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KOHL'S DEPARTMENT STORES, INC.

16
17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19

20 STEVEN RUSSELL, et al.
21 Plaintiff,
22 vs.
23 KOHL'S DEPARTMENT STORES,
INC., et al.,
24 Defendants.
25

Case No. 5:15-cv-01143-RSK-SP

**JOINT STIPULATION RE (1)
SETTING HEARING DATE FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT
AGREEMENT; AND (2)
CLARIFICATION OF SETTLEMENT
THROUGH AMENDMENT**

26 Courtroom: 850
27 Judge: Hon. R. Gary Klausner
Action Filed: June 11, 2015

1 Plaintiffs Steven Russell and Donna Caffey, on behalf of themselves and as
2 class representatives, and Defendant Kohl's Department Stores, Inc. hereby
3 respectfully submit this Joint Stipulation and request for Court Order to address two
4 points regarding the recent preliminary approval of the parties' Class Action
5 Settlement:

6
7 Date for Final Approval Hearing

8 1. On March 14, 2016, Plaintiffs submitted a Motion for Preliminary
9 Approval of Class Action Settlement and Conditional Certification (the "Motion"),
10 seeking to certify for settlement purposes a class of "all persons who, while in the
11 State of California, and between June 11, 2011, and the present (the 'Class Period'),
12 purchased from Kohl's one or more items at a discount of at least 30% off of the
13 stated 'original' or 'regular' price, and who have not received a refund or credit for
14 their purchase(s)."

15 2. On April 11, 2016, this Court granted Plaintiffs' Motion.

16 3. However, in connection with granting the Motion, it was not clear to the
17 Parties which date the Court intended to set as the final approval hearing.

18 4. Plaintiffs' motion proposed November 7, 2016, for a final approval
19 hearing date, and the Parties believe that date provides sufficient time for computing
20 the total number of claims and to address other issues regarding class claim
21 administration.

22 5. The parties therefore stipulate and agree, subject to approval of the
23 Court, that the hearing date for the final approval of the settlement shall be November
24 7, 2016.

25 Gift Card Redemption

26 6. The Class Action Settlement Agreement (and corresponding notices)
27 defines the Gift Card Credits to be provided to class members who submit valid
28 claims as "fully transferrable, stackable and may be used in connection with any

1 promotional discount(s) that are otherwise available with the use of Gift Cards.”
2 Class Action Settlement Agreement at 1.13.

3 7. The definition of Gift Card Credits under the settlement also states that
4 the Gift Card Credits “will maintain a running balance that is depleted based on use
5 until the balance is zero, but are not redeemable for cash.” *Id.*

6 8. The Parties do not intend, however, for the Gift Card Credits to conflict
7 with any existing laws that may permit customers to redeem gift cards for cash in
8 certain limited circumstances.

9 9. The Parties therefore stipulate and agree, subject to approval by the
10 Court, to amend their Class Action Settlement Agreement to provide that the Gift
11 Card Credits “are not redeemable for cash, except where required by law.” Amended
12 Class Action Settlement Agreement (proposed amendment attached hereto as a
13 redline at Exhibit A) at 1.13 (emphasis added).

14 10. Other than this change, no other changes are contained within the
15 Amended Class Action Settlement Agreement.

16 11. Because notices have not yet been sent or published, the notices to the
17 class can be amended to be consistent with this provision.

18
19 I hereby attest that all other signatories listed, and on whose behalf the filing is
20 submitted, concur in the filing’s content and have authorized the filing.

21
22 FOR PLAINTIFFS AND THE PLAINTIFF CLASS

23 Dated: April 20, 2016

By: /s/ Christopher J. Morosoff

24 Christopher J. Morosoff
25 Law Office of Christopher J. Morosoff
Counsel for the Class

26 Dated: April 20, 2016

By: /s/ Douglas Caiafa

27 Douglas Caiafa
28 Douglas Caiafa, A Professional Law
Corporation
Counsel for the Class

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FOR DEFENDANT

Dated: April 20, 2016

ARNOLD & PORTER LLP

By: /s/ James F. Speyer

James F. Speyer
Alex Beroukhim
Attorneys for Defendants KOHL'S
DEPARTMENT STORES, INC. and
KOHL'S CORPORATION

EXHIBIT A

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14 Fax: 213.243.4199

15 Attorneys for Defendant
KOHL'S DEPARTMENT STORES, INC.

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
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20 STEVEN RUSSELL, et al.
21 Plaintiff,
22 vs.
23 KOHL'S DEPARTMENT STORES,
INC., et al.,
24 Defendants.
25

Case No. 5:15-cv-01143-RSK-SP

**AMENDED CLASS ACTION
SETTLEMENT AGREEMENT**

Courtroom: 850
Judge: Hon. R. Gary Klausner
Action Filed: June 11, 2015

1 **AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

2 This Amended Class Action Settlement Agreement (the “Amended
3 Agreement”) is made by and between the Class Representatives, individually and on
4 behalf of the Settlement Class, and Defendant Kohl’s Department Stores, Inc.
5 (collectively, “Kohl’s” or the “Settling Defendant”).¹ The Class Representatives, the
6 Settlement Class, and the Settling Defendant are collectively referred to as the
7 “Parties.”

