

SETTLEMENT AGREEMENT

This agreement (the “Settlement Agreement” or “Agreement”) is effective as of the latest date set forth in the below signature blocks. It is made and collectively entered into by and among: (a) Plaintiffs Lori Cowen, Rochelle Ibarrola, Ava Adames, Barbara Whalen, and Amanda Wells (collectively, “Plaintiffs”); and (b) Defendant Lenny & Larry’s, LLC, (converted from and formerly known as Lenny & Larry’s, Inc.) (“Defendant”). This Settlement Agreement is intended by the Settling Parties (as defined below) to fully, finally, and forever to resolve, discharge, and settle the claims released in this Agreement upon and subject to the terms and conditions hereof. This Settlement Agreement is made in accordance with, and pursuant to, Federal Rule of Civil Procedure Rule 23(e).

RECITALS

A. THE LITIGATION

On February 28, 2017, Plaintiffs Lori Cowen and Rochelle Ibarrola, individually and on behalf of putative class members, filed a complaint against Defendant in the United States District Court for the Northern District of Illinois, Eastern Division, entitled *Lori Cowen, et al. v. Lenny & Larry’s, Inc.*, Case No.

1:17-cv-01530 (the “Litigation”). The parties to that Litigation and the Court proceeded with motion practice and, on May 25, 2017, Plaintiffs Lori Cowen and Rochelle Ibarrola, individually and on behalf of putative class members, filed a first amended complaint.

On December 21, 2017, Plaintiffs Lori Cowen, Rochelle Ibarrola, and Ava Adames, individually and on behalf of putative class members, filed a second amended complaint. On March 23, 2018, Plaintiffs Rochelle Ibarrola, Amanda Wells, and Barbara Whalen, individually and on behalf of putative class members, filed a third amended complaint. Plaintiffs alleged claims based on multiple states’ laws, but concurrently explored settlement opportunities, including formal mediation.

B. BACKGROUND

Pursuant to California Civil Code section 1150, Lenny and Larry’s, Inc., the California corporation named as the defendant in the Litigation, converted to Lenny & Larry’s, LLC, a California limited liability company. The conversion was effective as of May 25, 2017.

**C. CLAIMS OF THE PLAINTIFFS
AND BENEFITS OF SETTLEMENT**

Plaintiffs asserted claims against Defendant relating to the advertising, packaging, and labeling of its products. Among other things, Plaintiffs alleged that the nutritional content and values described for those products have been misstated. In reaching this Settlement Agreement, Plaintiffs and Plaintiffs' Counsel (as defined below) recognize and acknowledge the expense and length of time necessary to continue to prosecute the Litigation against Defendant through trial and appeals. Plaintiffs and Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially complex cases such as this one, as well as the difficulties and delays inherent in such litigation.

While Plaintiffs and Plaintiffs' Counsel believe the claims in their respective complaints have merit, Plaintiffs and Plaintiffs' Counsel are also aware of the difficulties of proving the claims asserted against Defendant, as well as the existence of possible defenses to those claims. Plaintiffs and Plaintiffs' Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class (as defined below). Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the

settlement set forth in this Settlement Agreement is in the best interests of the Settlement Class (as defined below).

D. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY

Defendant has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs in the Litigation, including without limitation all charges of wrongdoing against it, and the allegations that the Plaintiffs or the Settlement Class were harmed by the conduct of Defendant alleged in the Litigation.

Nonetheless, Defendant concluded that this Litigation, if not resolved by this Settlement Agreement, could be protracted and expensive and that it is desirable that the claims against Defendant be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement, in order to limit further expense, inconvenience, and distraction to Defendant. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially complex cases such as this one. Defendant has determined that it is desirable and beneficial to it that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs and Defendant that: (i) subject to the approval of this Court required below, the Litigation and the Released Claims (as defined below) shall be finally and fully compromised, settled, and released as to all Settling Parties and the Settlement Class (subject to the Court’s retention of jurisdiction over the Settling Parties) to enforce the terms of the Final Approval Order (as defined below) pursuant to Federal Rule of Civil Procedure 23(e)); (ii) the Litigation shall be finally and fully compromised, settled, released, and dismissed with prejudice as to all Settling Parties and the Settlement Class, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. DEFINITIONS

1.1 “Claims Administrator” means the entity the Settling Parties have agreed will provide notice to putative class members (the “Settlement Class Notice”) and administer the claims and distribution process as specified *infra*.

1.2 “Class Counsel” means, collectively: (i) Wexler Wallace LLP; (ii) Barbat, Mansour & Suciu PLLC; and (iii) Wasserman Law Group.

