

1 FINKELSTEIN THOMPSON LLP  
Rosemary M. Rivas (Cal. Bar No. 209147)  
2 rivas@finkelsteinthompson.com  
505 Montgomery Street, Suite 300  
3 San Francisco, CA 94111  
Telephone: (415) 398-8700  
4 Facsimile: (415) 398-8704

JENNER & BLOCK LLP  
Dean N. Panos (*pro hac vice*)  
dpanos@jenner.com  
353 North Clark Street  
Chicago, IL 60654  
Telephone: (312) 222-9350  
Facsimile: (312) 527-0484

5 BRAUN LAW GROUP, P.C.  
6 Michael D. Braun (Cal. Bar No. 167416)  
mdb@braunlawgroup.com  
10680 W. Pico Boulevard, Suite 280  
7 Los Angeles, CA 90064  
Telephone: (310) 836-6000  
8 Facsimile: (310) 836-6010

JENNER & BLOCK LLP  
Kenneth K. Lee (Cal. Bar No. 264296)  
klee@jenner.com  
Kate T. Spelman (Cal. Bar No. 269109)  
kspelman@jenner.com  
633 West 5th Street, Suite 3600  
Los Angeles, CA 90071  
Telephone: (213) 239-5100  
Facsimile: (213) 239-5199

9 LAW OFFICE OF JANET LINDNER  
10 SPIELBERG  
Janet Lindner Spielberg (Cal. Bar No. 221926)  
11 jspielberg@jlspl.com  
12 12400 Wilshire Boulevard, Suite 400  
Los Angeles, CA 90025  
13 Telephone: (310) 392-8801  
14 Facsimile: (310) 278-5938

***Counsel for Defendant Bear Naked, Inc.***

15 ***Counsel for Plaintiffs***

16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18 CHANEE THURSTON, *et al.*, individually  
19 and on behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 BEAR NAKED, INC.,

23 Defendant.

Case No. 11 CV 2890-H (BGS)

**STIPULATION OF SETTLEMENT**

24  
25 This Stipulation of Settlement is made and entered into by and among Plaintiff Chanee  
26 Thurston, on behalf of herself and each of the Settlement Class Members (“Plaintiffs”), and  
27 Defendant Bear Naked, Inc. (“Defendant” or “Bear Naked”) (collectively, the “Parties”).  
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1 I. RECITALS

2 A. In 2011, the following putative class action complaints were filed against Bear Naked:  
3 Thurston, et al. v. Bear Naked, Inc., 3:11-CV-02890, was initially filed in the U.S. District Court for  
4 the Northern District of California (11-cv-4678) and then transferred to the U.S. District Court for the  
5 Southern District of California; and Babic v. Bear Naked, Inc., 3:11-CV-02985 was filed in in the  
6 U.S. District Court for the Southern District of California (collectively “the Original Complaints”).

7 B. On February 9, 2012, the Court ordered the consolidation of the Thurston case with  
8 the Babic case. (ECF No. 34.)

9 C. On March 12, 2012, Plaintiffs filed a First Amended Consolidated Complaint For  
10 Damages, Equitable, Declaratory and Injunctive Relief against Bear Naked, Inc. (Case No. 3:11-cv-  
11 2890) (the “First Amended Consolidated Complaint”) (ECF No. 36), which amended and superseded  
12 the above-referenced Original Complaints.

13 D. In the First Amended Consolidated Complaint, which was filed as a putative class  
14 action, Plaintiffs allege that they bought certain Bear Naked food products based, at least in part, on  
15 allegedly misleading statements printed on the products’ labels that the products were “100%  
16 Natural” or “100% Pure and Natural.” Plaintiffs allege that, based on the labels, they believed the  
17 products contained no synthetic ingredients and had they known the truth they either would not have  
18 purchased the products or would have purchased other non-natural products that were less expensive.  
19 Plaintiffs further allege that the products that bore the “100% Natural” or “100% Pure and Natural”  
20 labels contained certain synthetic ingredients.

21 E. On April 11, 2012, Bear Naked filed a motion to dismiss the First Amended  
22 Consolidated Complaint. (ECF No. 40.) Plaintiffs opposed Defendants’ motion to dismiss.

23 F. On July 16, 2012, the Court entered an Order granting in part and denying in part Bear  
24 Naked’s motion to dismiss. (ECF No. 50.) The Court dismissed Plaintiffs’ Magnuson-Moss  
25 Warranty Act (“MMWA”) causes of action, common law fraud cause of action, and claim for unjust  
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1 enrichment. The Court denied the remaining portions of Bear Naked's motion to dismiss the First  
2 Amended Consolidated Complaint.

3 G. On April 15, 2013, Plaintiffs filed a motion for class certification. (ECF No. 73.)  
4 Bear Naked opposed Plaintiffs' motion for class certification.

5 H. On July 30, 2013, the Court entered an Order granting in part and denying in part  
6 Plaintiffs' motion for class certification. (ECF No. 110.) The Court appointed Feinstein Doyle Payne  
7 & Kravec, LLC, Finkelstein Thompson LLC, Braun Law Group, P.C. and the Law Offices of Janet  
8 Lindner Spielberg as class counsel.