8 This Amended Class Action Settlement Agreement supersedes in its entirety
9 the Settlement Agreement Term Sheet entered into and as exchanged as an executed
10 version on February 16, 2016, by and between the Parties, as well as the Class Action
11 Settlement Agreement finally executed on March 13, 2016.

12 **RECITALS**

13 WHEREAS, on June 11, 2015, Class Representatives Steven Russell and
14 Donna Caffey filed this class action against Kohl’s in the United States District Court
15 for the Central District of California;

16 WHEREAS, Class Representatives filed their First Amended Complaint
17 (“FAC”) on August 14, 2015;

18 WHEREAS, the FAC alleges that Kohl’s has deceived consumers by
19 “inflat[ing]” its “original” and/or “regular” prices in order to make its sale prices
20 appear more attractive. The Class Representatives claim that they and other consumers
21 relied on these allegedly “false and deceptive advertising, marketing and pricing
22 schemes” when purchasing products from Kohl’s. Plaintiffs sued for monetary and
23 injunctive relief;

24 WHEREAS, on October 6, 2015, the Court denied Kohl’s motion to dismiss
25 the FAC;

26
27
28 _____
¹ Capitalized terms in this Agreement are defined in Section 1, below.

1 WHEREAS, on December 4, 2015, the Court entered an order in which it
2 certified the following for class purposes of injunctive relief:

3 All persons who, while in the State of California, and
4 between June 11, 2011, and the present (the “Class
5 Period”), purchased from Kohl’s one or more items at any
6 Kohl’s store in the State of California at a discount of at
7 least 30% off of the stated “original” or “regular” price,
8 and who have not received a refund or credit for their
9 purchase(s).

10 WHEREAS, Class Representatives and their counsel have pursued this
11 litigation believing that it is meritorious. They have conducted a thorough
12 investigation into the facts of this case and have diligently pursued an investigation
13 of Kohl’s price comparison advertising policies and practices, including, but not
14 limited to, (i) researching the applicable law and the potential defenses;
15 (ii) reviewing and analyzing Kohl’s public filings and internal documents
16 concerning its advertising, pricing and promotional practices, and reviewing and
17 analyzing Kohl’s sales data; (iii) conducting in-store and online reviews to
18 determine and document Kohl’s pricing practices; (iv) hiring and consulting with
19 experts; (v) developing arguments for class certification; (vi) briefing numerous
20 motions; (vii) obtaining class certification; (viii) attending an all-day in-person
21 mediation and conducting several follow up telephonic sessions; and (x) preparing
22 for pretrial litigation tasks and trial. Based on their own independent investigation
23 and evaluation, Class Counsel (defined below) is of the opinion that the Settlement
24 is fair, reasonable, and adequate and is in the best interests of the Settlement Class
25 Members as well as future California consumers, in light of all known facts and
26 circumstances, including the risk of significant delay, the defenses asserted by
27 Kohl’s, trial risk and appellate risk;

1 WHEREAS, Kohl's denies liability and wrongdoing of any kind associated
2 with the claims alleged and contends that this Litigation is not appropriate for class
3 treatment. Kohl's continues to assert that the Class Representatives will not be able
4 to establish any monetary remedy or injunctive relief. Kohl's continues to assert
5 that it has complied with all applicable price comparison advertising laws. Kohl's
6 further states that despite its good faith belief that it is not liable for any of the
7 claims asserted, and despite its good faith belief that certification was not
8 appropriate, Kohl's will not oppose the District Court's certification of the
9 Settlement Class contemplated by this AgreementAmended Agreement solely for
10 purposes of effectuating this Settlement. Kohl's agreement to certification of the
11 Settlement Class is without prejudice to Kohl's rights to oppose certification of a
12 class or oppose any other claim (i) in this Litigation, should the
13 AgreementAmended Agreement not be approved or implemented for any reason; or
14 (ii) in any other litigation, whether pending in California or elsewhere;

15 WHERAS, in the event the AgreementAmended Agreement is not approved
16 or is otherwise terminated, this AgreementAmended Agreement shall be deemed
17 null and void and be of no further force or effect and may not be used by any Party
18 for any purpose in this Litigation or any other action;

19 WHEREAS, the entry of Final Judgment in this Litigation shall dismiss with
20 prejudice all claims which were or which could have been alleged in the Litigation
21 by Settlement Class Members against Kohl's, with the exception of any individual
22 claims that might be retained by Settlement Class Members who exclude
23 themselves from the Settlement, if any;

24 WHEREAS, the Parties agree to cooperate and take all reasonable steps
25 necessary and appropriate to obtain preliminary and final approval of this
26 Settlement, to effectuate its terms, and to dismiss this Litigation with prejudice.
27
28

1 **1. Definitions**

2 1.1 The term “Amended Agreement” as used herein means this Amended
3 Class Action Settlement Agreement.

4 1.2 The term “Attorneys’ Fees and Costs” as used herein means the
5 attorneys’ fees and costs to be requested by Class Counsel subject to Court approval
6 in accordance with the provisions below.

7 1.3 The term “Claim” as used herein means a Claim submitted by way of a
8 Claim Form in accordance with this AgreementAmended Agreement.

