

FINAL RULING RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Haylee Woodard v. Lilly Lashes, LLC

Case No.: 22STCV18692

Department SSC-9

Hon. Elaine Lu

Hearing: February 28, 2025 c/f February 18, 2025

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- A. The Gross Settlement Amount ("GSA") is **\$500,000**, non-reversionary. (¶2.1)
- B. The Net Settlement Amount is the GSA minus the following:
 - Up to **\$166,666.67** (33 1/3%) for attorney fees (¶2.5);
 - Fee split: equal split. (Supp. Brief at 3:27-4:3.)
 - Up to **\$25,000** for litigation costs (*Ibid.*);
 - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶2.4); and
 - Up to **\$104,000** for settlement administration costs (Supp. Brief 8:1-3.).
- C. **Injunctive Relief.** Defendant has stopped including the claim "cruelty free" on the labels of the Products and on its website and other marketing materials for the Products. Defendant agrees not to revert to making a claim the Products are "cruelty free" on its labels and marketing materials. (¶2.3)
- D. Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **June 30, 2025** and shall be heard on **July 29, 2025 at 10:00 am in Department 9**. Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single** document that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appeal Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for July 7, 2025, 8:30 a.m., Department 9.

BACKGROUND

This is a claims-made, false advertising class action. The primary claims alleged in the action are that Defendant Lilly Lashes, LLC falsely advertised its false eyelashes made with mink fur as “Cruelty Free” in violation of Cal. Bus. & Prof. C. §17200, et seq. (“UCL”), Cal. Bus. & Prof. C. §17500, et seq. (“FAL”), and the California Consumer Legal Remedies Act (the “CLRA”). By her complaint, Plaintiff Haylee Woodward sought equitable relief in the form of removal of the statement the eyelashes are “Cruelty Free” from the products packaging and marketing as well as restitution and damages on behalf of a national class.

On June 7, 2022, plaintiff filed her initial complaint against Defendant. Plaintiff filed a First Amended Complaint on October 21, 2022 that alleged claims on behalf of herself and a class of consumers for (1) false and misleading advertising in violation of Business & Professions Code § 17200; (2) false and misleading advertising in violation of Business & Professions Code § 17500; (3) violation of California Civil Code § 17500; (4) unjust enrichment; (5) breach of express warranty; and (6) negligent misrepresentation.

On June 14, 2023, plaintiff filed the operative second amended complaint, which alleges claims for (1) false and misleading advertising in violation of Business and Professions Code § 17200; (2) false and misleading advertising in violation of Business and Professions Code § 17500; (3) violation of Civil Code § 1750; (4) breach of express warranty; and (5) negligent misrepresentation arising out of Defendant’s sale and marketing of its mink fur eyelashes as “Cruelty Free.”

There was no mediator involved in the settlement. The general terms of the settlement were negotiated between March and July of 2024 after Defendant produced discovery responses and production. The settlement was then reduced to a settlement agreement which was fully executed in December 2024. A fully executed copy of the Settlement Agreement was filed with the Court on December 17, 2024.

On February 18, 2025, the Court continued Preliminary Approval for Counsel to provide supplemental briefing. On February 20, 2025, Counsel provided supplemental briefing. (See Further Brief ISO Prelim (“Supp. Brief”).) On February 27, 2025, both parties filed supplemental declarations.

Now before the Court is Plaintiff’s Motion for Preliminary Approval of the Settlement Agreement.