9 I. On August 12, 2013, Bear Naked filed a Petition For Permission To Appeal Under  
10 Federal Rule of Civil Procedure 23(f) in the United States Court of Appeals for the Ninth Circuit.

11 J. On October 22, 2013, the Ninth Circuit denied Bear Naked's petition for permission to  
12 appeal the District Court's class certification ruling.

13 K. On October 24, 2013, Bear Naked filed a motion to modify the Court's July 30, 2013  
14 class certification order. Plaintiffs opposed Bear Naked's motion.

15 L. On November 22, 2013, the Court denied Bear Naked's motion to modify the Court's  
16 class certification order. (See ECF No. 151 in related case 3:11-cv-01967-H (BGS).)

17 M. On October 23, 2013, Plaintiffs' Counsel, Bear Naked and Defendant's Counsel  
18 participated in a mediation conducted by the Honorable Howard B. Weiner (ret.). Subsequent to this  
19 session, the Parties engaged in protracted, extensive, and hard-fought settlement negotiations. As a  
20 result of those negotiations, the Parties agreed to settle the Litigation pursuant to the terms set forth in  
21 this Stipulation of Settlement.

22 N. On December 19, 2013, the Court granted the motion of Joseph Kravec of Feinstein,  
23 Doyle, Payne & Kravec LLC to withdraw as class counsel. (ECF No. 157.)

24 O. Based upon Class Counsel's investigation and evaluation of the facts and law relating  
25 to the matters alleged in the pleadings, including the completion of all merits discovery in this action  
26 and the parties' exchange of trial expert reports on liability and damage issues, Plaintiffs and Class  
27 Counsel agreed to settle the Litigation pursuant to the provisions of this Stipulation after considering,  
28

1 among other things: (1) the benefits available to the Class under the terms herein; (2) the attendant  
2 risks and uncertainty of litigation, especially in complex actions such as this, as well as the  
3 difficulties and delays inherent in such litigation; and (3) the desirability of consummating this  
4 Stipulation to provide effective relief to the Class and to end the conduct at issue.

5 P. Bear Naked has denied and continues to deny each and all of the claims and  
6 contentions alleged by Plaintiffs. Bear Naked has expressly denied and continues to deny all charges  
7 of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions  
8 alleged, or that could have been alleged, in the Litigation.

9 Q. Nonetheless, Bear Naked has concluded that further defense of the Litigation would  
10 be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in  
11 the manner and upon the terms and conditions set forth in the Stipulation. Defendant also has taken  
12 into account the uncertainty and risks inherent in any litigation. Bear Naked, therefore, has  
13 determined that it is desirable and beneficial to it that the Litigation be settled in the manner and upon  
14 the terms and conditions set forth in the Stipulation.

15 R. This Stipulation effectuates the resolution of disputed claims and is for settlement  
16 purposes only.

## 17 II. DEFINITIONS

18 A. As used in this Stipulation the following capitalized terms have the meanings  
19 specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

20 1. “Challenged Ingredients” means one of more of the following ingredients:  
21 glycerin, hexane-processed soy ingredients, potassium carbonate, and/or tocopherols.

22 2. “Claim Form” means the documents to be submitted by Claimants seeking  
23 payment pursuant to this Stipulation that will be available online at the Settlement Website,  
24 substantially in the form attached hereto as Exhibit A and discussed in § IV.A.5 of this Stipulation.

25 3. “Claimant” means a Settlement Class Member who submits a claim for  
26 payment as described in § IV of this Stipulation.

1           4.       “Claims Administration Protocols” means the protocols set forth in the Claims  
2 Administration Protocols, attached as Exhibit B.

3           5.       “Class” means all California residents who purchased any package of the  
4 Products during the Settlement Class Period. Excluded from the Class are: (a) Bear Naked’s  
5 employees, officers and directors; (b) persons or entities who purchased the Products for the purpose  
6 of re-sale; (c) retailers or re-sellers of the Products; (d) governmental entities; (e) persons who timely  
7 and properly exclude themselves from the Class as provided herein; and (f) the Court, the Court’s  
8 immediate family, and Court staff.

9           6.       “Class Action Settlement Administrator” means, subject to Court approval,  
10 The Garden City Group, Inc., which will provide the Class Notice and administer the claims process.

11           7.       “Class Counsel” means, subject to Court approval, the following individuals:

Rosemary M. Rivas	Janet Lindner Spielberg
Finkelstein Thompson LLP	Law Office of Janet Lindner Spielberg
505 Montgomery Street	12400 Wilshire Boulevard
Suite 300	Suite 400
San Francisco, CA 94111	Los Angeles, CA 90025
Telephone: (415) 398-8700	Telephone: (310) 392-8801

16                   Michael D. Braun  
17                   Braun Law Group, P.C.  
18                   10680 W. Pico Boulevard  
19                   Suite 280  
20                   Los Angeles, CA 90064  
21                   Telephone: (310) 836-6000

22           8.       “Class Notice” means, collectively, the “Notice of Class Action Settlement”  
23 and the “Publication Notice,” substantially in the forms attached hereto as Exhibit C and Exhibit D,  
24 respectively, and discussed in § V of this Stipulation, but which may be modified as necessary to  
25 comply with the provisions of any order of Preliminary Approval entered by the Court.

