucher Products. If Thinx does not have a record of your past purchases of Thinx Period Underwear (as noted in **Section B**), you must provide proof of purchase or attest under penalty of perjury to having made the purchases you identify in **Section D**.

If you fail to return your Claim Form by the deadline above, your claim will be rejected, and you will be deemed to have waived all rights to receive a class benefit under the settlement.

To be valid, your Claim Form must be completely and accurately filled out, signed and dated, and must include all requested information. If your Claim Form is incomplete, untimely, illegible, not signed, or contains false information, it may be rejected by the Settlement Administrator.

A. ELECTION OF CLASS BENEFIT

Place an “x” in front of the type of class benefit you choose to receive. (Choose only one.)

☐ I wish to receive cash reimbursement for up to a total of 3 pairs of underwear. The reimbursement will be for either \$7.00 per pair for which Thinx has a record of my purchase or for which I provide proof of purchase or \$3.50 for each pair for which I do not have proof of purchase, but which I attest to under penalty of perjury in completing this form (as described in the Instructions above).

☐ I wish to receive a single-use voucher for a discount of 35% off total purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50).

If you submit an otherwise valid and timely Claim Form, but either (1) request both cash reimbursement and a voucher, (2) fail to choose either a cash reimbursement or a voucher, or (3) submit two or more Claim Forms that do not make the same choice, you will receive cash reimbursement on the terms set forth above.

[Either the Cash Reimbursement flow or Voucher flow will pre-populate. This form shows the Voucher flow.]

B. CLAIM NUMBER

Please provide below the Claim Number contained in the email or on the postcard notice that you received.

Listing your unique Claim Number will pre-populate the claim form with information contained in Thinx’s records. You must declare that any pre-populated information is true and correct.

CLAIM NUMBER - You can find your claim number on the email or postcard you received notifying you about the settlement

IF YOU DO NOT HAVE A UNIQUE CLAIM NUMBER, BUT BELIEVE THAT YOU MAY BE ELIGIBLE TO MAKE A CLAIM, PLEASE CLICK [HERE](#) TO PROCEED.

[Either Group 1 or Group 2 bullet will pre-populate]

- **Group 1: Thinx has records of your past purchases.**

Thinx's records reflect that you purchased the following Thinx Period Underwear: [pre-populated list of purchases inserted here].

Please go to **Section C** to confirm or update your contact information.

- **Group 2: Thinx does not have records of your past purchases/you do not have a claim number.**

Please go to **Section C** to provide your contact information. To be eligible for the class benefit, you must also provide the purchase information for your past Thinx Period Underwear purchase(s) and either 1) upload proof of purchase or 2) attest under penalty of perjury that you have made the purchases specified in **Section D**.

C. ADDRESS INFORMATION

Please verify or provide your name and contact information below.

Full Name _____

Home Street Address _____

City, State, ZIP Code _____

Telephone Number: _____

E-mail Address: _____

D. PURCHASE INFORMATION

[For Group 2] Because Thinx does not have a record of you purchasing Thinx Period Underwear, please provide below a description of the style, quantity, purchase location, and approximate corresponding date for the purchase(s) you made of Thinx Period Underwear in the United States, not for resale, between November 12, 2016 to [DATE]. For a list of the styles of underwear covered by the Settlement and which may make you eligible for a class benefit, go to [website].

[A grid for purchase information will pre-populate.]

<u>Style Purchased</u>	<u>Quantity</u>	<u>Purchase Location & Date</u>
------------------------	-----------------	-------------------------------------

E. PROOF OF PURCHASE

[For Group 2, if purchases listed in Section D] Please include a proof of purchase in the form of a receipt, proof of online order, email from Thinx or another retailer, or credit card statement for each transaction identified in **Section D**. The proof or purchase must show: the amount of the purchase, the seller, the purchase date (month/year), and style purchased. You may redact balance information and any transaction information regarding transactions not entered into with Thinx or a third-party retailer of the underwear from your credit card statement(s). You may upload your documents by clicking here or if you are submitting by mail please attach to this Claim Form. Please list the number of additional purchases for which you will be providing

proof of purchase here: .

For any purchases for which you do not upload proof of your past purchases showing the required information described above, you will be required to attest under penalty of perjury to having made the purchases you listed in **Section D**.

F. MANNER OF TRANSMISSION OF CLASS BENEFIT

If your Claim Form is valid, signed, and has been timely submitted, you will receive your voucher by email, at the email listed in **Section C**, unless you request to have the voucher mailed to you. You acknowledge that if you do not choose to receive your voucher by email, you may not receive your voucher as quickly and that the Settlement Administrator will not be responsible for vouchers that do not arrive by U.S. mail and may not reissue vouchers that are claimed as lost or stolen.

If you do not elect to receive your voucher by email, and wish to receive your voucher via U.S. mail, please check this box to receive your voucher at the address listed in **Section C**: ☐

Please be patient. Thinx will not be able to send you your chosen award until after your Claim Form has been processed and Court proceedings are completed.

G. SIGNATURE UNDER PENALTY OF PERJURY

By signing below and submitting this Claim Form, I hereby declare under penalty of perjury that I am the person identified above, and that all of the information I have provided on this Claim Form, or that was pre-populated in this Claim Form, is true and accurate. I understand that Thinx has the right to verify the accuracy of any purchase information I provide, and that the Court may ultimately determine I am not entitled to receive an award.

Signed

Dated

Typing your name constitutes your legal signature, in the same manner as if you signed by hand.

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE CLAIMS ADMINSTRATOR BY [DATE], EITHER ONLINE ([WEBSITE]) OR MAILED TO THE ADDRESS BELOW:

Settlement Administrator

[address]

[address]

All information submitted in support of your claim is subject to investigation and verification by the Settlement Administrator.

If you have any questions about this lawsuit, your rights, or completing the Claim Form, you may also contact Class Counsel:

- **Erin J. Ruben** Telephone: (919) 600-5000; email: eruben@milberg.com

- **Rachel Soffin** Telephone: (865) 864-8541; email: rsoffin@milberg.com

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR THINX, OR TO ANY THINX AGENT OR EMPLOYEE. They are not permitted to answer your questions.

EXHIBIT B

THINX PERIOD UNDERWEAR CLASS ACTION CLAIM FORM

Nicole Dickens, et al. v. Thinx Inc., Case No. 1:22-cv-04286-JMF
United States District Court for Southern District of New York

If mailed, this Claim Form must be postmarked no later than [date].
If submitted online, it must be submitted by 11:59 p.m. ET on [date].