SETTLEMENT CLASS DEFINITION

- “Settlement Class” means, for settlement purposes only, all persons residing in the United States or its territories who purchased any false eyelashes made with mink fur sold by Lilly Lashes labeled as “Cruelty Free” for personal, family, household, or professional purposes between June 7, 2018 and the date of the entry of an order granting preliminary approval to the Settlement Agreement, excluding (a) any individuals who have pending litigation against Defendant at the time of preliminary and/or final approval of the Settlement; (b) any Settlement Class Members who file a valid and timely request for exclusion; (c) any officers, directors, or employees, or

immediate family members of the officers, directors, or employees, of Defendant or any entity in which Defendant has a controlling interest; (d) any person who has acted as a consultant of Defendant; (e) any legal counsel or employee of legal counsel for Defendant; (f) any federal, state, or local government entities; and (g) any judicial officers presiding over the Actions and the members of their immediate family and judicial staff. (¶1.32)

- “Settlement Class Period” means between June 7, 2018 and the date of entry of the Preliminary Approval Order. (¶1.34)
- “Settlement Class Member” means each member of the Settlement Class who does not file a valid and timely request to be excluded from the Settlement. (¶1.33)
- Class size estimate: The class consists of approximately 394,000 class members comprising of approximately 236,568 Direct to Consumer customers (“DTC”) for whom Defendant has names, email and mailing addresses and approximately 130,432 third-party purchasers for whom Defendant does not have names, email or mailing addresses. Defendant has represented approximately 40% of Defendant’s sales were made by third party retailers. Defendant does not have exact numbers of the consumers who purchased the Product from third party retailers, but assuming the same repurchase rate for the DTC customers and third-party customers Defendant estimates there are approximately 130,432 third party purchasers. (MPA at 7:26-8:5.)
- “Product” or “Products” means any false eyelashes made with mink fur sold by Lilly Lashes labeled as “Cruelty Free.” (¶1.25)
- The parties stipulate to class certification for settlement purposes only. (¶1.24.)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$500,000**, non-reversionary. (¶2.1)
- The Net Settlement Amount (“Net”) (**\$194,333.33**) is the GSA minus the following:
 - Up to **\$166,666.67** (33 1/3%) for attorney fees (¶2.5);
 - Fee split: equal split. (Supp. Brief at 3:27-4:3.)
 - Up to **\$25,000** for litigation costs (*ibid.*);
 - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶2.4); and
 - Up to **\$104,000** for settlement administration costs (Supp. Brief 8:1-3.).
- **Injunctive Relief.** Defendant has stopped including the claim “cruelty free” on the labels of the Products and on its website and other marketing materials for the Products. Defendant agrees not to revert to making a claim the Products are “cruelty free” on its labels and marketing materials. (¶2.3)
- **Funding of Settlement:** On or before ten (10) calendar days after the entry of the Preliminary Approval Order, Lilly Lashes shall deposit the estimated Settlement Administration Costs. On or before ten (10) calendar days after the entry of the Final Order and Judgment, Lilly Lashes shall deposit the remaining amount of the Cash Settlement Fund Amount with the Settlement Administrator who will deposit it into an interest bearing account with all interest applied to the Net Settlement Fund. (¶¶2.1.b-2.1.c)