26           9.       “Class Representative” means, subject to Court approval, Chanee Thurston.

27           10.      “Court” means the United States District Court for the Southern District of  
28 California.

1 11. “Defendant” means Bear Naked, Inc.

2 12. “Defendant’s Counsel” means the following individuals:

3 Dean N. Panos  
4 Jenner & Block LLP  
5 353 North Clark Street  
6 Chicago, IL 60654-3456  
7 Telephone: (312) 923-2765

8 Kenneth K. Lee  
9 Jenner & Block LLP  
10 633 West 5th Street, Suite 3500  
11 Los Angeles, CA 90071-2054  
12 Telephone: (213) 239-5100

13 13. “Effective Date” means the date on which all of the conditions of settlement  
14 have been satisfied, as discussed in § IX of this Stipulation.

15 14. “Final Judgment” means the “Final Judgment And Order of Dismissal” to be  
16 entered by the Court, substantially in the form attached hereto as Exhibit E, which, among other  
17 things, fully and finally approves the Settlement and dismisses the First Amended Consolidated  
18 Complaint with prejudice.

19 15. “Incentive Award” means any award sought by application to and approved by  
20 the Court that is payable to the Representative Plaintiffs from the Settlement Fund.

21 16. “Litigation” means the lawsuit captioned Thurston, et al. v. Bear Naked, Inc.,  
22 Case No. 11-CV-2890-H (BGS) (S.D. Cal.), consisting of the First Amended Consolidated Complaint  
23 and the Original Complaints.

24 17. “Notice Deadline” is fifty (50) days after the Court enters the Preliminary  
25 Approval Order and means the deadline for all notifications discussed in the media plan (attached as  
26 Exhibit G).

27 18. “Party” or “Parties” means the Plaintiffs and Defendant in this Litigation.

28 19. “Person” means a natural person, individual, corporation, partnership,  
association, or any other type of legal entity.

1           20.    “Plaintiffs” means the Class Representative Chanee Thurston on behalf of  
2 herself and each of the Settlement Class Members.

3           21.    “Plaintiffs’ Counsel” means Class Counsel and the following individuals:

4                   Rosemary M. Rivas  
5                   Finkelstein Thompson LLP  
6                   505 Montgomery Street, Suite 300  
7                   San Francisco, CA 94111  
8                   Telephone: (415) 398-8700

9                   Janet Lindner Spielberg  
10                  Law Office of Janet Lindner Spielberg  
11                  12400 Wilshire Boulevard  
12                  Suite 400  
13                  Los Angeles, CA 90025  
14                  Telephone: (310) 392-8801

15                  Michael David Braun  
16                  Braun Law Group PC  
17                  10680 West Pico Boulevard  
18                  Suite 280  
19                  Los Angeles, CA 90064  
20                  Telephone: (310) 836-6000

21           22.    “Preliminary Approval Order” means the “Order Preliminarily Approving  
22 Class Action Settlement, Conditionally Certifying the Settlement Class, Providing For Notice and  
23 Scheduling Order,” substantially in the form of Exhibit F attached hereto, which, among other things,  
24 preliminarily approves this Stipulation, certifies the settlement-only class, provides for notification to  
25 the Settlement Class and sets the schedule for the Settlement Hearing.

26           23.    “Products” means Bear Naked products labeled as “100% Natural” or “100%  
27 Pure and Natural” and containing any of the Challenged Ingredients. A list of such products is set  
28 forth below:

- Bear Naked Cookie Double Chocolate/Bear Naked Soft-Baked Double Chocolate Granola Cookie
- Bear Naked Cookie Fruit & Nut/Bear Naked Soft-Baked Fruit & Nut Granola Cookies
- Bear Naked Fruit and Nut Granola
- Bear Naked Heavenly Chocolate Granola
- Bear Naked Nut Cluster Crunch Honey Almond Cereal
- Bear Naked Nut Cluster Crunch Maple Nut Cereal

- Bear Naked Peak Energy Chocolate Cherry Trail Mix
- Bear Naked Peak Energy Cranberry Almond Trail Mix/Bear Naked Peak Energy Trail Mix Cranberry Protein
- Bear Naked Peak Energy Pecan Apple Flax Trail Mix
- Bear Naked Peak Flax Oats and Honey with Blueberries Granola
- Bear Naked Peak Protein Granola/Bear Naked Peak Protein Original Granola

24. “Released Claims” shall be construed as broadly as possible to effect complete finality over this Litigation, and means, with the exception of claims for personal injury, any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that arose during the Settlement Class Period against the Released Persons, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to Bear Naked’s packaging, marketing, distribution or sale of food products labeled as “100% Natural” or “100% Pure and Natural,” which have been asserted by the Class in the Plaintiff’s First Amended Consolidated Complaint or in any of the Original Complaints.

