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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF VENTURA

LYNETTE FLIEGELMAN, on behalf of  
herself and all others similarly situated,

Plaintiffs

vs.

THE TALBOTS, INC and DOES 1 through  
100, inclusive,

Defendants.

Case No. 56-2018-00513611-CU-BT-VTA

**AGREEMENT OF SETTLEMENT  
AND RELEASE AND RELATED  
EXHIBITS A THROUGH G**

Date: August 2, 2018

Time: 8:30 a.m.

Judge: Hon. Kevin DeNoce

Dept: 43

Reservation Number: 2346455

## AGREEMENT OF SETTLEMENT AND RELEASE

This **AGREEMENT OF SETTLEMENT AND RELEASE** ("**Agreement**") is entered into by and between plaintiff Lynette Fliegelman, individually, and in her representative capacity on behalf of all others similarly situated ("Plaintiff"), on the one hand, and defendant The Talbots, Inc. ("Talbots" or "Defendant"), on the other (collectively referred to as the "Parties" or singularly "Party") to effect the settlement set forth herein, subject to Court approval.

### RECITALS

A. On May 17, 2017, plaintiff Lynette Fliegelman filed a class action lawsuit against Talbots in the Ventura County Superior Court, on behalf of a class of California consumers who purchased products at the Talbots' outlet stores in California based on violations of California's *Unfair Competition Law* ("UCL"), *False Advertising Law* ("FAL"), and *Consumer Legal Remedies Act* ("CLRA"). On June 21, 2017, Talbots removed the case to the United States District Court, Central District of California, pursuant to 28 U.S.C. §1332. The Fliegelman Complaint alleged that Talbots used false and/or deceptive reference prices in its advertising for products sold at the Talbots outlet stores, improperly leading consumers to believe that they are receiving a discount on their purchases. The action was titled *Lynette Fliegelman, individually and on behalf of all others similarly situated v. The Talbots, Inc., et al.*, Case No. 2:17-cv-04576 DMG (JCx) (C.D. Cal.).

B. Plaintiff and Talbots thereafter conducted a thorough investigation of the facts and analyzed the relevant legal issues in regard to the claims asserted in Plaintiff's Complaint (defined below) and Talbots' potential defenses to those claims.

C. Counsel for Plaintiff further reviewed informal discovery produced by Talbots, as well as extensive publicly-available information relating to Talbots, its advertising and sales practices, and financial status.

D. Talbots moreover has represented that, independent of the pendency of this action and the Parties' settlement discussions, it has modified its pricing practices in Talbots outlet stores.

E. In light of the above, the Parties agreed to mediate the Action (defined below), and participated in a full day mediation session in San Francisco, California before Hon. Edward A. Infante (Ret.) of JAMS on November 1, 2017.

F. As a result of the mediation session and subsequent settlement discussions, the Parties reached a resolution of the Action (defined below), the terms of which are set forth in this Agreement.

G. Plaintiff and her Counsel believe the claims asserted in the Complaint (defined below) have merit. Talbots has denied and continues to deny any and all allegations of wrongdoing alleged in the Action (defined below) and believes the claims asserted by Plaintiff are without merit. Nonetheless, the Parties have concluded that litigation could be protracted and expensive and desire the Action to be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense, inconvenience, and risk. The Parties also have considered the risks of continued litigation and the benefits to be obtained under the proposed Agreement and have considered the costs, risks, and delays associated with the prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiff or Talbots.

**H.** It is now the intention of the Parties and the objective of this Agreement to avoid the costs of trial and settle and dispose of, fully and completely and forever, any and all claims and causes of action alleged in the Action.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, Plaintiff, the Class, and Talbots hereby stipulate to the resolution of the Action, subject to Court approval, under the following terms and conditions:

**1. DEFINITIONS.** In addition to the definitions included in the Recitals above, and in later sections of the Agreement, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

**1.1** As used herein, the term “**Action**” means the proceeding *Lynette Fliegelman, on behalf of herself and all others similarly situated, v. The Talbots, Inc., et al.*, Case No. 56-2018-00513611-CU-BT-VTA (Cal. Super. Ct., Ventura Cnty.).