- A claim form is required: Each Settlement Class Member who wishes to obtain a Cash Benefit must submit a complete and valid Claim Form on or before the Claim Filing Deadline. (¶5.3.a)
 - “Claim Filing Deadline” means the deadline by which Settlement Class Members must submit a Claim under the Agreement by filing a Claim Form within 45 days after commencement of the notice plan. (¶1.6)
 - “Authorized Claimant” means any Settlement Class Member who does not timely and validly request exclusion from the Class and who timely submits a completed and valid Claim Form in accordance with the terms of this Agreement. (¶1.1)
 - “Cash Benefit” means the cash payment that each Settlement Class Member who submits a valid and timely Claim will receive from the Net Settlement Fund. (¶1.2)
 - “Cash Repeat Purchaser Benefit” means the Cash Benefit that will be distributed to Settlement Class Members who bought more than one unit of the Products and submitted a timely and valid Claim (1) with documentary proof of multiple purchases or (2) that Lilly Lashes’ internal records confirm made multiple purchases. (¶1.3)
 - “Claim Form” means the form Settlement Class Members must complete to submit a Claim under this Agreement. The Claim Form must be signed by the Settlement Class Member under penalty of perjury, and shall be substantially similar to the form attached [to the Settlement] as Exhibit E. (¶1.7)
 - **Anticipated Claim Rate:** The settlement administrator estimates there will be a claim rate of approximately 3%. (Spencer Declaration¶ 3 Ex. 1 Declaration of Mark Schey ¶133 [attached to Plaintiff’s Supp. Brief.])
- **Value of Injunctive Relief:** Counsel contends that the value of the injunctive relief of causing Defendant to remove the "cruelty free" representations from its marketing and labeling of the products is significant. It was the primary goal of the litigation and has been achieved. Defendant will no longer market and label the products as cruelty free. There is an intrinsic value in eliminating confusing or deceptive labeling. This is especially true in this case of this nature where consumers will no longer be confused or deceived into believing they are purchasing cruelty free products. If the case were to proceed to trial Plaintiffs would pursue recovery under the price premium theory of liability. See *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) (“price premium” theory of liability provides recovery of the difference between what consumers paid and what a reasonable consumer would have paid at the time without the alleged fraudulent or misleading information). The exact price premium has not been developed at this stage of the litigation. However, Plaintiffs believe the appropriate price premium for "Cruelty Free" mink eyelashes is at least 25% of the purchase price. (Supp. Brief at 7:8-21.)
- **Individual Settlement Payment Calculation:** The Net Settlement Fund will first be allocated pro rata in an amount up to \$10.00 per unit to all Authorized Claimants. Authorized Claimants without Proof of Purchase are limited to a maximum Cash Benefit of \$10.00 per household. (¶2.2.a)

- Any remaining funds in the Net Settlement Fund after the first distribution in Section 2.2(a) will be allocated pro rata in a second distribution to Authorized Claimants who appear in Lilly Lashes' purchase records or who submitted Proof of Purchase, in an additional amount up to \$10.00 per unit purchased as established by valid Proof of Purchase or Lilly Lashes' purchase records. (¶2.2.b)
- Should the total amount of valid claims for the Cash Benefit, Class Representative Service Payment, Plaintiff's Counsel's Fees and Expenses, and Settlement Administration Costs exceed \$500,000, payments of the Cash Benefit will be adjusted downward on a pro rata basis. However, if the total amount of valid claims for the Cash Benefit, Class Representative Service Payment, Plaintiff's Counsel's Fees and Expenses, and Settlement Administration Costs are less than \$500,000, payments will be adjusted upward on a pro rata basis. (¶2.2.c)
- Response Deadline: "Exclusion Deadline" means the date by which Class Members must file any request for exclusion from the Settlement, in accordance with the procedures set forth herein and/or in any order from the Court, which will be (45) days from the first mailing date of the Class Notice. [sic] after entry of a preliminary approval order, and at least thirty (30) days prior to the Final Approval Hearing. (¶1.13) The same deadline applies to objections. (¶1.21)
 - The parties have agreed class members who receive re-mailed notices will be given an additional 45 days from the date of re-mailing to opt out or object or submit claims. (Supp. Brief at 8:7-14; Spencer Declaration ¶ 6)
 - Uncashed Settlement Checks: Checks will expire six months after the date on the check. (¶2.2.d) The only anticipated residue of settlement funds will be if a class member submits a claim and fails to cash the settlement check within 6 months. With respect to those uncashed/abandoned settlement funds, the parties agree subject to Court approval that they will be paid to a cy pres organization People for the Ethical Treatment of Animals (PETA). (Spencer Declaration ¶ 7). The organization works to eliminate cruelty to animals and to eliminate false advertising regarding animal cruelty which is consistent with the goals of the current litigation. (Supp. Brief at 8:23-9:2.) Counsel for both parties have provided declarations verifying their lack of any interest in the governance or work of the cy pres recipient.
- The settlement administrator will be Digital Settlement, LLC. (¶1.29; Decl. of Mark Schey, *passim* [attached as Exhibit 1 to Supp. Brief].)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶5.2.a)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. There was no mediator involved in the settlement. The general terms of the settlement were negotiated