25. “Released Persons” shall be defined and construed broadly to effectuate a complete and comprehensive release, and means and includes Bear Naked and its past and present direct and indirect corporate parents (including without limitation Kashi Company and Kellogg Company), subsidiaries and affiliates, joint-ventures, partners, members, divisions, distributors, wholesalers, retailers, re-sellers, licensors, suppliers, officers, directors, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising and production agencies and assigns of all such persons or entities.

26. “Settlement Class Member(s)” or “Member(s) of the Settlement Class” means a member of the Class who has not been properly excluded from the Class.

27. “Settlement Class Period” means the period from September 21, 2007 up to and including May 1, 2014.

28. “Settlement Fund” means the common fund discussed in § IV.A.2 of this Stipulation.



1           29.     “Settlement Hearing” means the hearing(s) to be held by the Court to consider  
2 and determine whether the proposed settlement of this Litigation as contained in this Stipulation  
3 should be finally approved as fair, reasonable, and adequate, and whether the Judgment approving the  
4 settlement contained in this Stipulation should be entered. The Parties shall ask the Court to schedule  
5 the Settlement Hearing 120 days after the Court enters the Preliminary Approval Order.

6           30.     “Settlement Website” means the website to be created for this settlement that  
7 will include information about the Litigation and the settlement, relevant documents and electronic  
8 and printable forms relating to the settlement, including the Claim Form which can be submitted  
9 online or printed and mailed. The Settlement Website shall be activated no later than seven (7) days  
10 after the Court enters the Preliminary Approval Order.

11           31.     “Stipulation” means this Stipulation of Settlement, including its attached  
12 exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel  
13 for Defendant.

14           B.     Other capitalized terms used in this Stipulation but not defined above shall have the  
15 meaning ascribed to them in this Stipulation and the exhibits attached hereto.

16 **III.     CERTIFICATION OF THE SETTLEMENT CLASS**

17           Bear Naked hereby consents, solely for purposes of the settlement set forth herein, to the  
18 certification of the Settlement Class, to the appointment of Class Counsel as counsel for the  
19 Settlement Class, and to the conditional approval of Chanee Thurston as a suitable Class  
20 Representative; provided, however, that if this Stipulation fails to receive Court approval or  
21 otherwise fails to be consummated, including, but not limited to, the Judgment not becoming final as  
22 provided in § IX.C of this Stipulation, then Bear Naked retains all rights it had immediately  
23 preceding the execution of this Stipulation to object to the maintenance of this Litigation as a class  
24 action by Class Counsel, and in that event, nothing in this Stipulation or other papers or proceedings  
25 related to the settlement shall be used as evidence or argument by any Party concerning whether the  
26 Litigation may properly be maintained as a class action, whether the Class is ascertainable, or  
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1 whether Class Counsel or the Plaintiffs can adequately represent the Settlement Class Members under  
2 applicable law.

#### 3 IV. SETTLEMENT RELIEF

4 The settlement relief includes cash payments and non-monetary relief.

##### 5 A. Cash Payments

##### 6 1. Class Members' Cash Recovery

7 a. With Proof of Purchase: Class members may seek reimbursement of  
8 \$0.50 per package for every Product purchased during the Settlement Class Period, for which they  
9 can present written proof of purchase in the form of a receipt or a retail rewards submission.

10 b. Without Proof of Purchase: Class members may make a claim for  
11 every Product for which they submit a valid Claim Form. Class members may seek reimbursement at  
12 \$0.50 per package for every Product purchased during the Settlement Class Period, with a maximum  
13 recovery of \$10 per household.

14 c. Class Members may obtain relief under both Paragraphs IV.A.1(a) and  
15 (b), with the appropriate paper work and subject to the maximum recovery amounts permitted for  
16 each type of claim.

17 d. Claimants may seek reimbursement by submitting a Claim Form either  
18 by mail or electronically. Each Claim Form will be signed (electronic or manual) under penalty of  
19 perjury. The actual amount paid to individual Claimants will depend upon the number of valid  
20 claims made. Adequate and customary procedures and standards will be used by the Class Action  
21 Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate  
22 claims.

##### 23 2. Settlement Fund

24 a. In accordance with the payment schedule set forth in § IV.A.7, below,  
25 Defendant shall pay \$325,000 in trust to a third party institution (the "Fund Institution") approved by  
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1 the Parties to establish an interest bearing, non-reversionary settlement fund for payments made  
2 pursuant to this section.

3           b.       The Settlement Fund shall be applied to pay in full: (i) any Expense  
4 Award made by the Court to Class Counsel under § VIII(a); (ii) any Incentive Award made by the  
5 Court to the Class Representative under § VIII(c); and (iii) payments to authorized Claimants as  
6 allowed by this Stipulation and to be approved by the Court.

7           c.       The Settlement Fund will not be used to pay for the costs of providing  
8 Notice to the Class, or claims administration. Defendant will retain a Class Action Settlement  
9 Administrator to provide notice and claims administration.

10           3.       **Settlement Fund: Insufficient or Excess Funds**

11           a.       If the total amount of eligible claims exceeds the Settlement Fund, then  
12 each claim's award shall be proportionately reduced.