**1.2** As used herein, the term “**Authorized Claimant**” means any Class Member who does not validly request exclusion from the Class and: (1) whom Talbots identifies as a Class Member and sends direct notice pursuant to Section 3.3(b) or (c), or (2) who timely submits a completed and valid Claim Form in accordance with the terms of this Agreement.

**1.3** As used herein, the term “**Claim**” means a request made by a Class Member in order to receive a Merchandise Credit pursuant to the procedures stated in Section 3.5.

**1.4** As used herein, the term “**Claim Form**” means the form Class Members must complete to submit a Claim under this Agreement. The Claim Form will state that any Claim submitted will be under penalty of perjury, and shall be substantially similar to the form attached hereto as **Exhibit F**.

**1.5** As used herein, the term “**Claimant**” means any Class Member who submits a Claim Form under this Agreement.

**1.6** As used herein, the term “**Claims Administrator**” means KCC Class Action Services, LLC, and any successors to that entity, that Talbots designates (with approval from Class Counsel, whose approval shall not be unreasonably withheld), to administer the notice, claims, and Settlement relief distribution process provided for in the Agreement.

**1.7** As used herein, the term “**Claims Administrator Costs**” means all costs incurred by the Claims Administrator, including the cost of providing notice to the Class and administering the terms set forth in this Agreement.

**1.8** As used herein, the terms “**Class**” and “**Class Members**” means the following Class:

All persons who, during the period of time beginning May 17, 2013 through the date the Court enters preliminary approval, purchased one (1) or more products at any Talbots outlet store in the State of California and did not receive a refund or credit for their purchase(s).

1.9 As used herein, the term "**Class Period**" means the period to which the settlement and this Agreement applies, as specified in the definition of the Class, namely May 17, 2013 through the date of the entry of order granting preliminary approval.

1.10 As used herein, the term "**Class Released Claims**" means all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, in law or equity, fixed or contingent, which they have or may have, arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged or otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, including, but not limited to, any and all claims related in any way to the advertisement of prices, discounts, and/or related promotions in Talbots' outlet stores in California from the beginning of the Class Period to the date of the Final Order and Judgment.

1.11 As used herein, the term "**Class Releasers**" means all Class Members who do not timely and sufficiently request to be excluded from the proposed settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives.

1.12 As used herein, the term "**Complaint**" means the Class Action Complaint filed by plaintiff in the Action.

1.13 As used herein, the term "**Court**" means the Ventura County Superior Court in which this Action is pending, and to which presentation of this Agreement for judicial review and approval will be made.

1.14 As used herein, the term "**Defendant**" means the named Defendant in the Action: The Talbots, Inc.

1.15 As used herein, the terms "**Defendant's Counsel**" and "**Talbots' Counsel**" means the law firm of Steptoe & Johnson LLP.

1.16 As used herein, the term "**Email Notice**" means the legal notice summarizing the proposed terms of this Agreement, as approved by Class Counsel, Talbots' Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Agreement via electronic mail. The Email Notice shall be substantially similar to the form attached as **Exhibit C**.

1.17 As used herein, the term "**Fairness Hearing**" means the hearing(s) to be held by the Court to consider and determine whether the Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Agreement should be entered.

1.18 As used herein, the terms "**Final Order and Judgment**" mean the Court's grant of final approval of the Agreement following the Fairness Hearing. The proposed Final Order and Judgment that Plaintiff submit to the Court for its approval shall be substantially similar to the form attached as **Exhibit G**.

1.19 As used herein, the term "**Final Settlement Date**" means the earlier of the following: (1) if no timely written objections to the Settlement are made, the date of entry of the Final Order and Judgment, or (2) if timely written objections to the Settlement are made, the date the Final Order and Judgment becomes "Final." For purposes of this Section, "Final" means the occurrence of any of the following: (i) final affirmance on an appeal of the Final Order and Judgment, the expiration of the time for a petition for review of the Final Order and Judgment



and, if the petition is granted, final affirmance of the Final Order and Judgment following review pursuant to that grant, or (ii) final dismissal of any appeal from the Final Order and Judgment or the final dismissal of any proceeding to review the Final Judgment, or (iii) if no appeal is filed, the expiration of the time for the filing or noticing of any appeal from the Court's Final Order and Judgment.