By timely submitting this Claim Form, you will be included in the Settlement Class identified in the Notice and the Class Action Settlement Agreement and Release. **If you also submit a Request for Exclusion (in other words, if you ask to “opt out” of the Settlement Class), this Claim Form will be deemed invalid.**

CLAIM FORM INSTRUCTIONS

IMPORTANT: Please read the instructions below before completing this Claim Form. In completing the Claim Form, you must elect to receive one of two class benefits. You have the option to choose either cash reimbursement for past purchases (up to three (3) pairs in total) or a single-use voucher towards a future purchase of Thinx Period Underwear. **Thinx Period Underwear means: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.**

- **Cash reimbursement:** You may receive a \$7.00 refund for each purchase of up to three (3) pairs of Thinx Period Underwear reflected in Thinx’s records, or for which you provide a valid proof of purchase. **Section B** will indicate whether Thinx has a record of your purchases or if you need to provide proof of purchase.
- **Cash reimbursement without proof of purchase:** You may receive a \$3.50 refund for each purchase of up to three (3) pairs of Thinx Period Underwear that are not reflected in Thinx’s records and for which you do not have proof of purchase, but which you attest to purchasing under penalty of perjury. **Section B** will indicate whether Thinx has a record of your purchases or if you need to provide proof of purchase.
- **Voucher:** You may choose to receive a voucher for a discount of 35% off total purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50). Vouchers are not transferable, subject to standard terms and conditions, and will be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products only, and may not be combined with any other offers, discounts, or promotions. Go to [website] for a list of Eligible Voucher Products. If Thinx does not have a record of your past purchases of Thinx Period Underwear (as noted in **Section B**), you must provide proof of purchase or attest under penalty of perjury to having made purchases you identify in **Section D**.

If you fail to return your Claim Form by the deadline above, your claim will be rejected, and you will be deemed to have waived all rights to receive a class benefit under the settlement.

To be valid, your Claim Form must be completely and accurately filled out, signed and dated, and must include all requested information. If your Claim Form is incomplete, untimely, illegible, not signed, or contains false information, it may be rejected by the Settlement Administrator.

A. ELECTION OF CLASS BENEFIT

Place an “x” in front of the type of class benefit you choose to receive. (Choose only one.)

- ☐ I wish to receive cash reimbursement for up to a total of 3 pairs of underwear. The reimbursement will be for either \$7.00 per pair for which Thinx has a record of my purchase or for which I provide proof of purchase or \$3.50 for each pair for which I do not have proof of purchase, but which I attest to under penalty of perjury in completing this form (as described in the Instructions above).
- ☐ I wish to receive a single-use voucher for a discount of 35% off total purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50).

If you submit an otherwise valid and timely Claim Form, but either (1) request both cash reimbursement and a voucher, (2) fail to choose either a cash reimbursement or a voucher, or (3) submit two or more Claim Forms that do not make the same choice, you will receive cash reimbursement on the terms set forth above.

[Either the Cash Reimbursement flow or Voucher flow will pre-populate. This form shows the Cash Reimbursement flow.]

B. CLAIM NUMBER

Please provide below the Claim Number contained in the email or on the postcard notice that you received.

Listing your unique Claim Number will pre-populate the claim form with information contained in Thinx’s records. You must declare that any pre-populated information is true and correct.

CLAIM NUMBER - You can find your claim number on the email or postcard you received notifying you about the settlement

IF YOU DO NOT HAVE A UNIQUE CLAIM NUMBER BUT BELIEVE THAT YOU MAY BE ELIGIBLE TO MAKE A CLAIM, PLEASE CLICK [HERE](#) TO PROCEED.

[Either Group 1 or Group 2 bullet will pre-populate]

- **Group 1: Thinx has records of your past purchases.**

Thinx's records reflect that you purchased the following Thinx Period Underwear: [pre-populated list of purchases inserted here].

Please go to **Section C** to confirm or update your contact information.

[If less than 3 purchases in Thinx's records for claimant, include this box.]

You may be able to claim cash reimbursement for additional purchases: Thinx has records of the past purchase(s) listed above, but if you made additional purchases of Thinx Period Underwear, you are eligible to claim cash reimbursement of up to \$7.00 with proof of purchase, or up to \$3.50 with proof of purchase or a declaration under penalty that you made the purchases, for a total of 3 purchases of Thinx Period Underwear. If you have additional Thinx Period Underwear purchases for which you wish to claim cash reimbursement, please click [here](#). [If claimant clicks this link, include Section D.]

- **Group 2: Thinx does not have records of your past purchases/you do not have a claim number.**

Please go to **Section C** to provide your contact information. To be eligible for the class benefit, you must also provide the purchase information for your past Thinx Period Underwear purchase(s) and either 1) upload proof of purchase or 2) attest under penalty of perjury that you have made the purchases specified in **Section D**.

C. ADDRESS INFORMATION

Please verify or provide your name and contact information below.

Full Name _____

Home Street Address _____

City, State ZIP Code _____

Telephone Number: _____

E-mail Address: _____

D. PURCHASE INFORMATION

[For Group 1, if fewer than 3 records of purchase] Thinx has records of you purchasing fewer than 3 pairs of Thinx Period Underwear. If you have more purchases to share (up to three (3) pairs total), please provide below a description of the style, quantity, purchase location, and approximate corresponding date for each purchase you made of Thinx Period Underwear in the United States, not for resale, between November 12, 2016 to [DATE]. For a list of the styles of underwear covered by the Settlement and which may make you eligible for a class benefit, go to

[website].

[A grid for purchase information will pre-populate.]

Style Purchased

Quantity

Purchase Location & Date

[For Group 2] Because Thinx does not have a record of you purchasing Thinx Period Underwear, please provide below a description of the style, quantity, purchase location, and approximate corresponding date for each purchase you made of Thinx Period Underwear in the United States, not for resale, between November 12, 2016 to [DATE]. For a list of the styles of underwear covered by the Settlement and which may make you eligible for a class benefit, go to [website]. You may only claim for up to three (3) pairs total.

[A grid for purchase information will pre-populate.]