9 1.4 The term “Claim Form” as used herein means the Claim Form for the
10 Settlement Class attached hereto as Exhibit 1, which is agreed to by the Parties
11 subject to Court approval as the method by which a Class Member may submit a
12 Claim. Only those Settlement Class Members who submit a Claim Form, in the
13 manner set forth in this AgreementAmended Agreement, shall be eligible to recover
14 a share of the Settlement proceeds.

15 1.5 The term “Claimant” as used herein means any Settlement Class
16 Member who submits a Claim Form.

17 1.6 The term “Claims Administrator” as used herein means KCC LLC, or
18 another entity subsequently selected, which, subject to Court approval, shall
19 perform the duties of, among other things: (i) providing Notice, Claim Forms and
20 Opt-Out Request Forms to Settlement Class Members; (ii) publishing the
21 Publication Notice; (iii) providing notice as required by the Class Action Fairness
22 Act, 28 U.S.C. § 1715; (iv) tracking returned Claim Forms and Opt-Out Requests;
23 (v) notifying the Parties of determinations regarding submitted Claim Forms and
24 Opt-Out Requests consistent with this AgreementAmended Agreement; (vi)
25 distributing Gift Card Credits; and (vii) other notice and administration duties in
26 accordance with this AgreementAmended Agreement and the Court’s orders.

27 1.7 The term “Class Counsel” as used herein means the following counsel
28 who have appeared on behalf of the Class Representatives: DOUGLAS CAIAFA,

1 A Professional Law Corporation, and LAW OFFICE OF CHRISTOPHER J.
2 MOROSOFF.

3 1.8 The term “Class List” as used herein means the customers, and their
4 email or physical addresses as known, who purchased during the Settlement Class
5 Period from Kohl’s one or more items at a discount of at least 30% off of the stated
6 “original” or “regular” price, and who have not received a refund or credit for their
7 purchase(s).

8 1.9 The term “Class Representatives” as used herein means Steven Russell
9 and Donna Caffey.

10 1.10 The term “Class Representative Enhancement Payment” as used herein
11 means the amount Class Counsel shall request be paid as set forth below.

12 1.11 The term “Email Notice” as used herein means a document
13 substantially in the form of attached hereto as Exhibit 3, which has been agreed to
14 by the Parties subject to Court approval and which will be sent to potential
15 Settlement Class Members as an email where an email exists on the Class List.

16 1.12 The term “Final Judgment” as used herein refers to the Final Judgment
17 and Order approving the Settlement and dismissing the Litigation with prejudice as
18 against Kohl’s, which this Settlement contemplates will be entered and approved by
19 the District Court.

20 1.13 The term “Gift Card Credit” as used herein means a credit
21 redeemable for purchases at any Kohl’s store or www.Kohls.com. Each Gift Card
22 Credit shall be fully transferable, stackable and may be used in connection with any
23 promotional discount(s) that are otherwise available with the use of Gift Cards.
24 Gift Card Credits have no expiration date and need not be used in full at any time.
25 They will maintain a running balance that is depleted based on use until the balance
26 is zero, but are not redeemable for cash, except where required by law.

27 1.14 The term “Litigation” means the underlying litigation between the
28 Parties as identified in the above caption.

1 1.15 The term “Monetary Component” as used herein means \$6,150,000 to
2 be made available by Kohl’s pursuant to this Settlement, which represents Kohl’s
3 total monetary liability under this AgreementAmended Agreement.

4 1.16 The term “Notice” as used herein means a document substantially in
5 the form of the Notice of Proposed Class Action Settlement Between Plaintiff and
6 Kohl’s attached hereto as Exhibit 2, which has been agreed to by the Parties subject
7 to Court approval and which the Claims Administrator will make available through
8 the Settlement Website, explaining the terms of the Settlement and the Claims, Opt-
9 Out, and objection processes.

10 1.17 The term “Notice and Administration Costs” as used herein means the
11 costs to send notice and administer the Settlement as contemplated by this
12 AgreementAmended Agreement.

13 1.18 The term “Opt-Out Request Form” as used herein means a form that
14 will be available for download on the Settlement Website, which can be used by
15 Settlement Class Members to Request to Opt Out. Settlement Class Members are
16 not required to use the Opt-Out Request Form in order to communicate their desire
17 to opt out of the Settlement.

18 1.19 The term “Parties” as used herein means the Class Representatives, the
19 Settlement Class, and Settling Defendant.

20 1.20 The term “Postcard Notice” as used herein means a document
21 substantially in the form attached hereto as Exhibit 4, which has been agreed to by
22 the Parties subject to Court approval and which will be sent to potential Settlement
23 Class Members in the U.S. mail where a physical address exists on the Class List
24 but an email address does not.

25 1.21 The term “Publication Notice” as used herein means a document
26 substantially in the form attached hereto as Exhibit 5, which has been agreed to by
27 the Parties subject to Court approval.

28

1 1.22 The terms “Qualified Settlement Fund” or “QSF” as used herein means
2 the Qualified Settlement Fund to be set up in accordance with the terms below.

3 1.23 The term “Releasing Settlement Class Members” as used herein means
4 the Class Representative and all Settlement Class Members, other than those who
5 submit Requests to Opt Out.