1.3 “Defendant’s Counsel” means, collectively: (i) Pillsbury Winthrop Shaw Pittman LLP; (ii) Hinshaw & Culbertson LLP; and (iii) Loeb & Loeb LLP.

1.4 “Distribution Amount” means the balance of the Settlement Class payment that remains to be distributed to the participating class members after subtracting from the settlement class payment the amount that the Court designates for Plaintiffs’ Counsel’s attorneys’ fees and costs (including but not limited to the costs of administering the settlement).

1.5 “Effective Date” means the first date by which all of the events and conditions specified in § 5.1 of this Settlement Agreement have been met and have occurred.

1.6 “Execution Date” means the date by which this Settlement Agreement is executed by and on behalf of all Settling Parties.

1.7 “Final Approval Hearing” means the hearing at which the Settling Parties’ counsel shall request that the Court finally approve the settlement reflected in this Agreement and enter the Final Approval Order (as defined below).

1.8 “Final Approval Order” means the order and judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit C, and including but not limited to the provisions set forth in Sections 2 and 3 of this Agreement.

1.9 “Final Settlement Approval” means the date that the District Court order approving the settlement of the Litigation becomes final and from which no writ or appeal can be taken. Absent further events that alter the time when the order will become final and not reviewable, this is 60 days after the District Court order approving the settlement is entered pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, unless a request for a writ or Notice of Appeal is filed with respect to the Final Settlement Approval, in which event Final Settlement Approval means the date after which there is a ruling on the writ or appeal, and all deadlines for further appeal therefrom, or request for review thereof, have expired.

1.10 “Incentive Award” means any award approved by the Court that is payable to the Plaintiffs, *i.e.* the class representatives, from the Settlement Payment.

1.11 “Notice” means the notice of the settlement of the Litigation, substantially in the form of Exhibits A-1 and A-2 attached hereto, which shall include the general terms of the settlement set forth in this Settlement Agreement and the date of the Settlement Hearing (as defined below).

1.12 “Notice Date” means the date the Settlement Class Notice is provided.

1.13 “Opt-Out” means a Settlement Class Member (as defined below) who timely and validly requests exclusion from the Settlement Class.

1.14 “Participating Class Member” means a Settlement Class Member who is not an Opt-Out.

1.15 “Plaintiffs” means, collectively, Lori Cowen, Rochelle Ibarrola, Ava Adames, Barbara Whalen, and Amanda Wells.

1.16 “Preliminary Approval Order” means the preliminary approval and notice order substantially in the form of Exhibit B attached hereto, providing for, *inter alia*, certification of the provisional Settlement Class, preliminary approval of the settlement set forth in this Settlement Agreement, and approval for the Settlement Class Notice.

1.17 “Released Claims” means any and all actions, causes of action, claims, suits, demands, debts, obligations, liabilities, damages, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, costs, and expenses whatsoever, including, but not limited to, claims for violations of federal or state statutes including but not limited to 21 U.S.C. 343(a)(1), 410 ILCS 620/21(j),

California Business and Professions Code § 17200, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, and any other statute directly or indirectly regulating food advertising or labeling, and claims sounding in common law tort, breach of contract, fraud, intentional misrepresentation, negligent misrepresentation, negligent supervision, conversion, negligence, unjust enrichment, and violations of any other statutes, rules, or regulations, whether known or unknown, suspected or unsuspected, that have been, could have been, or could be, asserted by the Plaintiffs or any Settlement Class Member who is not an Opt-Out, ever had, now have, or may or could hereafter have against the Released Parties (as defined below), whether under state or federal law, at law or in equity, of every kind and nature whatsoever and whether arising directly, indirectly, derivatively, individually, or in any other capacity, that in any way concern, arise out of, relate to any acts, omissions, facts, matters, transactions, occurrences, conduct, statements, or representations concerning or relating in any way to the subject matter of, or any allegations or assertions in any papers filed in, the Litigation or any related lawsuit, including all claims relating to advertising, nutritional statements, descriptions of ingredients, representations, or other statements whether contained on packaging, labeling, in

print or online advertising, or otherwise concerning The Complete Cookie or any other Lenny & Larry's baked goods product.

1.18 "Released Parties" means Defendant, and all of its respective officers, directors, shareholders, employees, partners, agents, members, predecessors, successors, parents, affiliates, subsidiaries, related entities, attorneys, insurers and assigns.

1.19 "Settlement Class" is all United States resident consumers who purchased one or more of Lenny & Larry's The Complete Cookie or other Lenny & Larry's baked goods products at a retail establishment or online any time up to the date of Final Settlement Approval.

1.20 "Settlement Class Member" means a Person who falls within the definition of the Settlement Class.