Style Purchased

Quantity

Purchase Location & Date

E. PROOF OF PURCHASE

[For Groups 1 and 2, if purchases listed in Section D] Please include a proof of purchase in the form of a receipt, proof of online order, email from Thinx or another retailer, or credit card statement for each transaction identified in **Section D**. The proof or purchase must show: the amount of the purchase, the seller, the purchase date (month/year), and style purchased. You may redact balance information and any transaction information regarding transactions not entered into with Thinx or a third-party retailer of the underwear from your credit card statement(s). You may upload your documents by clicking [here](#) or if you are submitting by mail please attach to this Claim Form. Please list the number of additional purchases for which you will be providing proof of purchase here: .

For any purchases for which you do not upload proof of your past purchases showing the required information described above, you will be required to attest under penalty of perjury to having made the purchases you listed in **Section D** and will receive a smaller dollar value cash reimbursement.

F. MANNER OF TRANSMISSION OF CLASS BENEFIT

If your Claim Form is valid, signed, and has been timely submitted, you will receive the Class Benefit you have chosen by PayPal or direct deposit (ACH), unless you request a paper check. You acknowledge that if you do not choose direct deposit (ACH) or PayPal, you may not receive payment as quickly and that the Settlement Administrator will not be responsible for Settlement checks that do not arrive by U.S. mail and may not reissue checks that are claimed as lost or stolen.

For PayPal: Please provide the email address associated with your PayPal account: _____

For direct deposit (ACH): Due to the nature and scope of the information required to effectuate direct deposit (ACH) payments, this option is only available by submitting a claim using the settlement website. Please click [here](#) to provide your direct deposit information. **If you are submitting by mail, you either must choose the PayPal or the mailed check option.**

If you do not elect PayPal or direct deposit, and wish to receive payment by check sent via U.S. mail, please check this box to receive your payment at the address listed in **Section C**: ☐

Please be patient. Thinx will not be able to send you your chosen award until after your Claim Form has been processed and Court proceedings are completed.

G. SIGNATURE UNDER PENALTY OF PERJURY

By signing below and submitting this Claim Form, I hereby declare under penalty of perjury that I am the person identified above, and that all of the information I have provided on this Claim Form, or that was pre-populated in this Claim Form, is true and accurate. I understand that Thinx has the right to verify the accuracy of any purchase I provide, and that the Court may ultimately determine I am not entitled to receive an award.

Signed

Dated

Typing your name constitutes your legal signature, in the same manner as if you signed by hand.

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE CLAIMS ADMINISTRATOR BY [DATE], EITHER ONLINE ([WEBSITE]) OR MAILED TO THE ADDRESS BELOW:

Settlement Administrator

**[address]
[address]**

All information submitted in support of your claim is subject to investigation and verification by the Settlement Administrator.

If you have any questions about this lawsuit, your rights, or completing the Claim Form, you may also contact Class Counsel:

- **Erin J. Ruben** Telephone: (919) 600-5000; email: eruben@milberg.com
- **Rachel Soffin** Telephone: (865) 864-8541; email: rsoffin@milberg.com

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR THINX, OR TO ANY THINX AGENT OR EMPLOYEE. They are not permitted to answer your questions.

EXHIBIT C

To: [Email Address]

From: [Administrator Address]

Subject: Thinx Period Underwear Class Action Settlement

The United States District Court for the Southern District of New York approved this notice.

If you bought a pair of Thinx Period Underwear between November 12, 2016 and [date of entry of the Preliminary Approval Order], you may be eligible for payment from a class action settlement.

A settlement has been reached in a class action lawsuit involving Thinx Period Underwear making allegations regarding the presence of short chain per- and polyfluoroalkyl substances (“PFAS”), Agion anti-microbial treatment, and the organic cotton line of the underwear.

Thinx denies all of the allegations made in the lawsuit and denies that Thinx did anything improper or unlawful. With respect to PFAS, Thinx confirms that PFAS have never been a part of its product design, and that it will continue to take measures to help ensure that PFAS are not intentionally added to Thinx period underwear at any stage of production. The proposed settlement is not an admission of guilt or wrongdoing of any kind by Thinx.

○ **Why am I receiving this notice?**

Thinx’s records indicate that you may be a member of the Settlement Class and entitled to receive a monetary class benefit. You are a member of the Settlement Class if you purchased in the United States, other than for resale, Thinx Period Underwear between November 12, 2016 and [date of entry of the Preliminary Approval Order]. **You must submit a claim to receive a monetary benefit.**

For more information and to review the full notice, please visit [settlement website].

○ **What does the settlement provide?**

If the Court approves the Settlement, Thinx has agreed to pay \$4 million into a cash fund, and may pay up to an additional \$1 million if needed to cover valid claims. Thinx also has agreed to take appropriate business measures to address the claims in the lawsuit, as detailed in the full notice.

In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of attorneys’ fees and costs not to exceed \$1.5 million. Class Counsel will also ask the Court for service awards of \$2,500 for each of the named Plaintiffs. The purpose of the service award is to compensate the named Plaintiffs for their time, efforts, and risks taken on behalf of the Settlement Class. Any award of attorneys’ fees, costs and service awards to the named

Plaintiffs will be paid from the \$4 million cash fund. Class Counsel's Motion for Attorneys' Fees and Expenses will be available at [\[website URL\]](#) once it has been filed.

○ **What types of Thinx period underwear are covered by the settlement?**

The settlement covers the following Thinx period underwear: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong, sold between November 12, 2016 and [\[date of entry of the Preliminary Approval Order\]](#) ("Thinx Period Underwear").

○ **What is the Class Benefit available to me?**

You have the option to choose either cash reimbursement for past purchases (up to 3 pairs total) or a single-use voucher towards a future purchase of eligible Thinx period underwear. The specific options include:

- **Cash reimbursement:** You may receive a \$7.00 refund for each purchase of up to 3 pairs of Thinx Period Underwear reflected in Thinx's records, or for which you provide a valid proof of purchase (for a total of up to \$21.00). Your Claim Form will indicate whether Thinx has a record of your purchases or you need to provide proof of purchase.
- **Cash reimbursement without proof of purchase:** You may receive a \$3.50 refund for each purchase of up to 3 pairs of Thinx Period Underwear that are not reflected in Thinx's records and for which you do not have proof of purchase (for a total of up to \$10.50), but which you attest to purchasing under penalty of perjury.
- **Voucher:** You may choose to receive a voucher for a discount of 35% off total purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50). Click here [\[hyperlink\]](#) for a list of Eligible Voucher Products for which the voucher can be used.

Vouchers are not transferable, subject to standard terms and conditions, and will be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products, and may not be combined with any other offers, discounts, or promotions.

If Thinx does not have a record of your past purchases of Thinx Period Underwear, your Claim Form will require you to provide proof of purchase or attest under penalty of perjury to having made the purchases.