13           b.       If after all valid claims (plus other authorized fees, costs and expenses)  
14 are paid, money remains in the Settlement Fund, the remaining amount shall be used to  
15 proportionately increase the recovery of each eligible claim.

16           4.       **Delivery of Payments to Settlement Class Members**

17           a.       The Class Action Administrator shall send a letter to any applicable  
18 Settlement Class Member explaining the rejection of any claim no later than fifteen (15) days after  
19 the Effective Date. Settlement Class Members' time to appeal any such rejection decisions shall  
20 expire forty-five (45) days after the Effective Date.

21           b.       The Class Action Administrator will send payment directly to the  
22 eligible Settlement Class Members no later than ninety (90) days after the Effective Date (the  
23 "Claims Payment Date").

24           c.       Failure to provide all information requested in the Claim Form will not  
25 result in nonpayment of a claim. Instead, the Class Action Settlement Administrator will take all  
26 adequate and customary steps to determine the Settlement Class Member's eligibility for payment  
27 and the amount of payment based on the information contained in the Claim Form or otherwise  
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1 submitted, the amount of money available to pay all valid claims, and such other reasonably available  
2 information from which eligibility for payment can be determined.

3 **5. Claim Form Availability**

4 The Claim Form will be available for downloading and may be completed and submitted  
5 online at the Settlement Website. The Claim Form may also be available for download on Class  
6 Counsel’s websites, at Class Counsel’s option. The Claim Form may also be requested by calling the  
7 toll-free number provided by the Class Action Settlement Administrator or by writing to the Class  
8 Action Settlement Administrator.

9 **6. Eligibility for Cash Payment**

10 a. To be eligible for a cash payment, the Settlement Class Member must  
11 timely submit a signed and completed Claim Form containing his or her name and mailing address.  
12 The Claim Form will also request an e-mail address for the Settlement Class Member, but an e-mail  
13 address will not be required to be eligible for a cash payment. The Settlement Administrator may pay  
14 claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and  
15 timely claims in full plus untimely but otherwise valid claims from the Settlement Fund, and payment  
16 of any such untimely but valid claims is administratively feasible and otherwise reasonable, taking  
17 into account the need to timely pay claims. The determination of the Class Action Settlement  
18 Administrator, after consultation with Class Counsel and Defendant’s Counsel, concerning the  
19 eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees  
20 with such a determination, the Class Action Settlement Administrator agrees to reconsider such  
21 determination, which includes consultation with Class Counsel.

22 b. To be eligible, Claim Forms must be postmarked or submitted online  
23 no later than eight (8) days before the Settlement Hearing (the “Claims Deadline”).

24 **7. Funding the Settlement Fund**

25 a. Subject to § IV.A.2, above, Defendant shall fund the Settlement Fund  
26 no later than seven (7) days after the Effective Date.  
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1           **B.     Other Relief**

2           1.     By the later of (i) 120 days following the Effective Date or (ii) December 31,  
3 2014 (“the Injunctive Relief Effective Date”), Bear Naked agrees to modify its current labeling and  
4 advertising to remove “100% Natural” and “100% Pure and Natural” from those Products that  
5 contain hexane-processed soy ingredients, unless the ingredients are approved or determined as  
6 acceptable for products identified as “natural” by a federal agency or controlling regulatory body.  
7 Sales of products manufactured prior to the Injunctive Relief Effective Date shall not constitute a  
8 violation of this Stipulation. The injunctive terms and requirements of this Paragraph shall expire  
9 three years after the Effective Date.

10 **V.     NOTICE TO THE CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS**  
11 **MEMBERS AND REDEMPTION OF SETTLEMENT RELIEF**

12           **A.     Class Notice**

13           The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil  
14 Procedure, the United States Constitution (including the Due Process Clauses), model class notices of  
15 the Federal Judicial Center and any other applicable law, and shall otherwise be in the manner and  
16 form agreed upon by the Parties and approved by the Court. Collectively, the Class Notice shall set  
17 forth the following information

- 18           1.     General Terms. The Class Notice shall:
- 19           a.     inform Settlement Class Members that, if they do not exclude
  - 20 themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
  - 21           b.     contain a short, plain statement of the background of the Litigation, the
  - 22 Class certification and the proposed settlement;
  - 23           c.     describe the proposed settlement relief outlined in this Stipulation;
  - 24           d.     explain the impact of the proposed settlement on any existing litigation,
  - 25 arbitration or other proceeding; and
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1 e. state that any relief to Settlement Class Members is contingent on the  
2 Court's final approval of the proposed settlement.