between March and July of 2024 after Defendant produced discovery responses and production. The settlement was then reduced to a settlement agreement which was fully executed in December 2024. (MPA at pp. 14-16; Supp. Brief 3:6-9.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that, through the discovery process, Plaintiff's counsel obtained documents regarding Defendant's manufacture, advertising and marketing of the Products as well as informal discovery and reports regarding the Products. Plaintiff believes the discovery confirms the marketing, advertising, and representations of the mink eyelashes as being "Cruelty Free" was deceptive and an unfair business practice. (*Id.* at 14:10-16.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel represents that they are experienced in class action litigation, including consumer class actions. (Decl. of William A. Baird, ¶¶2-7; Decl. of Jeffrey Spencer, ¶¶5-16.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

CONCLUSION: The settlement is entitled to a presumption of fairness.

B. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, Class Counsel has provided detailed analysis, summarized below, of the estimated values of the claims asserted:

Violation	Maximum Exposure
Retail price of product \$24-\$30 x 394,000	\$11,820,000-\$9,456,000.00

(MPA at 16:8-17:9.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$500,000 non-reversionary settlement. The \$500,000 settlement amount constitutes approximately 4.23% to 5.29% of Defendant's maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The proposed Settlement Class is comprised of approximately 394,000 class members who purchased Defendant's false eyelashes with mink fur. The retail price of the eyelashes ranges

from \$24-\$30 dollars. The class members who submit claims will be paid according to a formula that will compensate them on a pro-rata basis for up to \$10.00 per item purchased. Those participating Class Members that purchased more than one product directly from Lilly Lashes, as reflected by its records, do not need to submit proof of purchase. Class Members who do not appear in Lilly Lashes records (third party purchasers) will need to submit proof of purchase to be credited with more than one purchase. If there is a 10% take rate it is estimated each participating class member will receive approximately \$6.00 per claim. (MPA at 16:8-16.)

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the final fairness hearing.

CONCLUSION: The settlement is preliminarily deemed "fair, adequate, and reasonable."

C. Scope of the release

Release by Settlement Class. Effective immediately upon the Settlement Date and deposit of the settlement consideration with the settlement administrator, Plaintiff and each Settlement Class Member who does not validly and timely exclude themselves from the Settlement shall fully, completely and forever release and discharge the Released Parties from all claims that were alleged in the Complaint, or that could have been alleged, based on, or arising out of the facts and claims alleged in the Complaint and Action, including (1) false and misleading advertising in violation of Business & Professions Code § 17200; (2) false and misleading advertising in violation of Business & Professions Code § 17500; (3) violation of California Civil Code § 1750; (4) unjust enrichment; (5) breach of express warranty; and (6) negligent misrepresentation arising out of Lilly Lashes' labeling and sale of false eyelashes made with mink fur as "Cruelty Free" ("Released Class Claims"). (§13.1)

- "Released Parties" means Defendant Lilly Lashes and its predecessors, successors, parents, subsidiaries, members, suppliers, indemnitors, insurers, reinsurers, and affiliates, as well as their respective present and former officers, directors, members, shareholders, managers, employees, attorneys, agents and other representatives, as well as each entity to whom Defendant Lilly Lashes directly or indirectly distributes, ships, or sells any Product, including but not limited to downstream distributors, wholesalers, retailers, franchisees, franchisors, cooperative members, suppliers, lenders, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns. (§11.27)
- Named Plaintiff will also provide a general release and CC § 1542 waiver. (§13.2-3.4)

D. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

2. Analysis

a. Numerosity. There are approximately 394,000 class members. (MPA at 7:26-8:5.) This element is met.