You will be required to elect whether to receive either cash reimbursement or the voucher on your Claim Form.

- **How do I file a claim?**

To file a claim, click here [\[hyperlink\]](#) or call [\[telephone number\]](#) for the Claim Form. **Use your Claim Number XXXX so that your Claim Form will show whether Thinx has a record of your purchases of Thinx Period Underwear.** Your Claim Form must be submitted electronically or postmarked no later than [\[date\]](#). A link to the Claim Form is available here [\[hyperlink\]](#) or by calling [\[telephone number\]](#).

- **What are my other options?**

You can do nothing, exclude yourself, or object. If you do nothing, you will be legally bound by the settlement, but you won't get a payment. If you don't want to be legally bound by the settlement, you must exclude yourself from it by [\[date\]](#). Unless you exclude yourself, you will give up the right to sue or continue to sue Thinx for any claim released by the settlement.

If you stay in the settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the Final Approval Hearing—at your own cost—but you don't have to. **Objections and requests to appear are due by [\[date\]](#).** The Final Approval Hearing will be held on [\[date\]](#), at [\[time\]](#), in Courtroom 1105 of the Thurgood Marshall United States Courthouse, located at 40 Foley Square, New York, New York 10007, or via Zoom webinar.

More information about these options and the settlement is in the detailed notice available here [\[hyperlink\]](#) or by calling [\[telephone number\]](#).

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

To unsubscribe from this list, please click on the following link: [\[hyperlink\]](#)

EXHIBIT D

[Address]
[Address]
[Address]
[Address]

**If you purchased
Thinx Period
Underwear between
November 12, 2016
and [date the
Preliminary Approval
Order is entered], you
may be eligible for
payment from a class
action settlement.**

Important Notice About a Class Action Lawsuit

<<Barcode>>

Claim#: A2E-<<ClaimID>>-

<<MailRec>>

«First1» «Last1»

«CO»

«Addr1» «Addr2»

«City», «St» «Zip»

«Country»

A settlement has been reached with Thinx Inc. in a class action lawsuit involving Thinx Period Underwear making allegations regarding the presence of short chain per- and polyfluoroalkyl substances (“PFAS”), Agion anti-microbial treatment and the organic cotton line of the underwear. Thinx denies all of the allegations made in the lawsuit and denies that Thinx did anything improper or unlawful. With respect to PFAS, Thinx confirms that PFAS have never been a part of its product design, and that it will continue to take measures to help ensure that PFAS are not intentionally added to Thinx period underwear at any stage of production. The proposed settlement is not an admission of guilt or wrongdoing of any kind by Thinx.

Who’s included? You are a member of the Settlement Class if you purchased in the United States, other than for resale, Thinx Period Underwear between November 12, 2016 and [date the Preliminary Approval Order is entered].

What does the settlement provide? If the Court approves the Settlement, Thinx has agreed to pay \$4 million into a cash fund, and may pay up to an additional \$1 million if needed to cover valid claims. Thinx also has agreed to take appropriate business measures to address the claims in the lawsuit, as detailed in the full notice. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of attorneys’ fees and costs not to exceed \$1.5 million. Class Counsel will also ask the Court for service awards of \$2,500 for each of the named Plaintiffs. Any award of attorneys’ fees, costs and service awards to the named Plaintiffs will be paid from the \$4 million cash fund. Class Counsel’s Motion for Attorneys’ Fees and Expenses will be available at [website URL] once it has been filed.

You have the option to choose **either** cash reimbursement for past purchases (up to 3 pairs total) **or** a single-use voucher towards a future purchase of eligible Thinx period underwear. The settlement provides for a \$7.00 cash reimbursement for each purchase of up to 3 pairs of Thinx Period Underwear that are reflected in Thinx’s records or for which you provide proof of purchase (for a total of up to \$21.00), or a \$3.50 cash reimbursement for each purchase of up to 3 pairs of Thinx Period Underwear that are not reflected in Thinx records and for which you don’t have proof of purchase (for a total of up to \$10.50). Or, you may choose a voucher for a 35% discount off future purchases of up to \$150 of eligible full-price Thinx period underwear in a single transaction on the Thinx website (thinx.com) (maximum discount \$52.50). Vouchers are not transferable, subject to standard terms and conditions, will be valid for six months from issuance, and may not be combined with any other offers, discounts, or promotions.

How do you get a payment? You must complete and submit a valid Claim Form by [date]. Claims may be submitted online or mailed to the address on the form. Use your **Claim Number XXXX** so that your Claim Form will show whether Thinx has a record of your purchases of Thinx Period Underwear.

What are your other options? You can do nothing, exclude yourself, or object. If you do nothing, you will be legally bound by the Settlement and you won’t receive a payment. If you do not want to be bound by the Settlement, you must exclude yourself by [date]. If you do not exclude yourself, you may object to the Settlement by [date].

For more information about the Settlement, the Class Benefit, how to make a claim, exclude yourself, object, or attend the Final Approval Hearing, please visit the website or call the toll-free number below.

[website] • [telephone number]

EXHIBIT E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

If you bought a pair of Thinx Period Underwear sold between November 12, 2016 and [date of entry of the Preliminary Approval Order], a class action settlement may affect your rights.

A Federal Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit called *Dickens, et al. v. Thinx Inc.*, No. 1:22-cv-4286-JMF, pending in the U.S. District Court for the Southern District of New York. The lawsuit involves Thinx Period Underwear and makes allegations regarding the presence short chain per- and polyfluoroalkyl substances (“PFAS”), Agion anti-microbial treatment, and the organic cotton line of the underwear.

Thinx denies all of the allegations made in the lawsuit and denies that Thinx did anything improper or unlawful. With respect to PFAS, Thinx confirms that PFAS have never been a part of its product design, and that it will continue to take measures to help ensure that PFAS are not intentionally added to Thinx period underwear at any stage of production. The proposed settlement is not an admission of guilt or wrongdoing of any kind by Thinx.

You are included in the Settlement Class if you purchased in the United States, other than for resale, Thinx Period Underwear between November 12, 2016 and [date of entry of the Preliminary Approval Order]. Excluded from the Settlement Class are Thinx; its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Thinx has a controlling interest; and any Judge presiding over the lawsuit and the members of the Judge’s immediate family.