6 1.24 The term “Requests to Opt Out” as used herein means requests sent by
7 any Settlement Class member not wishing to remain in the Settlement Class.

8 1.25 The term “Settlement” as used herein means the compromise and
9 settlement of the Litigation as contemplated by this Agreement Amended
10 Agreement.

11 1.26 The term “Settlement Class” as used herein means all persons who,
12 while in the State of California, and between June 11, 2011, and the present (the
13 “Class Period”), purchased from Kohl’s one or more items at a discount of at least
14 30% off of the stated “original” or “regular” price, and who have not received a
15 refund or credit for their purchase(s). Excluded from the Settlement Class are
16 Defendant, as well as its officers, employees, agents or affiliates, and any judge who
17 presides over this action, as well as all past and present employees, officers and
18 directors of Kohl’s.

19 1.27 The term “Settlement Class Member Released Claims” as used herein
20 means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs
21 and expenses (other than those costs and expenses required to be paid pursuant to
22 this Amended Settlement Agreement), liens, charges, complaints, causes of action,
23 obligations, or liabilities that are released, acquitted and discharged as described
24 below.

25 1.28 The term “Settlement Class Members,” as used herein means the Class
26 Representatives and all members of the Settlement Class.

27 1.29 The term “Settlement Class Period” as used herein means the period of
28 time between June 11, 2011, and the present.

1 1.30 The term “Settlement Effective Date” as used herein means the first
2 day following the last of the following occurrences:

3 1.30.1 The date the time to appeal or seek permission to appeal or seek
4 other judicial review of the entry of the Final Judgment approving the Settlement and
5 dismissing this Litigation with prejudice as to Kohl’s has expired with no appeal or
6 other judicial review having been taken or sought; or

7 1.30.2 If an appeal or other judicial review has been taken or
8 sought, the latest of: (i) the date the Final Judgment is finally affirmed by an
9 appellate court with no possibility of subsequent appeal or other judicial review
10 therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally
11 dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if
12 remanded to the District Court following an appeal or other review, the date the Final
13 Judgment is entered by the District Court after remand and the time to appeal or
14 seek permission to appeal or seek other judicial review of the entry of that Final
15 Judgment has expired with no further appeal or other judicial review having been
16 taken or sought. If further appeal is sought after a remand, the time periods in this
17 sub-section shall apply.

18 1.31 The term “Settlement Website” as used herein means an Internet
19 website maintained by the Claims Administrator containing the Notice, Claim Form,
20 Opt-Out Request Form, Settlement Class Member information about their individual
21 allocation of the Settlement, instructions on how to submit a Claim Form and/or
22 additional receipts providing evidence of additional qualifying purchases, and where
23 Gift Card Credits may be obtained.

24 1.32 The term “Verified Claims” as used herein means those Claims which
25 are approved by the Claims Administrator for payment after the deadline for audits
26 allowable has expired, or, if an audit or objection is made, after all audits or
27 objections have been resolved in accordance with the provisions below.

28

1 **2. Settlement Class**

2 2.1 The Parties agree that, for purposes of this Agreement Amended
3 Agreement only, Class Representatives shall request, and Kohl's will not oppose,
4 certification of the Settlement Class (defined above) pursuant to Federal Rule of Civil
5 Procedure 23(b)(3), to which Kohl's will provide settlement consideration and from
6 which Kohl's will obtain a release of claims, subject to the Court's preliminary
7 approval of this Agreement Amended Agreement, the provision of Notice to members
8 of the Settlement Class, and the Court's final approval of the notice provided and this
9 Agreement Amended Agreement.

10 2.2 The Parties agree that, for purposes of this Agreement Amended
11 Agreement only, Class Representatives shall request, and Kohl's will not oppose, the
12 Court's appointment of Class Counsel as counsel for the Settlement Class, and the
13 appointment of the Class Representatives as representatives of the Settlement Class.

14 2.3 The Parties further agree that, for purposes of this Agreement Amended
15 Agreement only, the definition of the proposed class in the Litigation is amended to
16 be the same as the Settlement Class, and that the Court's orders preliminarily and
17 finally approving the Agreement Amended Agreement shall so amend the operative
18 complaint in the Litigation. The Parties also agree that the operative complaint in this
19 Litigation can and shall be further amended as necessary and/or as required by the
20 Court to effectuate the terms of this Agreement Amended Agreement.

21 2.4 The Settlement is conditioned on the Court certifying the Settlement
22 Class. The Parties and Class Counsel agree that, if approved, certification of the
23 Settlement Class is a conditional certification for settlement purposes only, and if for
24 any reason the District Court does not grant final approval of the Settlement, or if
25 final approval is not granted following appeal of any order by the District Court, the
26 certification of the Settlement Class shall be deemed null and void, and each Party
27 shall retain all their respective rights as they existed prior to the execution of the
28 Amended Settlement Agreement and the Settlement Agreement Term Sheet.