**1.20** As used herein, the term "**Full Notice**" means the full legal notice of the proposed Agreement terms, as approved by Class Counsel, Talbots' Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Agreement. The Full Notice shall be substantially similar to the form attached as **Exhibit B**.

**1.21** As used herein, the term "**Plaintiff**" means Lynette Fliegelman in her individual capacity only.

**1.22** As used herein, the terms "**Plaintiff's Counsel**" and "**Class Counsel**" mean the Law Offices of Zev B. Zysman, APC.

**1.23** As used herein, the term "**Postcard Notice**" means the legal notice summarizing the proposed Agreement terms, as approved by Class Counsel, Talbots' Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Agreement via regular postal mail. The Postcard Notice shall be substantially similar to the form attached as **Exhibit D**.

**1.24** As used herein, the term "**Preliminary Approval Order**" means the order provisionally certifying the Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiff submit to the Court for its approval shall be substantially similar to the form attached as **Exhibit A**.

**1.25** As used herein, the term "**Qualifying Purchase**" means the purchase of any product from the Talbots Outlet store in California within the Class Period.

**1.26** As used herein, the term "**Released Parties**" means defendant The Talbots, Inc., and each of its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of its present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them.

**1.27** As used herein, the term "**Objection Deadline**" means the deadline by which Class Members must file any objections to the Agreement as set forth in the Preliminary Approval Order. The Objection Deadline shall be ninety (90) calendar days after entry of the Preliminary Approval Order. Thus, Class Members shall have sixty (60) calendar days to deliver objections.

**1.28** As used herein the term "**Exclusion Deadline**" means the deadline by which Class Members must file any exclusion from the Agreement as set forth in the Preliminary Approval Order. The Exclusion Deadline shall be ninety (90) calendar days after entry of the Preliminary Approval Order. Thus, Class Members shall have sixty (60) calendar days to deliver requests for exclusions.

**1.29** As used herein the term "**Claim Filing Deadline**" means the deadline by which Class Members must file all claims under the Agreement as set forth in the Preliminary Approval Order. The Claim Filing Deadline shall be ninety (90) calendar days after entry of the

Preliminary Approval Order. Thus, Class Members shall have sixty (60) calendar days to deliver Claim Forms.

**1.30** As used herein, the term "**Settlement**" means the Settlement of the Action and related claims effectuated by this Agreement.

**1.31** As used herein, the term "**Settlement Fund**" means the Settlement Fund established by Talbots with a combined value of at least \$1,100,000 in Merchandise Credits (equaling 88,000 Merchandise Credits valued at \$12.50 per Merchandise Credit). The Merchandise Credits in the Settlement Fund shall be automatically distributed to each Authorized Claimant who received direct notice pursuant to Section 3.3(b) and (c) and who did not validly request exclusion from the Class. Separate and independent from the Settlement Fund, Talbots shall distribute to each other Authorized Claimant who did not receive direct notice under Section 3.3(b) or (c) and timely submits a completed and valid Claim Form pursuant to Section 3.5(b), one (1) Merchandise Credit to the email address or postal address specified on the completed claim form.

**1.32** As used herein, the term "**Settlement Website**" means the website that shall be created for settlement administration purposes and administered by the Claims Administrator.

**1.33** As used herein, the term "**Store Notice**" means the legal notice summarizing the proposed Agreement terms, as approved by Class Counsel, Talbots' Counsel, and the Court, to be provided to Class Members under Section 3.3 via signs posted in Talbots Outlet stores in California. The Store Notice shall be substantially similar to the form attached as **Exhibit E**.

**1.34** As used herein, the term "**Merchandise Credit**" means a single-use credit good for \$12.50 off any purchase of merchandise at any Talbots outlet store in California. Merchandise Credits will be valid for six (6) months from date of issuance. The Merchandise Credits may be used with any other discounts and promotions, and on items that are on sale or otherwise discounted. The Merchandise Credits shall not be redeemable for cash (including no cash back), may not be applied to past purchases, may not be used to purchase gift cards, and will not be replaced if lost, stolen or damaged. The Merchandise Credits are fully transferable. There is no minimum purchase required to use a Merchandise Credit.