If the Court approves the settlement, Thinx will pay \$4 million into a cash fund, and may pay up to an additional \$1 million if needed to pay valid claims. Settlement Class Members who submit valid claims are eligible to receive cash reimbursement for past purchases of Thinx Period Underwear or a voucher for discounts on future purchases of eligible Thinx period underwear (“Class Benefit”) as explained in more detail below. **You must submit a claim to receive a Class Benefit.** A link to the Claim Form is available at [website] or by calling [telephone number].

Please read this notice carefully, which has been approved by the United States District Court for the Southern District of New York. Whether you act or not, your legal rights as a member of the Settlement Class are affected by the settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM AND PARTICIPATE IN THE SETTLEMENT	Submit a claim form on or before [date]. This is the only way to get a Class Benefit from the settlement. By receiving a benefit, you will give up rights and be bound by the settlement.

EXCLUDE YOURSELF	You will receive no payment, but you will retain any right you currently have to sue Thinx about the issues covered by the settlement. This is the only option that allows you to keep your right to bring any other claim against Thinx released by the settlement.
OBJECT	Write to the Court explaining why you don't like the settlement.
ATTEND THE FINAL APPROVAL HEARING	If you object, you may also ask to speak in court about the fairness of the settlement.
DO NOTHING	If you do nothing, you will not receive anything from the settlement. You will be bound by the terms of the settlement, and you won't be able to sue Thinx in a future lawsuit about any claim released by the settlement.

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the settlement. Payments will be provided only after any issues with the settlement are resolved. If approval is denied, is reversed on appeal, or does not become final, the case will continue, and no payments will be made. Please be patient.

BASIC INFORMATION

1. Why was this notice issued?

A Court authorized this notice to let you know about a proposed settlement with Thinx. You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. This notice explains the lawsuit, the settlement, and your legal rights.

Judge Jesse M. Furman of the U.S. District Court for the Southern District of New York is overseeing this class action. The case is known as *Dickens, et al. v. Thinx Inc.*, No. 1:22-cv-4286-JMF. The people who sued are called Plaintiffs or Class Representatives. The company they sued, Thinx Inc., is called the Defendant.

2. What is a class action lawsuit?

In a class action, one or more people called Plaintiffs or Class Representatives sue on behalf of a group of people who have similar claims. In this case, these people together are called a Settlement Class. In a class action, the court resolves the issues for all members of the Settlement Class, except for those who exclude themselves from the Settlement Class. People who do not exclude themselves are called Settlement Class Members. After the parties reached an agreement to settle this case, the Court recognized it as a case that may be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit involves Thinx Period Underwear and asserts allegations regarding short chain Per- and polyfluoroalkyl substances (“PFAS”), Agion anti-microbial treatment, and the organic cotton line of

the underwear.

Thinx denies all of the allegations made in the lawsuit and denies that Thinx did anything improper or unlawful. With respect to PFAS, Thinx confirms that PFAS have never been a part of its product design, and that it will continue to take measures to help ensure that PFAS are not intentionally added to Thinx period underwear at any stage of production. The proposed settlement is not an admission of guilt or wrongdoing of any kind by Thinx.

More information about the Complaint in the lawsuit can be found at the settlement website, [\[Website\]](#).

4. Why is there a settlement?

The Court has not decided whether the Plaintiffs or the Defendant should win this case. Instead, both sides agreed to a settlement. The Class Representatives and their attorneys (“Class Counsel”) believe that the settlement is in the best interests of the Settlement Class.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Settlement Class includes all natural persons who purchased, not for resale, the following Thinx Period Underwear in the United States from November 12, 2016 to [\[date of entry of the Preliminary Approval Order\]](#): Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong (“Thinx Period Underwear”). Excluded from the Settlement Class are Thinx; its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Thinx has a controlling interest; and any Judge presiding over this Action and the members of the Judge’s immediate family.

THE SETTLEMENT BENEFITS

6. What does the settlement provide?

As part of the settlement, Thinx has agreed to pay \$4 million into a cash fund to pay Settlement Class Members who submit valid claims, as well as any court approved attorneys’ fees, expenses and service awards to Class Representatives. Thinx has agreed to provide up to an additional \$1 million if needed to cover valid claims.

Settlement Class Members who submit a valid claim have the option to choose either cash reimbursement for past purchases (up to 3 pairs total) or a single-use voucher towards a future purchase of eligible Thinx underwear. The specific options are:

- **Cash reimbursement:** You may receive a \$7.00 refund for each purchase of up to 3 pairs of Thinx Period Underwear reflected in Thinx’s records, or for which you provide a valid proof of purchase (for a total of up to \$21.00). Your Claim Form will indicate whether Thinx has a record of your purchases or you need to provide proof of purchase.
- **Cash reimbursement without proof of purchase:** You may receive a \$3.50 refund for each purchase of up to 3 pairs of Thinx Period Underwear that are not reflected in Thinx’s records and for which you do not have proof of purchase (for a total of up to \$10.50), but which you attest to purchasing under penalty of perjury.

- **Voucher:** You may choose to receive a voucher for a discount of 35% off future purchases of up to \$150 of Eligible Voucher Products in a single purchase transaction on the Thinx website (thinx.com) (maximum discount \$52.50). Go to [website] for a list of Eligible Voucher Products for which the voucher can be used.

Vouchers are not transferable, subject to standard terms and conditions, and will be valid for six months from the date of issuance. Vouchers may be used on full-price Eligible Voucher Products, and may not be combined with any other offers, discounts, or promotions.

If Thinx does not have a record of your past purchases of Thinx Period Underwear, your Claim Form will require you to provide proof of purchase or attest under penalty of perjury to having made the purchases.

If the net cash fund (including the replenishment amount of up to \$1 million) is not sufficient to pay all Valid Claims for cash reimbursement, payments to Settlement Class Members who submit a Valid Claim for cash reimbursement will be prorated and the payment amounts may be reduced. Vouchers will not be counted in calculating the amount of total Valid Claims.

As part of the settlement, Thinx has also agreed to provide the following non-monetary relief:

- Thinx will take measures to help ensure that per- and polyfluoroalkyl substances (“PFAS”) are not intentionally added to Thinx period underwear at any stage of production. These measures will entail maintaining production controls, including material reviews.
- Thinx will continue to have suppliers of raw materials for Thinx period underwear review and sign a Supplier Code of Conduct and Chemical Supplier Agreement, which require suppliers to attest that PFAS are not intentionally added to Thinx period underwear.
- Thinx will disclose the use of anti-microbial treatments, including Agion, and the purpose for which anti-microbial treatments are used, including, if applicable, as odor control treatments, on its website. In addition, Thinx will agree not to refer to the anti-microbial components of Agion as “non-migratory.”