1.21 "Settlement Hearing" means the hearing at which the Settling Parties' (as defined below) counsel shall request that the Court finally approve the settlement reflected in this Settlement Agreement and enter the Final Approval Order and Judgment.

1.22 “Settling Parties” means, collectively, Defendant and the Plaintiffs on behalf of themselves and, for those who are putative class representatives, on behalf of the Settlement Class or any Settlement Class Member.

2. THE SETTLEMENT

2.1 *Settlement payment.* In consideration for the releases herein, Final Settlement Approval, and the other terms and conditions of this Settlement Agreement, Defendant shall contribute \$5 million to a common fund (the “Settlement Payment”) as follows: Defendant shall pay a maximum of \$1.85 million in cash, together with a minimum of \$3.15 million in free product as described below. Defendant will make available \$350,000 of the cash portion of the Settlement Payment to pay valid claims as submitted to the Claims Administrator as specified below. The balance of the cash portion of the Settlement Payment shall be available to pay for the administration of this Settlement, Plaintiffs’ Incentive Awards, and for such fees and costs for Class Counsel as approved by the Court. The Settlement Payment represents the entire amount Defendant will pay in consideration for the settlement of the Litigation, and the entire amount of the Settlement Payment shall be distributed as set forth herein. The Settlement Class shall not receive anything further from Defendant, whether for payment of Plaintiffs’ Counsel’s fees and costs, costs of

administration, notice, any participation awards to any named plaintiff, or otherwise.

2.2 Initial settlement distribution for Settlement Class Members with proofs of purchase. The Claims Administrator will activate the Interactive Voice Response system and the settlement website providing notice of the settlement and allowing Settlement Class Members to submit claim forms online. The Claims Administrator will also initiate banner ads and give notice to the Settlement Class allowing for the submission of claims for cash or free product. For each Settlement Class Member who submits a valid claim form supported by proof of purchase of a Lenny & Larry's baked goods product, that Settlement Class Member may elect to receive a cash distribution not exceeding the greater of (i) the amount reflected by the proof of purchase of up to \$50.00 or (ii) \$20.00. All proofs of purchase submitted to establish a \$20.00 cash distribution must be dated prior to the Notice Date. Alternatively, the respective Settlement Class Member, with proof of purchase, may elect to receive free Complete Cookies with a retail value of up to \$30.00, including shipping charges and applicable costs. Because Lenny & Larry's has a record of online purchases made through its website, Lenny & Larry's will provide customer data for online purchasers to the Claims Administrator. The Claims

Administrator may give notice of the Settlement to these online purchasers via their last known email address. Settlement Class Members who purchased Lenny & Larry's baked goods products online need not submit proof of purchase but may submit a claim form electing cash or product under this Section as though those members have a proof of purchase.

2.3 *Initial settlement distribution for Settlement Class Members without valid proof of purchase.* Settlement Class Members who do not have valid proof of purchase of a Lenny & Larry's baked goods product may elect to submit a completed claim form and affidavit in the form attached as Exhibit D hereto. Such Settlement Class Members may receive \$10.00 in cash or Complete Cookies with a retail value of up to \$15.00, including shipping charges and applicable costs.

2.4 *One Claim per Settlement Class Member and per household.* Only one claim may be submitted per Settlement Class Member and per Household, regardless of the number of Settlement Class Members residing at a particular address. However, multiple proofs of purchase may be used to establish one claim.

2.5 *Timing for claims submission.* In order to receive a cash or product distribution from the initial settlement distribution, the Claims Administrator must receive a valid claims form, including any proof of purchase or affidavit within 60 days (or the next business day thereafter) of the Notice Date.

2.6 *Cash distribution.* At the conclusion of the 60-day period described in Section 2.5 of this Settlement Agreement, the Claims Administrator shall advise counsel for the Settling Parties of the amount in cash claimed. If more than \$350,000 is claimed, each Settlement Class Member's cash claim shall be reduced on a *pro rata* basis. If less than \$350,000 is claimed, the unclaimed cash shall be returned to Defendant, and value of the free cookie distribution will be increased by like amount. By way of illustration, if \$50,000 in cash remains unclaimed, that \$50,000 will be returned to Defendant, and the free cookie distribution pursuant to the secondary claim distribution described below in section 2.8 shall increase by \$50,000. Regardless of cash claims rate, the total value of product and cash distributed to the class shall be the total Settlement Payment, minus costs of administration, attorneys fees and costs as outlined in this Agreement. Nothing herein shall be construed to increase Defendant's liability beyond this amount. Cash distributions will be paid by the Claims Administrator in the form of a check, which must be cashed within 60 days. If a

check is not cashed, the funds will be returned to the Settlement Payment and treated as unclaimed cash under this section for purposes of a Secondary Claim Distribution.