## **2. AGREEMENT TERMS.**

**2.1 Award to the Class.** Talbots shall issue one (1) Merchandise Credit to each Authorized Claimant.

**2.2 Distribution.** Within sixty (60) calendar days of the Final Settlement Date, Talbots through the Claims Administrator, shall distribute the Merchandise Credits to:

(a) Persons Who Received Direct Notice Pursuant to Section 3.3 (b) and (c): to the email address or postal address used for direct notice from the Settlement Fund, and

(b) Other Authorized Claimants: to the email or postal address designated on their Claim Form.

**2.3 Individual Award to Plaintiff.** The Parties acknowledge that Plaintiff must move the Court for approval of any incentive award to Plaintiff (the "Individual Award") in recognition of her efforts and activities in furtherance of both the litigation and this Agreement. Plaintiff agrees she will not seek an incentive award ("Individual Award") of greater than

\$3,000. Talbots agrees not to oppose a request by Plaintiff for an Individual Award of up to \$3,000. Plaintiff further agrees that, in any event, Talbots will not be obligated to pay any Individual Award in excess of \$3,000 to Plaintiff. If the Court approves the Agreement and an Individual Award to Plaintiff, Talbots agrees to pay the award approved by the Court within ten (10) calendar days of the Final Settlement Date. The Parties represent that their negotiation of and agreement to the compensation paid to the Plaintiff, which is separate and apart from any benefits to the Class, did not occur until after the substantive terms of the Agreement had been negotiated and agreed to in principle with the assistance of Hon. Edward A. Infante (Ret.). No interest shall be paid on the Individual Award.

**2.4 Attorneys' Fees and Costs.** The Parties acknowledge that Plaintiff shall move the Court for approval of an award to Class Counsel for attorneys' fees and costs. Plaintiff and Class Counsel agree Class Counsel will not seek an award greater than \$325,000, in the aggregate, for fees and costs. Talbots agrees not to oppose to Class Counsel's request for payment of \$325,000 (total) in attorneys' fees and costs. Plaintiff and Class Counsel further agree that, in any event, Talbots will not be obligated to pay any award to Class Counsel attorneys' fees and costs in excess of \$325,000 (total). If the Court approves the Agreement and an award of attorneys' fees and costs to Class Counsel, Talbots agrees to pay the attorneys' fees and costs approved by the Court to Class Counsel within thirty (30) calendar days of the Final Settlement Date. The Parties represent that the amount of the attorneys' fees and costs to be requested by Class Counsel was negotiated at arm's-length, separate and apart from any benefits to the Class, and only after agreement was reached on all substantive terms of the settlement, with the assistance of Hon. Edward A. Infante (Ret.). No interest shall be paid on the attorneys' fees and costs award.

**2.5 Reduction in Plaintiff's Awards or Class Counsel's Attorneys' Fees.** A reduction by the Court or by an appellate court of the attorneys' fees or litigation costs or the Individual Awards sought by Plaintiff and Class Counsel shall not affect any of the Parties' other rights and obligations under the Agreement.

**2.6 No Tax Liability.** Under no circumstances will Talbots or Defendant's Counsel have any liability for taxes or tax expenses under the Settlement. Plaintiff and/or Class Counsel are responsible for any taxes on any recovery or award. Nothing in this Settlement, or statements made during the negotiation of its terms, shall constitute tax advice by Talbots or Defendant's Counsel.

**2.7 Implementation Costs.** Talbots shall bear all the costs of providing notice to the Class (including the Website) in the manner prescribed in Section 3.3 of this Agreement and the costs associated with independent administration of benefits by the Claims Administrator.

**2.8 Release as to All Class Members.** Upon entry of the Final Order and Judgment, Class Releasers shall be deemed to have fully, finally and forever released and discharged all Class Released Claims against all Released Parties as set forth in the Final Order and Judgment.