HOW TO GET BENEFITS

7. How do I make a claim?

To file a claim, go to [website] or call [telephone number] for the Claim Form. Your claim must be submitted electronically or postmarked no later than [date].

If you appear in Thinx's records as having purchased Thinx Period Underwear, you will receive an email or postcard with a unique Claim ID number that you can use to pre-populate an online claim form. Use your Claim Number so that your Claim Form will show whether Thinx has a record of your purchases.

If you do not appear in Thinx's records as having purchased Thinx Period Underwear, or Thinx's records show less than the number of purchases for which you are claiming cash reimbursement (maximum three pairs), you will need to provide additional information, including reasonable documentation showing that you purchased Thinx Period Underwear or a declaration under penalty of perjury attesting to your purchases. The Claim Form will explain the information that is required and the acceptable forms of documentation for proof of purchase. You will be required to elect whether to receive either cash reimbursement or the voucher on your Claim Form.

8. When will I get my payment?

The Court will hold a hearing on [date] at [time], to decide whether to approve the settlement. The Court may move the Final Approval Hearing to a different date or time without providing further Notice to the Settlement Class. The date and time of the Final Approval Hearing can be confirmed at [website]. If the settlement is approved, there may be appeals. The appeal process can take time. If there is no appeal, your Class Benefit will be processed promptly. Please be patient.

Updates regarding the settlement and when payments will be made will be posted at [website].

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes, the Court has appointed lawyers Erin Ruben, Hunter Bryson, Harper Segui, and Rachel Soffin of Milberg Coleman Bryson Phillips Grossman PLLC as the attorneys to represent you and other members of the Settlement Class. These attorneys are called "Class Counsel."

In addition, the Court appointed Plaintiffs Nicole Dickens, Haleh Allahverdi, Haley Burgess, Jillian Blenis, and Lili Mitchell to serve as the Class Representatives. They are members of the Settlement Class like you. Class Counsel's contact information is as follows:

Milberg Coleman Bryson Phillips Grossman PLLC
[add phone number, e-mail address and/or street address].

10. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf at no additional cost to you. If you want your own lawyer, you will have to pay that lawyer. For example,

you can ask your lawyer to appear in Court for you at your own expense if you want someone other than Class Counsel to represent you.

11. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses totaling up to \$1.5 million and will also request service awards of up to \$2,500 for each of the five named Plaintiffs (totaling up to \$12,500). The Court may award less than the amounts requested by Class Counsel and Plaintiffs, and any money not awarded from these requests will stay in the settlement fund to pay Settlement Class Members. Costs of Notice and settlement administration, the Attorneys' Fees and Expenses Payment, and service awards to the named Plaintiffs will be paid out of the \$4 million cash fund, if approved by the Court.

YOUR RIGHTS AND OPTIONS

12. What happens if I do nothing?

If you do nothing, you will not receive anything from the settlement, and you will be legally bound by all orders and judgments of the Court. Unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against Thinx for any claim released by the settlement.

13. What happens if I ask to be excluded?

If you exclude yourself from the settlement, you can't claim any money or receive any benefits as a result of the settlement. You will not be bound by any orders and judgments of the Court. You will be able to start a lawsuit or be part of another lawsuit against Thinx for claims released by the settlement.

14. How do I ask to be excluded?

You can ask to be excluded from the settlement. To do so, you may submit a written request for exclusion either by going to [\[website\]](#) or by sending a letter by U.S. mail clearly stating that you want to be excluded from the settlement in *Dickens, et. al. v. Thinx, Inc.*, No.1:22-cv-4286-JMF. Your letter must include your name, address, and your signature. You must submit your exclusion request online or mail your exclusion request postmarked no later than [\[date\]](#) to:

[Dickens et al. v. Thinx Settlement](#)
[\[Address\]](#)

You can't exclude yourself via phone, fax, or email.

15. If I don't exclude myself, can I sue Thinx for the same thing later?

No. Unless you exclude yourself, you give up any right to sue or continue to sue Thinx for any claim regarding the subject matter of the claims in this case.

That means that if you don't exclude yourself, you and your respective heirs, executors, administrators, representatives, agents, partners, successors, and assigns ("Releasing Parties") will release Thinx, its past or present parent, sister, and subsidiary corporations, affiliated entities, predecessors, successors, assigns, and any of their present and former directors, officers, employees, shareholders, agents, partners, licensors, privies, representatives, attorneys, accountants, and all persons acting by, through, under or in concert with them ("Released Parties") from any and all

liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether state or federal, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which you have or may claim now or in the future to have, that have been or could have been asserted in the Action (the "Released Claims"). The Released Claims exclude claims for personal injury.

16. If I exclude myself, can I get anything from this settlement?

No. If you exclude yourself, you give up the right to receive any Class Benefit from the settlement.

17. How do I object to the settlement?

If you are a member of the Settlement Class and you do not exclude yourself, you can object to the settlement if you don't like any part of it. You can also object to Class Counsel's request for attorneys' fees and expenses and/or to the service award for the Class Representatives. The Court will consider your views.

Your objection and supporting papers must be in writing and must include: a caption or title that identifies it as "Objection to Class settlement in *Dickens, et al. v. Thinx Inc.*, Case No. 1:22-cv-4286-JMF;" your name, address, and telephone number; all grounds for the objection, with any factual and legal support for each stated ground; the identity of any witnesses you may call to testify; copies of any exhibits that you intend to introduce into evidence at the Final Approval Hearing; and a statement of whether you intend to appear at the Final Approval Hearing with or without counsel.

To be timely, the objection must (a) be submitted to the Court either by filing it in person at any location of the United States District Court for the Southern District of New York or by mailing it to 40 Foley Square, New York, New York 10007, and (b) be filed or postmarked on or before [date].

If you do not timely file with the Court a written objection in accordance with these requirements, you will give up any and all rights you may have to object, appear, present witness testimony, and/or submit evidence; be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; be precluded from seeking review of the settlement or Settlement Agreement by appeal or other means; and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the lawsuit.

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and expenses and service awards on [date].

18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class (i.e., you don't exclude yourself from the settlement). Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court hold the Final Approval Hearing on the fairness of the settlement?

The Final Approval Hearing will be held on [date], at [time], in Courtroom 1105 of the Thurgood Marshall United States Courthouse, located at 40 Foley Square, New York, New York 10007, or via Zoom webinar, and/or by remote access as determined by the Court. At the Final Approval Hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the service award to the Class Representatives.