2.7 *Accounting.* At the conclusion of the 60-day period described in Section 2.5 of this Settlement Agreement, the Claims Administrator shall provide an accounting of the total cash amount claimed and paid, together with an accounting of the total amount of free product claimed. The value of product claimed shall be subtracted from \$3,150,000 to arrive at a total amount for the secondary claim distribution (as described below), subject to possible upward adjustment pursuant to Section 2.6 of this Settlement Agreement.

2.8 *Secondary claim distribution.* Recognizing that the submission of claims in class action settlements can be difficult to predict, to the extent that the initial free product distribution does not equal \$3,150,000, the balance shall be distributed free via retail locations within 90 days (or the next business day thereafter) of receipt of the Claims Administrator's accounting. The retail locations will include 50 states, and retail locations for The Vitamin Shoppe, GNC, and additional retailers to be identified by Defendant. The secondary claim distribution will provide one free cookie package per customer, no purchase necessary. Defendant shall cause cookies labeled as "not for resale" to be

distributed to the retailers for distribution such that the cost to Defendant equals the shortfall, if any, between the initial free product distribution and \$3,150,000, as adjusted pursuant to Section 2.6 of this Settlement Agreement.

2.9 Notwithstanding any other provisions of this Settlement Agreement, in the event that more than 300 Settlement Class Members opt out of the Settlement, Defendant has the right to terminate this settlement in its entirety by providing prompt written notice to Plaintiffs' Counsel.

2.10 *Administration costs.* The costs reasonably and actually incurred by the Claims Administrator in connection with administering this settlement shall be re-paid from the Settlement Class Payment upon their receipt by the Claims Administrator. The Claims Administrator's fees and costs shall not exceed \$295,781.82 for the first 10,000 claims and \$ 4,530 in costs for each additional 1,000 claims. The Claims Administrator shall be advised of this fact, in writing, by counsel for the Settling Parties prior to the Claims Administrator being engaged.

2.11 *Class Counsels' attorneys' fees.* Class Counsel may receive from the Settlement Payment, subject to Court approval, attorneys' fees, costs, and expenses not to exceed 24% of the Settlement Payment. Class Counsel will

petition the Court for an award of such attorneys' fees and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel's petition for reasonable attorneys' fees and for reimbursement of costs and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys' fees and for reimbursement of costs and expenses. Payment of this fee award (the "Fee Award") will be made from the Settlement Payment and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section of this Settlement Agreement shall be returned to Defendant, who shall increase the free cookie distribution value by like amount, consistent with the operation of Section 2.6 of this Settlement Agreement.

2.12 *Class Counsels' costs.* Each of the law firms comprising Class Counsel may seek costs associated with the Litigation, which Class Counsel estimates are, collectively, in excess of \$80,000 and less than \$110,000. Class Counsel will only seek reasonable costs associated with the Litigation.

2.13 *Fee Award.* The Fee Award will be payable by Defendant within thirty days (or the next business day thereafter) after: (i) Final Settlement Approval; and (ii) the providing of all payment routing information and tax I.D.

numbers for Barbat, Mansour & Suciu, PLLC, in its role as agent for Class Counsel. Payment of the Fee Award will be made from the Settlement Payment by wire transfer to Barbat, Mansour & Suciu, PLLC, as agent for Class Counsel, for distribution to and among counsel for Plaintiffs and the class representatives, in accordance with wire instructions to be provided by Barbat, Mansour & Suciu, PLLC, and completion of necessary forms, including but not limited to W-9 forms.

2.14 *Incentive Award.* Subject to Court approval and in recognition of Plaintiffs' efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the Incentive Award to the class representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the Incentive Award for the class representatives. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) 30 days (or the next business day thereafter) after Final Settlement Approval.

2.15 *Effectiveness of Settlement Agreement.* For purposes of this settlement only, and provided that Final Settlement Approval occurs, the Settling Parties agree to the certification of a provisional Settlement Class. In the event that this Settlement Agreement is not finally approved by the Court, or the settlement is terminated for any reason, then this Settlement Agreement shall be void and the Settling Parties reserve all of their respective rights, positions and arguments on, among other points, the issue of whether a class should be certified in the Litigation, whether dispositive motions should be granted and attorneys' fees awarded, and all claims, issues, defenses, filed complaints, and causes of action, are preserved and restored, without prejudice, as if this Settlement Agreement had never been executed, and the Settling Parties remain free to pursue the lawsuit that was pending prior to this Settlement Agreement subject to all available defenses. In the event the settlement is terminated, this Settlement Agreement shall neither be admissible nor be utilized as evidence regarding class certification or otherwise in further proceedings in the Litigation.