1 **3. Settlement Consideration**

2 Monetary Component for Class

3 3.1 Subject to the other terms and conditions of this AgreementAmended
4 Agreement, and subject to Court approval, Kohl’s will contribute \$6,150,000 for the
5 Monetary Component of the settlement. This Monetary Component will be
6 comprised of the following:

7 3.1.1 Following approval of a final settlement agreement by the
8 Court and after the deductions described in Paragraphs 3.1.2 through 3.1.4 below, the
9 remaining value of the Monetary Component will be distributed on a pro rata basis in
10 the form of Kohl’s Gift Card Credits to members of the Settlement Class who submit
11 a valid Claim. The value of each Gift Card Credit shall be determined by dividing the
12 remaining value of the Monetary Component by the number of Class Members who
13 submit a valid Claim.

14 3.1.2 The actual Notice and Administration Costs incurred in
15 accordance with this AgreementAmended Agreement, up to \$1,000,000
16 (“Administrative Costs Portion”). The Administrative Costs Portion shall be
17 deposited by Kohl’s into the QSF for purposes of paying administrative costs within a
18 reasonable time period following preliminary approval of the Settlement by the
19 District Court.

20 3.1.3 Class Counsel may apply to the Court for an award of
21 reasonable Attorneys’ Fees and Costs not to exceed 25% of the Monetary Component
22 of the settlement. Kohl’s will not oppose an application for a reasonable award of
23 Attorneys’ Fees and Costs sought in accordance with this AgreementAmended
24 Agreement. In the event that the Court does not approve the award of Attorneys’
25 Fees and Costs requested by Class Counsel, or if the Court awards Attorneys’ Fees
26 and Costs in an amount less than that requested by Class Counsel, the amount that is
27 not awarded will be available for distribution to the Class, and the Court’s decision
28 shall not affect the validity and enforceability of the Settlement and shall not be a

1 basis for anyone to seek to void the Settlement or for rendering the entire Settlement
2 null, void, or unenforceable. Class Counsel retain their right to appeal any decision
3 by the Court regarding the Court's award of Attorneys' Fees and Costs.

4 3.1.4 Class Counsel intends to seek \$7,500 for the Class
5 Representatives as the Class Representative Enhancement Payment. Kohl's will not
6 oppose the application. Any request made by Class Counsel in accordance with this
7 Section is without prejudice to the Class Representative's right to file a Claim as a
8 Settlement Class Member. In the event that the Court does not approve the Class
9 Representative Enhancement Payment, or the Court awards an amount that is less
10 than sought, the amount that is not awarded will be available for distribution to the
11 Class and shall not affect the validity and enforceability of the Settlement and shall
12 not be a basis for anyone to seek to void the Settlement or for rendering the entire
13 Settlement null, void, or unenforceable.

14 3.2 The payments identified in Paragraphs 3.1.1 through 3.1.4 of this
15 Agreement Amended Agreement shall be paid solely from the Monetary Component.
16 The \$6,150,000 Monetary Component as described above shall be the total amount
17 owed by Kohl's in settlement. Kohl's will not be obligated to pay any additional
18 sums, and shall have no other monetary liability for any costs or expenses related to
19 this Settlement, including without limitation the costs of administering the
20 Settlement, preparation of Notice, oversight and reporting of the Notice program,
21 establishing the appropriate website, any escrow or QSF expenses, tax filing and
22 distributions. All such costs shall be included within and paid from the
23 Administrative Costs Portion of the Monetary Component. For clarity, all costs of
24 the QSF, as described in Paragraphs 9.1 through 9.8 of this Agreement Amended
25 Agreement, shall be paid from said Monetary Component.

26 3.3 Each Claimant who receives any value paid in accordance with this
27 Agreement Amended Agreement is responsible for any taxes associated with the
28 monies received by that recipient. If required by applicable law, the QSF shall issue

1 1099s to Class Counsel (for payments of Attorneys' Fees and Costs awarded by the
2 Court) and to the Class Representative for any Class Representative Enhancement
3 Payment authorized by the Court.

4 Injunctive Relief

5 3.4 As a direct result of this Litigation, Kohl's agrees that its comparative
6 advertising and pricing practices, as of the date of this Amended Settlement
7 Agreement, and continuing forward, will not violate Federal or California law,
8 including California's specific price-comparison advertising statutes. As a direct
9 result of this Litigation, Kohl's shall continue to enhance and expand programs
10 intended to promote pricing compliance with legal requirements, including those
11 requirements set forth in the Federal Trade Commission's guidelines for the use of
12 price comparisons in advertising (16 C.F.R. 233.1) and the relevant comparative
13 advertising provisions within California's Business and Professions Code (Section
14 17501) and California Civil Code Section 1770 (a)(13). More specifically,
15 commencing within six (6) months, Kohl's compliance program enhancements shall
16 include the development and roll-out of enhanced pricing compliance computer
17 systems. In addition, commencing within six (6) months and continuing for a period
18 of at least four (4) years from the date of this Amended Settlement Agreement Kohl's
19 will also implement pricing compliance training targeted at relevant buying office
20 personnel, which shall be offered on a regular basis, no less than annually, to ensure
21 that new hires are also appropriately trained on price-comparison advertising
22 requirements.