**2.9 Release by Plaintiff.** In addition to the releases made by the Class Members set forth in Section 2.8 above, effective upon entry of the Final Order and Judgment, the Plaintiff makes the additional following general release of all past or present claims, known or unknown. Upon entry of the Final Order and Judgment, the Plaintiff, and each of her successors, assigns, legatees, heirs, and personal representatives release and forever discharge the Released Parties, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts,

contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

In addition, Plaintiff, and each of Plaintiff's successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

**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.**

Plaintiff fully understands that the facts on which the Agreement is to be executed may be different from the facts now believed by Plaintiff and Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agrees that the Agreement will remain effective despite any difference in facts. Further, Plaintiff agrees that this waiver is an essential and material term of this release and the Agreement that underlies it and that without such waiver the Agreement would not have been accepted.

**2.10 No Admission of Liability or Wrongdoing.** This Agreement reflects the Parties' compromise and resolution of disputed claims. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Talbots, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Talbots has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Action. Talbots has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

**2.11 Settlement Information.** Within ten (10) calendar days after the execution of this Agreement, Talbots will provide to Class Counsel information regarding the number of items offered for sale in Talbots outlet stores in California at a price of \$12.50 or less, along with a representative list of examples of such items.

### **3. CLASS NOTICE AND CLAIMS PROCEDURES.**

**3.1 Cooperation to Obtain Court Approval.** The Parties will jointly take all reasonable steps necessary to secure the Court's approval of this Agreement.

**3.2 Preliminary Approval and Provisional Class Certification.** Plaintiff shall file the motion for preliminary approval as soon as feasibly possible. The motion for preliminary approval shall request that the Court:

- (a) preliminarily approve this Agreement as fair, adequate, and reasonable;



(b) preliminarily approve the form, manner, and content of the Full Notice, Email Notice, Postcard Notice, Store Notice, and Claim Form described in Section 3.3 of this Agreement, and attached as **Exhibits B–F**;

(c) set a deadline for the filing of objections, exclusions, Claim Form submission, the filing of the fee, cost, and award motion, the final approval motion; and schedule the date of the Fairness Hearing;

(d) provisionally certify the Class under CAL. R. CT. 3.769(d) for settlement purposes only;

(e) stay all proceedings in the Action against Talbots until the Court renders a final decision on approval of the Agreement and sets a briefing schedule for the papers in support of the *Final Order*;

(f) conditionally appoint Plaintiff as the Class Representative for settlement purposes only; and

(g) conditionally appoint the law firm identified in Section 1.22 as Class Counsel for settlement purposes only.

The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**. Talbots shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Preliminary Approval and Provisional Class Certification Order.

**3.3 Class Notice.** Subject to the Court entering the Preliminary Approval Order, the Parties agree that Talbots and its retained Claims Administrator will provide the Class with notice of the proposed Agreement by the following methods.

(a) **Settlement Website.** The Claims Administrator will post the Full Notice on the Website. The Full Notice shall be substantially similar to the form attached as **Exhibit B**. The Full Notice posted on the Website (the “Internet Posting”) will also contain the Claim Form, Complaint, Agreement, and Preliminary Approval Order. Within seven (7) court days of when Class Counsel files a motion for attorneys’ fees and costs, the Internet Posting will also post the fees and costs motion. The Internet Posting shall be operative starting on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Internet Posting shall remain active at least until the Final Settlement Date.

(b) **Email Notice.** Talbots shall use reasonable efforts to identify those Class Members for whom it has a valid email address in its business records. Through the Claims Administrator, for those Class Members for whom Talbots has a valid email address, Talbots will send an Email Notice to such Class Members. The Email Notice shall be substantially similar to the form attached as **Exhibit C**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. Talbots, through the Claims Administrator, will provide the Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order.

(c) **Postcard Notice.** Talbots shall use reasonable efforts to identify Class Members for whom it has a valid postal address in its business records, but no valid email address. Through the Claims Administrator, for those Class Members for whom Talbots does not have a valid email address, but does have a valid postal address, Talbots will send a Postcard

Notice to such Class Members. The Postcard Notice shall be substantially similar to the form attached as **Exhibit D**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. Talbots, through the Claims Administrator, will provide the Postcard Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order.