2.16 *Plaintiffs bound.* All Plaintiffs are bound by this Settlement Agreement and agree not to become an Opt-Out.

**3. PRELIMINARY APPROVAL
ORDER AND SETTLEMENT HEARING**

3.1 *Motion for preliminary approval.* As soon as reasonably practicable after the Execution Date, and in no event later than October 25, 2018, the Settling Parties shall jointly move the Court to: (i) find preliminarily that this settlement is a fair, adequate, and reasonable compromise of the Released Claims; (ii) order that the Settlement Class Notice be provided to the Settlement Class within 30 days (or the next business day thereafter) after the Preliminary Approval Order has been entered; (iii) declare that the Settlement Class Notice requirements of Federal Rule of Civil Procedure 23(e)(1) have been satisfied; (iv) schedule a date no later than 60 days (or the next business day thereafter) after the Notice Date by which any Settlement Class Member may opt out of the settlement; (v) schedule a date by which any Settlement Class Member who objects to the terms of this Agreement may file and serve written objections to the Agreement together with a deadline by which any Settling Party may file a brief in opposition to any such objection; and (vi) schedule a Final Approval Hearing date pursuant to Federal Rule of Civil Procedure 23(e)(2), at which any Settlement Class Member who is not an Opt-Out and who meets other requirements established by the Court, may appear in order to object to the fairness, adequacy or reasonableness of this Agreement. The Motion for Preliminary Approval shall

seek to schedule the Final Approval Hearing on final approval of this Agreement before the Court for a date no later than one hundred twenty (120) days after Notice Date. For the avoidance of doubt, at the Final Approval Hearing, Settlement Class Members: (1) may make any objections to the terms of the Settlement Agreement that relate to Plaintiffs' Attorneys; and (2) may also object to the specific application of any of Plaintiffs' Attorneys for payment of fees, and may request a copy of any such fee application.

3.2 *Claims Administrator duties.* The Claims Administrator shall: (i) provide Settlement Class Notice in accordance with the Preliminary Approval Order; (ii) receive and catalogue all Opt-Outs; (iii) receive and catalogue all Claim Forms; (iv) make any additional mailings required under the terms of this Agreement; (v) distribute payments to Participating Class Members; and (vi) otherwise assist with the administration of the Settlement Agreement. All fees and out-of-pocket costs incurred by the Claims Administrator in administering the settlement and distributing the Distribution Amount (but not the Claims Administrator's attorneys' fees to defend contested claims in the Claims Administration Process in the District Court), including the cost for providing Settlement Class Notice, shall be reimbursed from the Settlement Class payment, if approved by the Court, after reasonable notice to Settling Parties'

counsel and a reasonable opportunity to object. At least five business days prior to the Final Approval Hearing, the Claims Administrator shall provide a declaration to be filed with the Court and served on Defendant detailing the status of Settlement Class Notice.

3.3 *Notice contents.* The Settlement Class Notice shall specifically indicate that Settlement Class Members who so desire may exercise the right to exclude themselves from the Settlement Class (*i.e.*, to opt out), but only if they comply with the requirements for doing so as set forth in the Settlement Class Notice. The Settlement Class Notice shall further provide that any objections to: (i) the settlement proposed by this Agreement; and (ii) entry of the Final Approval Order approving the settlement, and any papers submitted in support of said objections, shall be considered by the Court at the Final Approval Hearing only if, on or before the date specified in the Settlement Class Notice, Settlement Class Members making any such objections file and serve on the Settling Parties written objections (which shall set forth each objection and the basis therefore) and copies of any papers in support of their positions as set forth in the Settlement Class Notice. Counsel for any Settling Party may file a brief in opposition to any such objection in accordance with deadlines for service and filing as set forth in the Settlement Class Notice. The Settlement Class Notice shall further provide

that any Settlement Class Member who does not properly and timely request exclusion from the Settlement Class shall be bound by any and all judgments, releases and settlements entered or approved by the Court, whether favorable or unfavorable to the Settlement Class. The Settlement Class Notice shall provide that no Settlement Class Member may simultaneously object to the settlement and opt out.

3.4 *Subsequent actions.* The Preliminary Approval Order and Settlement Class Notice shall also state that, pending final determination of whether the settlement contained in this Agreement should be approved, the Plaintiffs and other Settlement Class Members shall not commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties, either directly, indirectly, derivatively, individually, representatively, or in any other capacity.