3 2. Notice of Exclusion, Objection and Other Rights. The Class Notice shall  
4 inform Settlement Class Members:

5 a. that they may exclude themselves from the Class by submitting a  
6 written exclusion request postmarked no later than eight (8) days before the date the Court sets for  
7 the Settlement Hearing;

8 b. that any Settlement Class Member who has not submitted a written  
9 request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving  
10 a written statement of objections along with proof of membership in the Class no later than thirty  
11 (30) days before the date the Court sets for the Settlement Hearing;

12 c. that any Settlement Class Member who has filed and served written  
13 objections to the proposed settlement may, if he or she so requests, enter an appearance at the  
14 Settlement Hearing either personally or through counsel;

15 d. that any Judgment entered in the Litigation, whether favorable or  
16 unfavorable to the Class, shall include, and be binding on, all Settlement Class Members who have  
17 not been excluded from the Class, even if they have objected to the proposed settlement and even if  
18 they have any other claim, lawsuit or proceeding pending against Defendant;

19 e. that any Settlement Class Member who has not submitted a timely  
20 written request for exclusion may submit a completed and signed Claim Form seeking a cash  
21 payment under this settlement that must be postmarked or electronically submitted no later than eight  
22 (8) days before the date the Court sets for the Settlement Hearing; and

23 f. of the terms of the release.

24 3. No later than seven (7) days after the Court enters the Preliminary Approval  
25 Order, the Class Notice shall be posted on the Settlement Website and, at their option, on the websites  
26 of Class Counsel. The Class Notice shall also be sent via electronic mail or regular mail to those  
27 Class Members who so request.

1           **B.       Publication Notice Deadline**

2           No later than fifty (50) days after the Court enters the Preliminary Approval Order, the Class  
3 Action Settlement Administrator will cause to be published in accordance with the media plan,  
4 attached as Exhibit G, the Publication Notice, a copy of which is attached as Exhibit D.

5           **C.       Retention of Class Action Settlement Administrator**

6           Subject to Court approval, The Garden City Group, Inc. shall be retained as the Class Action  
7 Settlement Administrator to help implement the terms of the proposed Stipulation.

8                   1.       The Class Action Settlement Administrator shall assist with various  
9 administrative tasks, including, without limitation, (a) mailing or arranging for the mailing or other  
10 distribution of the Class Notice, Claim Forms to Settlement Class Members, and the statement  
11 pursuant to § V.A.4, (b) arranging for publication of the Publication Notice, (c) handling returned  
12 mail not delivered to Settlement Class Members, (d) attempting to obtain updated address  
13 information for Settlement Class Members and for any Class Notice Packages returned without a  
14 forwarding address or an expired forwarding address, (e) making any additional mailings required  
15 under the terms of this Stipulation, (f) answering written inquiries from Settlement Class Members  
16 and/or forwarding such inquiries to Class Counsel or their designee, (g) receiving and maintaining on  
17 behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests  
18 for exclusion to the settlement, (h) establishing the Settlement Website that posts notices, Claim  
19 Forms and other related documents, (i) receiving and processing claims and distributing payments to  
20 Settlement Class Members, and (j) otherwise assisting with administration of the Stipulation.

21                   2.       The contract with the Class Action Settlement Administrator shall obligate the  
22 Class Action Settlement Administrator to abide by the following performance standards:

23                           a.       The Class Action Settlement Administrator shall accurately and  
24 neutrally describe, and shall train and instruct its employees and agents to accurately and objectively  
25 describe, the provisions of this Stipulation in communications with Settlement Class Members;  
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1                   b.       The Class Action Settlement Administrator shall provide prompt,  
2 accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or  
3 Defendant's Counsel.

4 **VI. APPROVAL PROCEDURES AND RELATED PROVISIONS**

5       **A. Preliminary Approval and Settlement Hearing**

6                   Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the  
7 Court and shall jointly apply for entry of a Preliminary Approval Order preliminarily approving this  
8 Stipulation, providing for the dissemination of the Class Notice, and scheduling a Settlement  
9 Hearing.

10       **B. Requests for Exclusion**

11                   1.       Any potential Settlement Class Member who wishes to be excluded from the  
12 Class must mail or deliver a written request for exclusion to the Clerk of the Court, care of the  
13 address provided in the Class Notice, postmarked or delivered no later than eight (8) days before the  
14 Settlement Hearing, or as the Court otherwise may direct. The written request for exclusion must  
15 request exclusion from the Class, must be signed by the potential Settlement Class Member and  
16 include a statement indicating that the requester is a member of the Settlement Class. A list reflecting  
17 all requests for exclusion shall be filed with the Court by Plaintiffs at or before the Settlement  
18 Hearing.

19                   2.       Any potential Settlement Class Member who does not file a timely written  
20 request for exclusion as provided in the preceding § VI.B.1 shall be bound by all subsequent  
21 proceedings, orders and the Judgment in this Litigation relating to this Stipulation, even if he or she  
22 has pending, or subsequently initiates, litigation, arbitration or any other proceeding against  
23 Defendant relating to the Released Claims.

24 **VII. RELEASES**

25                   As of the Effective Date, Plaintiffs and each Settlement Class Member who has not validly  
26 excluded himself or herself from the Settlement Class pursuant to § VI.B of this Stipulation, and each  
27



1 of their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners,  
2 successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the  
3 Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released  
4 Claims against the Released Persons. In connection with the Released Claims, each Settlement Class  
5 Member shall be deemed as of the Effective Date to have waived any and all provisions, rights, and  
6 benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine  
7 similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:  
8

9 A general release does not extend to claims which the creditor does not know or  
10 suspect to exist in his or her favor at the time of executing the release, which if  
11 known by him or her must have materially affected his or her settlement with the  
12 debtor.