The date and time of the Final Approval Hearing, as well as whether the hearing will be conducted in person or by remote access, are subject to change by Court order, but any changes will be posted at the settlement website, [Website], or through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

20. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to court to talk about it. As long as your written objection was filed with the Court on time and meets the other criteria described above, the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

21. May I speak at the Final Approval Hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Final Approval Hearing concerning any part of the proposed settlement by asking to speak in your objection by following the instructions above in Section [] .

GETTING MORE INFORMATION

22. Where can I get additional information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement available at [Website], contact Class Counsel at Milberg Coleman Bryson Phillips Grossman PLLC, access the Court docket in this case through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the Office of the Clerk of the Court for the United States District Court for the Southern District of York, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Class Counsel's contact information is: [insert]

More information about the settlement is available at [Website], toll-free at [Number], or by contacting Class Counsel.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

EXHIBIT F

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

**NICOLE DICKENS, HALEH
ALLAHVERDI, HALEY BURGESS,
JILLIAN BLENIS, and LILI
MITCHELL**, individually and on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

THINX, INC.,

Defendant.

CASE NO. 1:22-cv-04286-JMF

[PROPOSED] PRELIMINARY APPROVAL ORDER

WHEREAS, on August 8, 2022, Plaintiffs Nicole Dickens, Haleh Allahverdi, Haley Burgess, Jillian Blenis, and Lili Mitchell (collectively “Plaintiffs”) filed a Consolidated Amended Complaint (“CAC”), in the Southern District of New York against Defendant Thinx Inc. (“Thinx”) on behalf of themselves and all others similarly situated, alleging that Thinx misrepresented the qualities of its Thinx Period Underwear (ECF No. 16);

WHEREAS, Plaintiffs and Thinx entered into a Settlement Agreement and Release (“Settlement Agreement”) on November 22, 2022, which is attached as **Exhibit 1** to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Settlement Agreement, filed on November 22, 2022, and sets forth the terms and conditions of the Settlement;¹

¹ Unless otherwise stated, all defined terms herein have the meaning given to such terms in the Settlement Agreement.

WHEREAS, Plaintiffs have moved the Court for an order preliminarily approving the proposed Settlement pursuant to Federal Rule of Civil Procedure 23 and approving Notice to the Settlement Class as more fully described herein;

WHEREAS, Thinx does not contest certification of the Settlement Class solely for purposes of the Settlement;

WHEREAS, the Court is familiar with and has reviewed the record and has reviewed the Settlement Agreement and its exhibits, Plaintiffs' Memorandum of Law in Support of their Unopposed Motion for Preliminary Approval, and the supporting Joint Declaration of Erin Ruben, Rachel Soffin, Harper Segui, and Hunter Bryson, and exhibits thereto, and finds good cause for entering the following Order;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement.

Preliminary Certification of the Settlement Class

2. Under Federal Rule of Civil Procedure 23(b)(3), the Settlement Class, defined as follows, is preliminarily certified for the purpose of settlement only:

All natural persons who purchased, not for resale, the following Thinx Period Underwear in the United States from November 12, 2016, to the date of entry of the Preliminary Approval Order: Cotton Brief, Cotton Bikini, Cotton Thong, Sport, Hiphugger, Hi-Waist, Boyshort, French Cut, Cheeky, and Thong.

3. The Settlement Class excludes:

Thinx, as well as its parents, subsidiaries, affiliates, officers, directors, investors, and employees; any entity in which Thinx has a controlling interest; any judge presiding over this Action, their staff, and the members of the judge's immediate family, all persons who request exclusion from (opt out of) the Settlement.

4. The Court preliminarily finds, for the purpose of settlement only, that the Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification, including numerosity, commonality, typicality, predominance of common issues, superiority, and that Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

5. Plaintiffs Nicole Dickens, Haleh Allahverdi, Haley Burgess, Jillian Blenis, and Lili Mitchell are hereby appointed as Class Representatives.

6. Erin Ruben, Rachel Soffin, Harper Segui, and Hunter Bryson are hereby appointed as Class Counsel.

7. The Settlement Class, if certified in connection with final approval, shall be for settlement purposes only and without prejudice to the parties in the event the Settlement is not finally approved by this Court or otherwise does not take effect.

Preliminary Approval of the Settlement

8. The Court has scrutinized the Settlement Agreement carefully. It preliminarily finds that the Settlement is the product of extensive, non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through discovery and motion practice, and who mediated before the Honorable Jay Gandhi (Ret.) of JAMS ADR. The Court also preliminarily finds that the Settlement is within the range of possible approval because it compares favorably with the expected recovery balanced against the risks of continued litigation, does not grant preferential treatment to the Plaintiffs and Class Counsel, and has no obvious deficiencies.

9. The Court hereby preliminarily approves the Settlement, as memorialized in the Settlement Agreement, as fair, reasonable, and adequate, and in the best interest of the Plaintiffs

and the other Settlement Class Members, subject to further consideration at the Final Approval Hearing to be conducted as described below.

10. The Court hereby stays this Action pending final approval of the Settlement, and enjoins, pending final approval of the Settlement, any actions brought by the named Plaintiffs concerning a Released Claim.

Manner and Form of Notice

11. The Court approves the Notice substantially in the form attached as Exhibits C - E to the Settlement Agreement and the Claim Forms substantially in the form attached as Exhibits A and B to the Settlement Agreement. The Notice is reasonably drafted, under the circumstances, to apprise the Settlement Class of the pendency of this litigation; the effects of the proposed Settlement on their rights (including the Released Claims contained therein); Class Counsel's upcoming motion for attorneys' fees, expenses, and service awards; of their right to submit a Claim Form; of their right to exclude themselves; and of their right to object to any aspect of the proposed Settlement. The date and time of the Final Approval Hearing shall be included in the Notice before it is disseminated.

12. The Court also finds that the proposed Notice Plan, which includes dissemination of Notice via (i) e-mail, (ii) U.S. mail (for those members of the Settlement Class for whom Thinx does not have an e-mail address on file or for whom e-mail notice has been undeliverable), (iii) an online banner advertisement campaign on certain websites to be determined by the parties with input from the Settlement Administrator, and (iv) the Settlement Website will provide the best notice practicable under the circumstances. The Notice and Notice Plan provide due, adequate, and sufficient notice to the Settlement Class, and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules.