3.5 *Final Approval Hearing.* At the Final Approval Hearing, the Settling Parties' counsel shall request that the Court finally approve the settlement reflected in this Settlement Agreement and enter the Final Approval Order which shall, among other things:

- a. Provide final approval of the settlement contemplated by this Settlement Agreement as being a fair, reasonable, and adequate settlement for, and in the best interests of the Settlement Class Members;
- b. Determine that this Settlement Agreement has been made in good faith, according to the terms of Federal Rule of Civil Procedure 23;
- c. Direct that this Settlement Agreement be consummated pursuant to its terms and conditions;
- d. Discharge and release the Released Parties from all Released Claims;
- e. Overrule any objections to the settlement reflected in the Settlement Agreement;
- f. Find that the Settlement Class Notice provided in this Agreement:
 - (i) constitutes reasonable and the best practicable notice; (ii) is reasonably calculated to apprise the Settlement Class Members of the pendency of the Litigation, the terms of settlement, the right to object to this Agreement, and the right to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons or entities to receive such notice; and (iv) meets

the requirements of due process, Federal Rule of Civil Procedure 23, and any other applicable law or rules of the Court;

- g. Reserve continuing and exclusive jurisdiction over the settlement for all purposes, including its administration, consummation, and any disputes that may arise concerning it; and
- h. Effect the dismissal on the Effective Date of the Litigation.

4. RELEASES AND DISMISSALS

4.1 (a) Upon the Effective Date, each of the Plaintiffs shall have, and each of the Settlement Class Members who are not Opt-Outs shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and covenanted not to sue the Released Parties on the Released Claims.

(b) With respect to the Released Claims, the Settling Parties stipulate and agree that, upon entry of the Final Approval Order, the Plaintiffs and each of the Settlement Class Members shall expressly deem to have, and by operation of the Final Approval Order shall have, waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, 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.

(c) Each Plaintiff and Settlement Class Member, upon entry of the Final Approval Order, shall be deemed to have, and by operation of the Final Approval Order shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code as to the Released Parties. Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those which, he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs and each Settlement Class Member, upon entry of the Final Approval Order, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future against the Released Parties, including, but not limited to, conduct which is negligent, intentional, with or without malice, or

a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge that the foregoing waiver was bargained for and is a key element of the settlement of which this release is a part.

4.2 The releases in this Section 4 of this Settlement Agreement shall not affect any claims to enforce the terms of this Settlement Agreement or any orders, agreements, or rights arising therefrom.

4.3 Within five court days of the Effective Date, Plaintiffs' Counsel in the Litigation shall file any remaining necessary papers to dismiss the lawsuit.

5. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

5.1 The Effective Date of the Settlement Agreement shall be conditioned on the occurrence of all of the following events:

- a. The Court has entered the Preliminary Approval Order, as required by Section 3 of this Settlement Agreement;
- b. The Settlement Class Notice has been given pursuant to the Preliminary Approval Order;

- c. The Court has entered the Final Approval Order, or an order substantially in the form of Exhibit C to the appended Settlement Agreement (Appendix 1) hereto;
- d. Final Settlement Approval has occurred; and
- e. Defendant has not exercised its right to terminate the Settlement Agreement pursuant to Section 2.9 of this Settlement Agreement.

5.2 This Settlement Agreement will be enforceable only upon signature by all the Settling Parties, unless Defendant waives this requirement in writing as to a particular Plaintiff or Plaintiffs. Further, this Settlement Agreement shall be void if any of the Plaintiffs purport to opt out of the settlement, unless Defendant waives this requirement in writing as to particular Plaintiffs.

5.3 This Settlement Agreement shall be terminated, become void and have no further force and effect, unless Plaintiffs' Counsel and counsel for Defendant mutually agree in writing to proceed with this Settlement Agreement, except for Sections 5.5 and of this Settlement Agreement 6.5, which shall remain in full force and effect if: (i) the Court fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted herewith, or either of such orders is reversed, vacated, or modified upon appeal; or (ii) any

of the other conditions specified in Section 5.1 of this Settlement Agreement are not met.

5.4 The Claims Administrator shall, within 15 business days after the time period for Settlement Class Members to exclude themselves from the settlement has ended, email the Defendant's Counsel a copy of each request for exclusion.

5.5 In the event this Settlement Agreement is cancelled, terminated or withdrawn, the Settling Parties shall be restored to their respective positions in the Litigation as of June 1, 2018. In such event, the terms and provisions of this Agreement, or any documents or exhibits related thereto, shall have no further force and effect with respect to the Settling Parties and shall not be used in any proceeding for any purpose, and any judgment or order entered by the Court under the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

6. MISCELLANEOUS PROVISIONS.

6.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable efforts to accomplish the

foregoing terms and conditions of this Settlement Agreement, and to obtain dismissal with prejudice of the Litigation. Plaintiffs shall dismiss the Litigation within five court days of the Effective Date.