23 **4. Notice to the Class**

24 4.1 Given the expected size of the Settlement Class, the Parties agree that
25 direct notice via email is the best practicable notice for those Settlement Class
26 Members for which such information exists. Where only a mailing address is
27 available for a Settlement Class member, or for all Settlement Class members whose
28 Email Notice was not deliverable and a physical address is known, a Postcard Notice

1 shall be mailed by first class mail. Recognizing that there are Settlement Class
2 Members for whom neither email nor physical mailing addresses are available, notice
3 by print publication as agreed to by the Parties and authorized by the Court will be
4 used to supplement the Email and Postcard notices. Class Counsel agrees to use their
5 best efforts to obtain preliminary approval of a notice plan to achieve the best
6 practicable notice consistent with this section.

7 4.1.1 The Email and Postcard notices shall advise Settlement Class
8 Members of the deadline for submitting Claim Forms, their right to opt out of the
9 Settlement or to object to the Settlement, the process by which such opt-outs or
10 objections must be made, and the date set by the District Court for a hearing on final
11 approval of the Settlement. Subject to Court approval, the Email and Postcard
12 Notices shall be substantially in the form attached hereto as Exhibits 3 and 4,
13 respectively.

14 4.1.2 Because some of the sales data during the Settlement Class
15 Period do not have corresponding customer names or addresses, the Parties agree that
16 notice by publication would be the best practicable notice for the balance of the
17 Settlement Class. This "Publication Notice" shall include instructions as to how to
18 access the Settlement Website and how to request a Claim Form and instructions on
19 how to submit it. The Publication Notice shall also advise Settlement Class Members
20 of their right to opt out of the Settlement or to object to the Settlement, the process
21 and deadlines by which such opt-outs or objection must be made and the date set by
22 the Court for a hearing on final approval of the Settlement. Subject to Court
23 approval, the Publication Notice shall be substantially in the form attached hereto as
24 Exhibit 5.

25 4.2 Kohl's will provide the Class List to the Claims Administrator in
26 sufficient time for Notice to go out. Kohl's and Plaintiff agree that all Class List
27 information shall be treated as highly confidential proprietary information, and that
28 the contents of the Class List shall not be shared with third parties other than the

1 Claims Administrator and that the Claims Administrator shall be required to preserve
2 the confidentiality of the Class List.

3 4.3 The Email Notice shall be sent to Settlement Class Members within
4 thirty (30) days following the Court's preliminary approval of the Settlement,
5 provided that any challenges or other barriers to the use of Email Notice have been
6 resolved. The Postcard Notice shall be sent to Settlement Class Members within
7 fifty (50) days following the Court's preliminary approval of the Settlement. The
8 Publication Notice shall be published on the soonest practicable date after preliminary
9 approval, but in no event shall it commence more than ten (10) days after the
10 Postcard Notice is sent.

11 4.4 The Email and Postcard Notices, Claim Form, Opt-Out Request
12 Form, FAC, original Settlement Agreement, Amended Settlement Agreement and
13 other materials as agreed to by the Parties shall be available on the Settlement
14 Website. The Claims Administrator shall also establish a toll-free phone line and an
15 email box to respond to inquiries from Settlement Class Members. The Settlement
16 Website address, toll-free phone number, and email box address will be included in
17 all notices to the class.

18 **5. Submission of Claims**

19 5.1 In order to be eligible to receive a share of the Monetary Component, a
20 Settlement Class Member must submit a completed Claim Form within ninety (90)
21 days from the date Notice is disseminated. Only those Settlement Class Members
22 who submit an approved Claim Form shall be eligible to receive a Gift Card Credit.
23 In order for a Claim Form to be considered timely, the Claims Administrator must
24 receive the completed Claim Form by 11:59 p.m. Pacific Time on the ninetieth (90th)
25 day from the date Notice is disseminated. These deadlines shall be set forth clearly in
26 the Notice.

27 5.2 In order for a Claim Form to be approved, the Claimant must meet the
28 following criteria:

1 5.2.1 Claim Forms shall be executed under penalty of perjury, but
2 need not be notarized.

3 5.2.2 Claimants will be directed to submit their Claim Forms
4 electronically on the Settlement Website, but also may submit them by regular mail.

5 5.3 Claim Forms and Opt-Out Request Forms shall be available on the
6 Settlement Website. The Email Notice, the Postcard Notice and Publication Notice
7 shall direct Settlement Class Members to the Settlement Website which shall contain
8 the Claim Forms, Opt-Out Request Form and other documentation concerning the
9 Litigation and Settlement.

10 5.4 Submission of more than one Claim Form, or submission of an
11 incomplete Claim Form, may render the Claim Form submitted by that Settlement
12 Class Member invalid. The Claims Administrator shall send to all Settlement Class
13 Members who have submitted an incomplete or duplicative Claim Form a notice of
14 deficiency with instructions on how to cure the deficiency. Settlement Class
15 Members will have thirty (30) days to cure deficiencies.

16 5.5 Within twenty (20) days after the deadline to submit Claim Forms,
17 the Claims Administrator shall provide a spreadsheet to Class Counsel and to
18 Kohl's that contains sufficient information for the Parties to determine the
19 number of approved Claims made by the members of the Settlement Class. The
20 Claims Administrator shall also provide information regarding rejected Claims,
21 as well as the reasons why each Claim was rejected. The Claims Administrator
22 shall retain the originals of all Claim Forms (including any envelopes with the
23 postmarks) received from Claimants, and shall make copies or the originals
24 available to Kohl's or Class Counsel within three (3) business days upon
25 request.