b. Ascertainability. A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 961.) The proposed class is defined above. The class members are ascertainable from Defendant’s employment records. The class consists of approximately 394,000 class members comprising of approximately 236,568 Direct to Consumer customers (“DTC”) for whom Defendant has names, email and mailing addresses and approximately 130,432 third party purchasers for whom Defendant does not have names, email or mailing addresses. Defendant has represented approximately 40% of Defendant’s sales were made by third party retailers. Defendant does not have exact numbers of the consumers who purchased the Product from third party retailers, but assuming the same repurchase rate for the DTC customers and third-party customers Defendant estimates there are approximately 130,432 third party purchasers. (MPA at 7:26-8:5.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Here, regarding commonality, Plaintiff contends that common questions of law and fact predominate because this matter involves common misrepresentations, omissions and practices to which every consumer was exposed, and which have not materially changed over the course of the class period. In addition, Plaintiff has submitted that she would not have purchased the false eyelashes if she had known they were not “Cruelty Free” as depicted in the advertising. (MPA at 20:5-8.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members’ claims because she was subjected to the same harm and is making the same claims as the class members. (*Id.* at 20:10-11.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (*Id.* at 20: 15-17; Declaration of Haylee Woodard, *passim*.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

Appropriateness of nationwide class action: Counsel contends that certifying a nationwide class is appropriate here because 1) Defendant is registered in and does business in California. 2) At the front end of the class period the company was a California LLC until August 2021 and up until that date was headquartered in California (El Segundo as of that date). In 2021 it was converted to a Delaware LLC and the principle address is now in Texas (although it maintains offices in California). 3) A significant number of class members are located in California. Defendant has records of the addresses for the 236,668 class members from whom it made Direct to Consumer Sales. Of these class members, 58,486 have a California address. This makes up 24.7% of the class, by far the largest of any state. 4) The “cruelty free” labeling at issue was developed, prepared and approved while Lilly Lashes was still headquartered in California and while he decision makers were in California. (Supp. Brief at 4:4-5:28.) Counsel further contends that there is no material difference between the claims for violation of California consumer protection statutes alleged in Plaintiff’s Complaint and the consumer protection laws of other states. (*Id.* at 5:28-7:7.)

CONCLUSION: The class is conditionally certified since the prerequisites of class certification have been satisfied.

E. Is the notice proper?

a. Content of class notice. The proposed notices (email, mailed notice, publication, and long form) are attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

b. Method of class notice. Mailed, Email, and Publication.

Email: Email Notice shall be sent via Email to the extent Email addresses are kept by Lilly Lashes. The Settlement Administrator will provide the Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Email Notice shall be substantially similar to the form attached as Exhibit C. Settlement Class Members for whom Lilly Lashes maintains both a physical address and Email address shall be sent an Email Notice. Only if the Settlement Administrator learns that Email Notice was undeliverable will those Class Members for whom Lilly Lashes maintains Email addresses receive a Mailed Notice. It will be conclusively presumed that the intended recipients received the Email

Notice if the Settlement Administrator does not receive a message indicating the Email Notice was undeliverable within fifteen (15) calendar days of sending. (§15.2.c)

Mail: Mailed Notice shall only be sent via postcard, pre-paid postage, sent by direct mail to the last known address of the Class Member to the extent such addresses are kept by Lilly Lashes and Email Notice to the Class Member is either not possible or is undeliverable. Class Members who receive Email notice will not receive Mailed Notice. Before mailing the Mailed Notice, the Settlement Administrator shall update the addresses provided by Lilly Lashes with the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. If the Mailed Notice is returned as undeliverable, the Settlement Administrator shall perform skip trace research and shall make one (1) attempt to re-mail the Mailed Notice as soon as possible before the Claim Filing Deadline. The Settlement Administrator will mail the Mailed Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. It will be conclusively presumed that the intended recipients received the Mailed Notice if the Mailed Notice has not been returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days of mailing. The Mailed Notice shall be substantially similar to the form attached as Exhibit D. (§15.2.d)

The parties have agreed that if any mailed notice is returned as undeliverable the settlement administrator will make efforts to find an alternative address and re-mail the notice within seven days if an alternative address is located. The parties have agreed that if a mailed notice is returned as undeliverable after fifteen calendar days of mailing the administrator will make efforts to find an alternative address and re-mail the notice within seven days if an alternative address is located. (Supp. Brief, 8:7-14.)