6.2 The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement Agreement compromises claims that are contested and shall not be deemed or treated as an admission by any Settling Party or Settling Parties as to the merits of any claim or defense. The Settling Parties agree that the settlement was negotiated in good faith and reflects a settlement that was reached voluntarily after consultation with experienced legal counsel. All communications (whether oral or in writing), between or among the Parties and their counsel relating to, concerning, or in connection with this Settlement Agreement shall be governed and protected in accordance with Federal Rule of Evidence 408 and applicable state laws to the fullest extent permitted by law.

6.3 Pending final determination of whether the terms contained in this Settlement Agreement should be approved, the Plaintiffs shall not prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties, either directly, indirectly, derivatively, individually, representatively, or in any other capacity, nor shall any Settlement

Class Member commence any such action or proceeding. With the exception of dates contained in this Settlement Agreement or any of its exhibits, all litigation dates in the Litigation are vacated; all further discovery is stayed; and, except as necessary or expeditious to consummate this settlement, all other proceedings in the Litigation are stayed.

6.4 No Settling Party or his, her, or its counsel shall issue a press release, make any statement to the media, or post any comments online or on social media regarding the Litigation or any part of it, or regarding this settlement, unless Defendant has provided its written consent to such a press release, statement or posting.

6.5 Neither this Settlement Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of Defendant; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Notwithstanding anything stated elsewhere in this Settlement Agreement, Defendant may file this Settlement

Agreement and/or the settlement order and final judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

6.6 All of the exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

6.7 This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their successors in interest.

6.8 This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and supersede all prior and contemporaneous oral and written agreements and discussions. No representations, warranties, or inducements have been made to any Settling Party concerning this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

6.9 Except as otherwise provided herein, each Settling Party shall bear his, her, or its own fees, expenses, and costs.

6.10 All agreements relating to the confidentiality of documents shall remain in effect by their terms, notwithstanding this Settlement Agreement or the dismissal of the Litigation.

6.11 With the exception that all Plaintiffs must sign this Settlement Agreement (subject to Defendant's right, referenced above, to waive this provision for specific plaintiffs), Plaintiffs' Counsel represent that they, on behalf of the Plaintiffs, are expressly authorized to take all appropriate actions required, or permitted to be taken, by the Plaintiffs pursuant to this Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Plaintiffs that they deem appropriate.

6.12 Each counsel executing this Settlement Agreement or any of its exhibits hereby warrants that he or she has the full authority of his or her clients to do so. Each person executing this Settlement Agreement or any of its exhibits on behalf of any Settling Party that is not a natural person hereby warrants that such person has the full authority to do so.

6.13 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court. PDFs of executed signature pages shall be deemed to be original signature pages.

6.14 This Settlement Agreement shall be binding upon, and inure to the benefit of, the Settling Parties and their representatives, agents, executors, heirs, spouses, partners, corporate parents, affiliates, beneficiaries, successors, and assigns.

6.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

6.16 This Settlement Agreement and the exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Illinois, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the

internal substantive laws of the State of Illinois without giving effect to that State's conflict of laws principles.

6.17 None of the Settling Parties has heretofore assigned, encumbered, hypothecated, transferred, or pledged, or purported to assign, encumber, hypothecate, transfer, or pledge, voluntarily, involuntarily, by operation of law, or by way of subrogation, to any person or entity, any interest in any of the Released Claims or other matters released by this Settlement Agreement.

6.18 Each of the Settling Parties has cooperated in the drafting and preparation of this Settlement Agreement and therefore this Settlement Agreement shall not be construed for or against any Settling Party. Descriptive headings are used herein for convenience only and shall not control or affect the meaning or construction of any provision of this Settlement Agreement. As used herein, and unless otherwise provided, the singular shall include the plural, and the plural shall include the singular, and the masculine, feminine, and neuter genders are used interchangeably, as the context may require.

6.19 Each Party acknowledges that he, she, or it has entered into this Settlement Agreement voluntarily and of his, her, or its own free choice and that he, she, or it has had the opportunity, if he, she, or it so desires, to seek the advice

of independent counsel of his, her, or its own choosing with respect to this Settlement Agreement.

6.20 Time is expressly of the essence to the performance of all obligations, conditions, and covenants contained herein.

6.21 No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall any such asserted waiver constitute a continuing waiver.

6.22 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section of this Settlement Agreement, “legal holiday” includes New Year’s Day,

Birthday of Martin Luther King, Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a federal or State of Illinois holiday.

6.23 All provisions in the Settlement Agreement apply to each Settlement Class Member, unless otherwise specifically stated.