(d) **Store Notice.** Talbots will post a Store Notice in all of its California Talbots outlet stores, in a location visible to customers. This Notice will be substantially similar to the form attached as **Exhibit E**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. Talbots will post the Store Notice within thirty (30) calendar days after entry of the Preliminary Approval Order, and the Store Notice will continue for ninety (90) days.

**3.4 Proof of Notice.** No later than ten (10) calendar days before the deadline for Plaintiff to file her brief in support of the Final Order and Judgment, Talbots and the Claims Administrator will serve upon Class Counsel a declaration confirming that notice to the Class has been provided in accordance with Section 3.3 of this Agreement.

### **3.5 Claims Procedure.**

(a) Class Members who received direct notice pursuant to Section 3.3 (b) and (c) do not need to submit a Claim Form. For each such Class Member, Talbots, through the Claims Administrator, will send one (1) Merchandise Credit to the email address or postal address used for direct notice.

(b) Class Members who did not receive direct notice under Section 3.3(b) or (c) must complete and submit a valid Claim Form on or before the Claim Filing Deadline in order to receive a Merchandise Credit. For each such Class Member, Talbots, through the Claims Administrator, will send one (1) Merchandise Credit to the email address or postal address specified on the completed Claim Form.

(c) **Date of Submission.** The Claim Form may be submitted electronically or by postal mail. The delivery date is deemed to be the date [i] the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. mail, or [ii] in the case of submission electronically through the Settlement Website, the date the Claims Administrator receives the Claim Form, as evidenced by the transmission receipt.

**3.6 Right to Verify.** The Claims Administrator and/or Talbots may review all submitted Claim Forms for completeness, validity, accuracy, and timeliness, and may contact any Claimant, through the Claims Administrator, to request additional information and/or documentation to determine the validity of any claim. In addition, the Claims Administrator and/or Talbots may verify that: [i] the information set forth in a submitted Claim Form is accurate; and [ii] the Claimant is a Class Member.

**3.7 Objections.** Any Class Member who has not submitted a timely written exclusion request pursuant to Section 3.8 of this Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Agreement, may elect to object to the Agreement by delivering a timely written objection to the Court, Class Counsel, and Defendant's Counsel.

(a) To be timely, a written objection must be submitted no later than the Objection Deadline. The submission date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure

receipt of any objection to the Court, Class Counsel, and Defendant's Counsel. The Court has the discretion to reject untimely objections.

(b) Any written objections must contain: (1) the name and case number of the Action; (2) the Class Member's full name, address, and telephone number; (3) the words "Notice of Objection" or "Formal Objection"; (4) in clear and concise terms, the legal and factual arguments supporting the objection; (5) facts supporting the person's status as a Class Member (e.g., either any unique identifier included by the Claims Administrator in his/her notice, or the date and location of his/her relevant purchases); (6) the Class Member's signature and the date; and (7) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge." The objection will not be valid if it only objects to the Action's appropriateness or merits. Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Agreement.

(c) Class Members have the option to appear at the Fairness Hearing, either in person or through counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Agreement, or to the award of attorneys' fees. However, Class Members (with or without counsel) intending to make an appearance at the Fairness Hearing must so inform the Parties and the Court on or before the Objection Deadline by providing a "Notice of Intention to Appear" to the Court, Class Counsel, and Defendants' Counsel.

**3.8 Exclusion from the Class.** Class Members may elect not to be part of the Class and not to be bound by this Agreement. To make this election, Class Members must send a signed letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Agreement, postmarked no later than the Exclusion Deadline. The Claims Administrator must serve on Class Counsel and Defendant's Counsel a list of Class Members who have timely and validly excluded themselves from the Class no later than five (5) calendar days after the Exclusion Deadline.

**3.9 Final Order and Judgment.** Before the Fairness Hearing, Plaintiff must apply to the Court for entry of Final Order and Judgment. Such an order shall be substantially similar to the form attached as **Exhibit G**. Class Counsel shall draft the motion papers, and Talbots' Counsel will not oppose the motion. Talbots shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Final Order and Judgment.

**3.10 Judgment and Enforcement.** The Parties agree that should the Court grant final approval of the proposed Agreement and enter Final Order and Judgment, the Final Order and Judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Agreement.