11 VIII. CLASS COUNSEL’S COSTS AND EXPENSES AND CLASS REPRESENTATIVE  
12 INCENTIVE AWARDS

13 A. Class Counsel may apply for an award of reasonable, actual out-of-pocket expenses  
14 from the Settlement Fund in an amount to be determined (“Expense Award”). Class Counsel will not  
15 make an application for an award of attorneys’ fees. Defendant reserves the right to respond as  
16 appropriate to Class Counsel’s petition for an Expense Award. Subject to the terms and conditions of  
17 this Stipulation and any order of the Court, any Expense Award approved and awarded by the Court  
18 to Class Counsel shall be paid out of the Settlement Fund within ten (10) days after the Effective  
19 Date. Such payment will be in lieu of any statutory fees or expenses Plaintiffs and/or their attorneys  
20 might otherwise have been entitled to recover from Bear Naked.

21 B. Class Counsel shall allocate and distribute the Court’s Expense Award among  
22 Plaintiffs’ Counsel. Bear Naked shall have no liability or other responsibility for allocation of any  
23 such Expense Award awarded, and, in the event that any dispute arises relating to the allocation of  
24 fees, Class Counsel agree to hold Bear Naked harmless from any and all such liabilities, costs, and  
25 expenses of such dispute.  
26  
27  
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1 C. Class Counsel may ask the Court for the award of an Incentive Award from the  
2 Settlement Fund to the Class Representative of up to \$2,000. Any Incentive Award approved by the  
3 Court shall be paid within ten (10) days after the Effective Date.

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

6 A. The Effective Date of this Stipulation shall be the first date after which all of the  
7 following events and conditions have been met or have occurred:

8 1. The Court has preliminarily approved this Stipulation and entered the  
9 Preliminary Approval Order;

10 2. The Court has entered the Final Judgment; and

11 3. Unless the Parties otherwise agree in writing to waive all or any portion of the  
12 following provision, there has occurred: (i) in the event there is a properly and timely filed objection  
13 to entry of the Final Judgment, the expiration (without the filing or noticing of an appeal) of the time  
14 to appeal from the Final Judgment; (ii) the final dismissal of all appeals from the Final Judgment;  
15 (iii) affirmance on appeal of the Final Judgment in substantial form; (iv) if a ruling or decision is  
16 entered by an appellate court with respect to affirmance of the Final Judgment, the time to petition  
17 for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other  
18 form of review with respect to such ruling or decision has expired; or (v) if a petition for rehearing or  
19 re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review  
20 with respect to the Final Judgment is filed, the petition has been denied or dismissed or, if granted,  
21 has resulted in affirmance of the Final Judgment in substantial form.

22 B. If all of the conditions specified in § IX.A of this Stipulation are not met, then this  
23 Stipulation shall be canceled and terminated unless Class Counsel and Defendant mutually agree in  
24 writing to proceed with this Stipulation.

25 C. In the event that this Stipulation is not approved by the Court or the settlement set  
26 forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the  
27 Parties shall be restored to their respective pre-settlement positions in the Litigation, including with  
28

1 regard to any agreements concerning tolling and similar agreements, and this entire Stipulation shall  
2 become null and void.

3 X. MISCELLANEOUS PROVISIONS

4 A. The Parties hereto and their undersigned counsel agree to undertake their best efforts  
5 and mutually cooperate to promptly effectuate this Stipulation and the terms of the settlement set  
6 forth herein, including taking all steps and efforts contemplated by this Stipulation and any other  
7 steps and efforts which may become necessary by order of the Court or otherwise.

8 B. The undersigned counsel represent that they are fully authorized to execute and enter  
9 into the terms and conditions of this Stipulation on behalf of their respective clients.

10 C. This Stipulation contains the entire agreement among the Parties hereto and  
11 supersedes any prior agreements or understandings between them. Except for § I, all terms of this  
12 Stipulation are contractual and not mere recitals and shall be construed as if drafted by all Parties.  
13 The presumption found in California Civil Code section 1654 (and equivalent, comparable or  
14 analogous provisions of the laws of the United States of America or any state or territory thereof, or  
15 of the common law or civil law) that uncertainties in a contract are interpreted against the party  
16 causing an uncertainty to exist hereby is waived by all Parties.

17 D. The terms of this Stipulation are and shall be binding upon each of the Parties, their  
18 agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any  
19 interest in the subject matter through any of the Parties, including any Settlement Class Member.