13. The Court appoints Epiq to serve as the Settlement Administrator to supervise and administer the Notice Plan, establish and operate a Settlement Website, administer the Claims process, including the determination of valid claims, distribute the Class Benefit to Valid Claimants according to the criteria set forth in the Settlement Agreement, and perform any other duties of the Settlement Administrator provided for in the Settlement Agreement.

14. Thinx shall provide the Settlement Administrator with the names, e-mail addresses (if available), and the mailing addresses (if available) of the Settlement Class for the purpose of disseminating the Notice. This information will not be shared with Class Counsel.

15. The Settlement Administrator shall provide Notice of the Settlement and Final Approval Hearing to the Settlement Class as follows:

a. Within 45 days following the entry of this Order, Epiq will establish the Settlement Website pursuant to the terms of the Settlement Agreement. The Settlement Website will have a Claim Form submission capability, contain the operative Consolidated Class Action Complaint, Preliminary Approval Motion and Order, the detailed Class Notice, the Settlement Agreement, Class Counsel's and Plaintiffs' application for attorneys' fees, costs, and service awards (once filed), Plaintiffs' Motion for Final Approval (once filed), answers to a set of frequently asked questions, information on how to object or request exclusion (and the ability to opt out online), and other information regarding the Court approval process as agreed to by the Parties.

b. Within 45 days following entry of this Order, Epiq will disseminate the Email Notice to each member of the Settlement Class for whom Thinx has an email address, which will substantially be in the form of Exhibit C attached to the Settlement Agreement.

c. Within 45 days following entry of this Order, Epiq will mail the Postcard Notice for each member of the Settlement Class for whom Thinx does not have an email address, which will substantially be in the form of Exhibit D attached to the Settlement Agreement.

d. Within 45 days following entry of this Order, Epiq will establish a toll-free telephone number where members of the Settlement Class can request a copy of the Detailed Notice, Claim Form(s), and other case documents.

e. Within 45 days following entry of this Order, Epiq will implement a limited online banner advertisement campaign on certain websites, to be determined by the Parties with input from Epiq. The campaign will continue for 30 days and will provide a link to the Settlement Website and contact information for the Settlement Administrator.

The Final Approval Hearing

16. The Court will hold a Final Approval Hearing on _____, 2023 at [TIME] in Courtroom 1105 of the United States District Court, Southern District of New York, 40 Centre Street, New York, NY 10007 for the following purposes: (i) to determine whether the Settlement should be approved as fair, reasonable, and adequate and in the best interests of Settlement Class Members; (ii) to rule upon Class Counsel's application for an award of attorneys' fees and expenses; (iii) to rule upon Class Counsel's application for service awards for the Class Representatives; and (iv) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

17. The Court may adjourn the Final Approval Hearing or decide to hold the Final Approval Hearing telephonically or via other means without further notice to the Settlement Class, and may approve the proposed Settlement without further notice to the Settlement Class.

18. Class Counsel's application for an award of attorneys' fees and expenses, and Class Counsel's application for service awards, will be decided in an order separate from the order that addresses the fairness, reasonableness, and adequacy of the Settlement.

19. If the Settlement is approved, Settlement Class Members (i.e., those who have not excluded themselves from the Settlement) will be bound by the Release provided for in the Settlement Agreement, and by any judgment or determination of the Court affecting Settlement Class Members. All Settlement Class Members shall be bound by all determinations and judgment in this Action concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

20. Any Settlement Class Member who intends to object to the Settlement must file with the Court a written statement that includes: a caption or title that identifies it as "Objection to Class Settlement in *Dickens et al. v. Thinx Inc.*, Case No. 1:22-cv-04286-JMF;" the Settlement Class Member's name, address, and telephone number; all grounds for the objection, with any factual and legal support for each stated ground; the identity of any witnesses the Settlement Class Member may call to testify; copies of any exhibits that the Settlement Class Member intends to introduce into evidence at the Final Approval Hearing; a statement identifying their counsel if they are represented by counsel; and a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing with or without counsel. To be timely, the objection must (a) be submitted to the Court either by filing it in person at any location of the United States District Court for the Southern District of New York or by mailing it to the Clerk of the Court for filing, and (b) be filed or postmarked by the Objection deadline, which shall be 60 days after the Notice Date.

21. Any Settlement Class Member who fails to timely file with the Court a written objection shall waive and forfeit any and all rights they may have to object, appear, present witness

testimony, and/or submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; shall be precluded from seeking review of the Settlement Agreement by appeal or other means; and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action.

Exclusion from the Settlement Class

22. Members of the Settlement Class who chose to opt out must submit a written request for exclusion either via the Settlement Website or by U.S. mail to the Settlement Administrator, which must be submitted or postmarked no later than 60 days following the Notice Date. The deadline shall be set forth in the Notice and on the Settlement Website.

23. Any member of the Settlement Class who does not submit a request to opt out in accordance with the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary.

24. The Settlement Administrator shall also provide a final report to Class Counsel and Thinx, no later than forty-five (45) calendar days before the Final Approval Hearing, that summarizes the number of opt-out requests received to date, and other pertinent information. Class Counsel shall include the information, as appropriate, with their final approval papers.

Termination of the Settlement

25. If the Settlement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if either Party elects to terminate the Settlement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

The Use of this Order

26. As set forth in the Settlement Agreement, the fact and terms of this Order and the Settlement, all negotiations, discussions, drafts, and proceedings in connection with this Order and the Settlement, and any act performed or document signed in connection with this Order and the Settlement, shall not, in this or any other court, administrative agency, arbitration forum or other tribunal, constitute an admission, or evidence, or be deemed to create any inference against either Party, including, but not limited to: (i) of any acts of wrongdoing or lack of wrongdoing; (ii) of any liability on the part of Thinx to the Class Representatives, the Settlement Class, or anyone else; (iii) of any deficiency of any claim or defense that has been or could have been asserted in this Action; (iv) that Thinx agrees that a litigation class is proper in this Act; (v) of any damages or lack of damages suffered by the Class Representatives, the Settlement Class, or anyone else; or (vi) that any benefits obtained by Settlement Class Members pursuant to the Settlement Agreement or any other amount represents the amount that could or would have been recovered in this Action against Thinx if it was not settled at this point in time.

27. The fact and terms of this Order and the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement, including but not limited to, the judgment and the release of the Released Claims provided for in the Settlement Agreement and the judgment, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Order and/or the Settlement.

28. The Court retains exclusive jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: _____, 2022

HON. JESSE M. FURMAN
United States District Court
Southern District of New York