6.24 Plaintiffs and Plaintiffs' Counsel hereby waive, discharge and release the Released Parties of and from any and all claims for attorney's fees not provided for in this Agreement, by lien or otherwise, for legal services rendered by Plaintiffs' Counsel in connection with this case. Plaintiffs and Plaintiffs' Counsel further represent and certify that they will pay any amounts due for attorneys' fees and costs and hold the Released Parties harmless from any such claim.

6.25 This Settlement Agreement shall be deemed to have been drafted jointly by the Settling Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any party because such provision, or this Settlement Agreement as a whole, was purportedly prepared or requested by such party.

ACCEPTED AND AGREED:

Day, Christmas Day, and any other day appointed as a federal or State of Illinois holiday.

6.23 All provisions in the Settlement Agreement apply to each Settlement Class Member, unless otherwise specifically stated.

6.24 Plaintiffs and Plaintiffs' Counsel hereby waive, discharge and release the Released Parties of and from any and all claims for attorney's fees not provided for in this Agreement, by lien or otherwise, for legal services rendered by Plaintiffs' Counsel in connection with this case. Plaintiffs and Plaintiffs' Counsel further represent and certify that they will pay any amounts due for attorneys' fees and costs and hold the Released Parties harmless from any such claim.

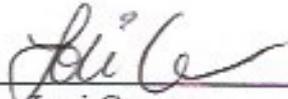
6.25 This Settlement Agreement shall be deemed to have been drafted jointly by the Settling Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any party because such provision, or this Settlement Agreement as a whole, was purportedly prepared or requested by such party.

ACCEPTED AND AGREED:

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: 10/24/18, 2018

By: 
Lori Cowen

Dated: _____, 2018

By: _____
Ava Adames

Dated: _____, 2018

By: _____
Amanda Wells

Dated: _____, 2018

By: _____
Barbara Whalen

Dated: _____, 2018

By: _____
Name: _____
Title: _____
For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: _____, 2018

Robert L. Wallan
Kimberly L. Buffington
Pillsbury Winthrop Shaw Pittman LLP

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: _____, 2018

By: _____
Lori Cowen

Dated: October 24, 2018

By: 
Ava Adames

Dated: _____, 2018

By: _____
Amanda Wells

Dated: _____, 2018

By: _____
Barbara Whalen

Dated: _____, 2018

By: _____
Name: _____
Title: _____
For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: _____, 2018

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: _____, 2018

By: _____
Lori Cowen

Dated: _____, 2018

By: _____
Ava Adames

Dated: October 24, 2018

By: Amanda Wells
Amanda Wells

Dated: _____, 2018

By: _____
Barbara Whalen

Dated: _____, 2018

By: _____

Name: _____

Title: _____

For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: _____, 2018

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: _____, 2018

By: _____
Lori Cowen

Dated: _____, 2018

By: _____
Ava Adames

Dated: _____, 2018

By: _____
Amanda Wells

Dated: October 24, 2018

By: Barbara Whalen
Barbara Whalen

Dated: _____, 2018

By: _____

Name: _____

Title: _____

For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: _____, 2018

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: _____, 2018

By: _____
Lori Cowen

Dated: _____, 2018

By: _____
Ava Adames

Dated: _____, 2018

By: _____
Amanda Wells

Dated: _____, 2018

By: _____
Barbara Whalen

Dated: October 26, 2018

By: 

Name: APU MODY

Title: CEO

For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: _____, 2018

Dated: _____, 2018

By: _____
Rochelle Ibarrola

Dated: _____, 2018

By: _____
Lori Cowen

Dated: _____, 2018

By: _____
Ava Adames

Dated: _____, 2018

By: _____
Amanda Wells

Dated: _____, 2018

By: _____
Barbara Whalen

Dated: _____, 2018

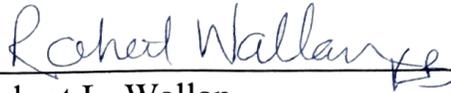
By: _____

Name: _____

Title: _____
For Lenny & Larry's, LLC

APPROVED AS TO FORM AND AGREED AS TO REPRESENTATIONS
UNDER SECTIONS 6.11 and 6.24:

Dated: October 18, 2018



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tstelter@hinshawlaw.com

Counsel for Defendant Lenny & Larry's, LLC
(converted from and formerly known as Lenny
& Larry's, Inc.)

Dated: _____, 2018

Edward A. Wallace

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tstelter@hinshawlaw.com

Counsel for Defendant Lenny & Larry's, LLC
(converted from and formerly known as Lenny
& Larry's, Inc.)

Dated: October 25 2018

Edward Wallace (TSS)
Edward A. Wallace

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krl@wassermanlawgroup.com

Counsel for Plaintiffs and the Settlement Class