20 E. Whenever this Stipulation requires or contemplates that one Party shall or may give  
21 notice to the other, notice shall be provided by facsimile, email and/or next day (excluding Sunday)  
22 express delivery service as follows:  
23  
24  
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1           1.     If to Plaintiffs, then to:

2                     Rosemary M. Rivas  
3                     Finkelstein Thompson LLP  
4                     505 Montgomery Street  
5                     Suite 300  
6                     San Francisco, CA 94111  
7                     Telephone: (415) 398-8700

                           Janet Lindner Spielberg  
                           Law Office of Janet Lindner Spielberg  
                           12400 Wilshire Boulevard, Suite 400  
                           Los Angeles, CA 90025  
                           Telephone: (310) 392-8801

8                     Michael D. Braun  
9                     Braun Law Group, P.C.  
10                    10680 W. Pico Boulevard  
11                    Suite 280  
12                    Los Angeles, CA 90064  
13                    Telephone: (310) 836-6000

14           2.     If to Defendant, then to:

15                     Dean N. Panos  
16                     dpanos@jenner.com  
17                     Jenner & Block LLP  
18                     353 North Clark Street  
19                     Chicago, IL 60654-3456  
20                     Telephone: (312) 923-2765  
21                     Facsimile: (312) 840-7765

22           F.     The time periods and/or dates described in this Settlement Agreement with respect to  
23           the giving of notices and hearings are subject to approval and change by the Court or by the written  
24           agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class  
25           Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant  
26           any reasonable extension of time that might be needed to carry out any of the provisions of this  
27           Settlement Agreement.

28           G.     All time periods set forth herein shall be computed in business days if seven days or  
                  less and calendar days if eight days or more unless otherwise expressly provided. In computing any  
                  period of time prescribed or allowed by this Stipulation or by order of the 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 in which weather or other

1 conditions have made the Office of the Clerk or the Court inaccessible, in which event the period  
2 shall run until the end of the next day as not one of the aforementioned days. As used in this  
3 subsection, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday,  
4 Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’  
5 Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or  
6 the Congress of the United States.

7 H. The Parties, their successors and assigns, and their attorneys undertake to implement  
8 the terms of this Stipulation in good faith and to use good faith in resolving any disputes that may  
9 arise in the implementation of the terms of this Stipulation.

10 I. This Stipulation may be amended or modified only by a written instrument signed by  
11 Class Counsel and any of Defendant’s Counsel. Amendments and modifications may be made  
12 without additional notice to the Settlement Class Members unless such notice is required by the  
13 Court.

14 J. The exhibits to this Stipulation are an integral part of the Settlement and are hereby  
15 incorporated and made a part of this Stipulation.

16 K. Neither this Stipulation nor the settlement, nor any act performed or document  
17 executed pursuant to or in furtherance of this Stipulation or the settlement: (i) is or may be deemed  
18 to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any  
19 wrongdoing or liability of Defendant, or of the propriety of Class Counsel maintaining the Litigation  
20 as a class action; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of,  
21 any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court,  
22 administrative agency, or other tribunal, except that Defendant may file this Stipulation or the  
23 Judgment in any action that may be brought against any Released Person in order to support a  
24 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith  
25 settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or  
26 similar defense or counterclaim.

1 L. The Court shall retain jurisdiction with respect to the implementation and enforcement  
2 of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for  
3 purposes of implementing and enforcing the settlement embodied in this Stipulation.

4 M. This Stipulation shall be deemed to have been executed upon the last date of execution  
5 by all of the undersigned.

6 N. This Stipulation may be executed in counterparts, each of which shall constitute an  
7 original.

8 IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed by  
9 their duly authorized representatives.

10 **FOR PLAINTIFFS:**

11 Dated: May 2, 2014

FINKELSTEIN THOMPSON

12 By: /s/ Rosemary M. Rivas  
13 ROSEMARY M. RIVAS

14 505 Montgomery Street, Suite 300  
15 San Francisco, CA 94111  
16 Telephone: (415) 398-8700  
17 Facsimile: (415) 398-8704  
18 Email: [rrivas@finkelsteinthompson.com](mailto:rrivas@finkelsteinthompson.com)

BRAUN LAW GROUP, P.C.

19 By: /s/ Michael D. Braun  
20 MICHAEL D. BRAUN

21 10680 West Pico Boulevard, Suite 280  
22 Los Angeles, CA 90064  
23 Telephone: (310) 836-6000  
24 Facsimile: (310) 836-6010  
25 Email: [mdb@braunlawgroup.com](mailto:mdb@braunlawgroup.com)

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LAW OFFICE OF JANET LINDNER  
SPIELBERG

By:  /s/ Janet Lindner Spielberg  
JANET LINDNER SPIELBERG

12400 Wilshire Boulevard, Suite 400  
Los Angeles, CA 90025  
Telephone: (310) 392-8801  
Facsimile: (310) 278-5938  
Email: jlspielberg@gmail.com

**FOR DEFENDANT:**

Dated: May 2, 2014

JENNER & BLOCK LLP

By:  /s/ Dean N. Panos  
DEAN N. PANOS

353 North Clark Street  
Chicago, IL 60654-3456  
Telephone: (312) 923-2765  
Facsimile: (312) 840-7765  
dpanos@jenner.com

Kenneth K. Lee (Cal. Bar No. 264296)  
Kate T. Spelman (Cal. Bar No. 269109)  
JENNER & BLOCK LLP  
633 West 5th Street, Suite 3600  
Los Angeles, CA 90071  
Phone: (213) 239-5100  
Facsimile: (213) 239-5199  
Email: klee@jenner.com  
kspelman@jenner.com