#### **4. Termination of the Agreement.**

**4.1 Right to Terminate Agreement.** Either Party has the right to terminate and withdraw from the Agreement at any time prior to the Fairness Hearing if the Court makes an order inconsistent with the terms of this Agreement which is so material that the key terms of the

Agreement cannot be affected (except for an order reducing the Class Counsel award or the Plaintiff's Individual Settlement Award).

**4.2 Effect of Agreement if Agreement Is Not Approved.** This Agreement was entered into only for the purpose of settlement of the Action. In the event that Section 4.1 is invoked by either Party, the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Agreement that are not acceptable to all Parties, or if the Court does not approve the Agreement or enter the Final Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective positions *status quo ante*, and as if this Agreement was never executed. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (b) the Action will revert to the status that existed before the Plaintiff filed her motion for approval of the Preliminary Approval Order; and (c) no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Agreement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Talbots shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Agreement or other papers or proceedings related to the Agreement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action provided however, that Talbots will nonetheless bear the costs of Administration and notice.

## **5. ADDITIONAL PROVISIONS.**

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

**5.2 Fair, Adequate, and Reasonable Agreement.** The Parties agree the Agreement is fair, adequate, and reasonable and the Agreement was the result of informed, intense, non-collusive, and arms-length negotiations, taking into account all relevant factors, present and potential. The Agreement was reached after extensive negotiations, including an all-day mediation session conducted with the assistance of Hon. Edward A. Infante (Ret.) of JAMS.

**5.3 Real Parties in Interest.** In executing this Agreement, the Parties warrant and represent that except as provided herein, neither the claims or causes of action released herein nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**5.4 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**5.5 Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**5.6 Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully



explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**5.7 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**5.8 Entire Agreement.** This Agreement and the exhibits thereto contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement.

**5.9 Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**5.10 Headings and Formatting of Definitions.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Agreement.

**5.11 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement are hereby incorporated and made a part of this Agreement as though fully set forth in the Agreement.

**5.12 Modifications and Amendments.** No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

**5.13 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

**5.14 Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

**5.15 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

**5.16 Cooperation of the Parties.** The Parties acknowledge that it is their intent to consummate this Agreement and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best

efforts to accomplish the foregoing terms and conditions of the Agreement. Specifically, the Parties to this Agreement agree to prepare and execute all documents, to seek Court approvals, defend Court approvals, and to do all things reasonably necessary to complete the settlement described in this Agreement. Further, the Parties will comply in good faith with the terms and conditions of the Agreement. Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

**5.17 Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

**5.18 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

**5.19 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**5.20 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**5.21 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, this Agreement shall not be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

**5.22 No Conflict Intended.** Any inconsistency between this Agreement and the attached exhibits will be resolved in favor of this Agreement.

**5.23 Notices.** Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Talbots to the attention of Talbots' Counsel, and if to Class Members to the attention of Class Counsel on their behalf.

CLASS COUNSEL	TALBOTS' COUNSEL
Zev B. Zysman LAW OFFICES OF ZEV B. ZYSMAN APC 15760 Ventura Boulevard, 16th Floor Encino, CA 91436	Stephanie A. Sheridan STEPTOE & JOHNSON LLP One Market Street, Steuart Tower Suite 1800 San Francisco, CA 94105

5.24 List of Exhibits: The following exhibits are attached to this Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Postcard Notice
- Exhibit E: Store Notice
- Exhibit F: Claim Form
- Exhibit G: [Proposed] Final Approval Order and Judgment

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED:

Dated:

5/18/18

*Lynette Fliegelman*  
 LYNETTE FLIEGELMAN

Dated:

5/23/18

*John L. Florio*  
 THE TALBOTS, INC.

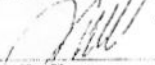
By: *John L. Florio*

Its: *Vice President, Senior Corporate Counsel*

APPROVED AS TO FORM:

Dated: 5/18/18 \_\_\_\_\_

LAW OFFICES OF ZEV B. ZYSMAN, APC

  
\_\_\_\_\_  
Zev B. Zysman

Dated: 5/23/18 \_\_\_\_\_

STEPTOE & JOHNSON LLP

  
\_\_\_\_\_  
Stephanie A. Sheridan