26 5.6 Class Counsel and Kohl's shall each have the right to audit the
27 information provided in any Claim Form, and to challenge the Claims
28

1 Administrator's determinations regarding approval or denial of each Claim Form, in
2 accordance with the following procedures:

3 5.6.1 Within fourteen (14) days of having received the
4 information contemplated by Paragraph 5.5 of this AgreementAmended Agreement,
5 Class Counsel and Kohl's counsel shall meet and confer regarding any issues that
6 either Class Counsel or Kohl's believes need to be raised with the Claims
7 Administrator. Class Counsel and Kohl's agree to use their best efforts to resolve any
8 disputes. If Class Counsel and Kohl's cannot resolve these issues within twenty-eight
9 (28) days of having received the information contemplated by Paragraph 5.5 of this
10 AgreementAmended Agreement, then Class Counsel or Kohl's may, within five (5)
11 days of the expiration of the above twenty-eight (28) day period, provide written
12 notice of their intent to audit the Claims Administrator's determinations with respect
13 to a particular Claim or Claims.

14 5.6.2 If the audit is filed with the Claims Administrator, the
15 decision of the Claims Administrator may be appealed, within fourteen (14) days of
16 receipt of the Claims Administrator's decision, to the District Court. All decisions by
17 the District Court, or such person as the Court may direct, regarding audits shall be
18 made expeditiously and are binding, final decisions which shall not be subject to
19 appeal by any party. If a decision by the Claims Administrators is not presented to
20 the District Court or to such person as the Court may direct, within fourteen (14) days
21 of issuance, the decision of the Claims Administrator becomes a binding, final
22 decision not subject to further appeal.

23 5.6.3 Class Counsel and Kohl's may invoke their rights under these
24 paragraphs by providing written notice to each other and to the Claims
25 Administrator. The notice shall identify the Claims that are the subject of the audit,
26 and may be accompanied by supporting papers of no more than two (2) pages,
27 double-spaced, 12-point type (excluding exhibits).

1 5.6.4 Within fourteen (14) days of receipt of the notice and
2 supporting papers, the non-auditing party may submit a written response of no more
3 than two (2) pages, double-spaced, 12-point type (excluding exhibits).

4 5.6.5 Given the cost of the audit process relative to the size of the
5 individual claims, the Parties shall only appeal an audit decision to the Court, or to
6 such person as the Court may direct, if the audit decision affects at least 10,000
7 claims. Audit decisions by the Claims Administrator affecting less than 10,000
8 claims shall be final and non-appealable.

9 5.6.6 Notice of audits, any paperwork submitted in support of, or in
10 response to, any audit, and the decisions by the Claims Administrator may be served
11 by e-mail or United States Mail.

12 **6. Opt-Out Process**

13 6.1 A Settlement Class Member who wishes to exclude himself or herself
14 from this Settlement and from the release of claims pursuant to this Settlement shall
15 submit a Request to Opt Out. For a Request to Opt Out to be accepted, it must be
16 timely and valid. To be timely, it must be postmarked by the date which is ninety
17 (90) days after the last date Notice is disseminated. To be valid, the Request to Opt
18 Out must be signed and dated. Opt-Out Request Forms, substantially similar to the
19 attached Exhibit 6, shall be available for download from the Settlement Website and,
20 upon request by a Settlement Class Member, made available by the Claims
21 Administrator through First Class Mail.

22 6.2 A Settlement Class Member who submits a Request to Opt Out is not
23 eligible to recover a share of the Class Settlement Amount, except that if any
24 Settlement Class Member submits both a Request to Opt Out and a Claim Form, the
25 Request to Opt Out will be rejected, the Settlement Class Member will be treated as if
26 they are still a member of the class, and the Claim Form will be treated as valid and
27 processed.

28

1 6.3 The Claims Administrator shall maintain a list of persons who have
2 excluded themselves and shall provide such list to the Parties upon request. The
3 Claims Administrator shall retain the originals of all Requests to Opt Out (including
4 the envelopes with the postmarks) received from Settlement Class Members, and
5 shall make copies or the originals available to Kohl's or Class Counsel within three
6 (3) business days upon request.

7 6.4 Kohl's, at its sole discretion, has the right to terminate this Settlement
8 if more than 2% of the Settlement Class opt out, with the class size based on the
9 estimated number of California purchasers within the Settlement Class as provided
10 to Class Counsel during the Settlement negotiations.

11 **7. Objection Process**

12 7.1 A Settlement Class Member who wishes to object to the Settlement
13 must notify the District Court of his or her objection, in writing, within ninety (90)
14 days of the last date Notice is disseminated.

15 7.2 To be considered valid, an objection must be in writing, must
16 include the objector's name and address, and must include the basis for the objection
17 (including why the objector believes the Settlement is not in the best interests of the
18 Settlement Class), along with any and all documents that support the objection. The
19 objection must also indicate whether or not the objector intends to appear at the
20 hearing on the motion for final approval of the Settlement. The objection must be
21 filed with the Court on or before the deadline. Additional instructions regarding how
22 to object to the Settlement are contained in the Notices.