Reminder Notice shall be sent at least fourteen (14) days prior to the Claim Filing Deadline. The Settlement Administrator will provide two (2) Reminder Notices by Email to the Settlement Class Members who received an Email Notice. The Reminder Notice shall be substantially similar to the Email Notice, unless otherwise agreed to by the Parties. (§15.2.e)

Publication: Publication Notice shall be provided by the Settlement Administrator to the Settlement Class Members through a banner advertisement placed in a newspaper that is circulated nation-wide, which shall be selected by counsel for the Parties. The Publication Notice shall be substantially similar to the Publication Notice attached hereto as Exhibit E, unless otherwise agreed to by the Parties. The Settlement Administrator will provide the Publication Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. (§15.2.f)

c. Cost of class notice. As indicated above, settlement administration costs are estimated to be **\$100,000**. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney fees and costs

California Rule of Court, rule 3.769(b) states: “Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$166,666.67** (33 1/3%) in attorney fees and up to **\$25,000** in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Fee split: equal split. (Supp. Brief at 3:27-4:3.)

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of **\$10,000**. (¶12.4) In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he “should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (*Id.* at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

CONCLUSION AND ORDER

The Parties’ Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- A. The Gross Settlement Amount (“GSA”) is **\$500,000**, non-reversionary. (¶12.1)
- B. The Net Settlement Amount is the GSA minus the following:

- Up to **\$166,666.67** (33 1/3%) for attorney fees (§12.5);
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- Up to **\$104,000** for settlement administration costs (Supp. Brief 8:1-3.).

C. **Injunctive Relief.** Defendant has stopped including the claim “cruelty free” on the labels of the Products and on its website and other marketing materials for the Products. Defendant agrees not to revert to making a claim the Products are “cruelty free” on its labels and marketing materials. (§12.3)

D. Plaintiffs shall release Defendants from claims described herein.

The Parties’ Motion for Final Approval of Class Action Settlement must be filed by **June 30, 2025** and shall be heard on **July 29, 2025 at 10:00 am in Department 9**. Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

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Non-Appearence Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for July 7, 2025, 8:30 a.m., Department 9.

THE PLAINTIFF IS ORDERED TO DOWNLOAD THE INSTANT **SIGNED** ORDER FROM THE COURT’S WEBSITE AND TO GIVE NOTICE TO ALL OTHER PARTIES AND TO FILE PROOF OF SERVICE OF SUCH WITHIN 10 DAYS.

IT IS SO ORDERED.

DATED: February 28, 2025




 Elaine Lu
 Judge of the Superior Court
 Elaine Lu / Judge

PROOF OF SERVICE

State of California)
County of Orange)

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 2 Venture, Suite 220, Irvine, CA 92618.

On March 1, 2025, I served the Order Granting Motion for Preliminary Approval on the interested parties in this action electronically via Caseanywhere to the addresses listed below:

<u>Co-Counsel for Plaintiffs</u>	<u>Attorneys for Defendants</u>
BAIRD LAW FIRM, APC William Anthony Baird (SBN 192675) 2625 Townsgate Rd., Suite 330 Westlake Village, CA 91361 Tel. (805) 267-1209 E-mail: tbaird@bairdlawfirm.org	Locke Lord LLP Daniel A. Solitro (SBN: 243908) dsolitro@lockelord.com William Mullen (SBN: 297272) william.mullen@lockelord.com 300 S. Grand Avenue, Suite 2600 Los Angeles, California 90071 Telephone: (213) 485-1500 Facsimile: (213) 485-1200

☒ BY ELECTRONICALLY via Caseanywhere to the email addresses listed above

☐ BY U.S. MAIL:

Executed on March 1, 2025 at Irvine, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: /S/ Jeffrey Spencer
JEFFREY SPENCER Esq.
Attorneys for Plaintiffs