23 7.3 Settlement Class Members who do not file a timely written objection in
24 accordance with the procedures set forth in this AgreementAmended Agreement and
25 the Notices shall be deemed to have waived any objections to the Settlement and shall
26 forever be foreclosed from making any objection (whether by appeal or otherwise) to
27 the Settlement, or any aspect of the Settlement, including, without limitation, the
28 fairness, reasonableness, or adequacy of the Settlement, or any award of Attorneys'

1 Fees and Costs, reimbursement of costs and expenses and/or the Class
2 Representative Enhancement Payment.

3 **8. Distribution Process**

4 8.1 The Class Settlement Amount shall be funded through the QSF in
5 accordance with the provisions below. The timing of the payments by Kohl's to the
6 QSF shall be as follows:

7 8.1.1 Within ten (10) business days following the date on which the
8 District Court enters an order granting Preliminary Approval of the Settlement, or
9 within ten (10) business days of the date on which the District Court enters an order
10 approving the QSF, whichever is later, Kohl's shall transfer to the QSF 75% of
11 the Administrative Costs Portion of the Monetary Component of the Settlement.
12 Kohl's shall continue to periodically fund the QSF to cover additional Notice
13 and Administration Costs, if required, up to the amount provided in Paragraph
14 [3.1.2](#). In the event that the Settlement Effective Date does not occur, any
15 amounts actually used by the Claim Administrator for notice and administration
16 shall not be refundable to Kohl's. If, however, Kohl's has paid into the QSF
17 monies for Notice and Administration, those amounts not used by the Claims
18 Administrator shall be refunded to Kohl's.

19 8.1.2 Within ten (10) business days following the
20 Settlement Effective Date, Kohl's shall transfer to the QSF amounts sufficient
21 to cover that portion of the Monetary Component comprising the Attorneys'
22 Fees and Costs and Class Representative Enhancement Payment awarded by the
23 Court.

24 8.1.3 With the assistance of the Claims Administrator and to keep the
25 Administrative Costs Portion of the Monetary Component as low as possible, the
26 Parties shall agree on a reasonable and cost effective process to provide Gift Card
27 Credits to Claimants.

28 8.2 Distributions from the QSF shall be handled as follows:

1 8.2.1 Other than for purposes of paying invoices submitted by the
2 Claims Administrator, the QSF shall not distribute any payments required under this
3 ~~Agreement~~Amended Agreement until after the Settlement Effective Date has
4 occurred.

5 8.2.2 Attorneys' Fees and Costs awarded by the Court and the Class
6 Representative Enhancement Payment awarded by the Court shall be paid to the
7 individuals or entities specified by the Court.

8 **9. Qualified Settlement Fund**

9 9.1 At the times required by this ~~Agreement~~Amended Agreement, Kohl's
10 shall transfer to a trustee selected jointly by Class Counsel and Kohl's (the "Trustee")
11 the required portions of the Class Settlement Amount to be held in the QSF, which
12 shall be a separate trust organized and operated as a qualified settlement fund as
13 described in Treasury Regulation § 1.468B-1. Class Counsel and Kohl's jointly
14 shall cause the Trustee and the Claims Administrator, as applicable, to take such
15 steps as necessary to qualify the QSF as a qualified settlement fund under §
16 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and the regulations
17 promulgated pursuant thereto. Kohl's shall be considered the "transferor"
18 within the meaning of Treasury Regulation § 1.468B-1(d)(1). The Claims
19 Administrator shall be the "administrator" within the meaning of Treasury Regulation
20 § 1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to
21 establish the QSF in accordance with the terms hereof in conjunction with its
22 preliminary Approval of the Settlement and Notice.

23 9.2 The Court shall retain jurisdiction over the administration of the QSF.
24 Kohl's shall supply to the Claims Administrator the statement described in Treasury
25 Regulation § 1.468B-3(e)(2) no later than February 15 of the year following each
26 calendar year in which Kohl's makes a transfer to the QSF. In accordance with
27 Treasury Regulation § 1.468B-3(c), the transfers to the QSF will satisfy the "all
28 events test" and the "economic performance" requirement of § 1.461(h)(1) of the

1 Internal Revenue Code, and Treasury Regulation 1.461-1(a)(2). Accordingly,
2 Kohl's shall not include the income of the QSF in its income. Rather, in accordance
3 with Treasury Regulation § 1.468B-2, the QSF shall be taxed on its modified gross
4 income, excluding the sums transferred to it, and shall make payment of resulting
5 taxes from its own funds. In computing the QSF's modified gross income,
6 deductions shall be allowed for its administrative costs and other deductible expenses
7 incurred in connection with the operation of the QSF as permissible pursuant to
8 Treasury Regulation § 1.468B-2(b), including, without limitation, state and local
9 taxes, and legal, accounting, and other fees relating to the operation of the QSF.

10 9.3 Upon establishment of the QSF, the Trustee or Claims Administrator,
11 as appropriate, shall apply for an employer identification number for the QSF
12 utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury
13 Regulation § 1.468B-2(k)(4).

14 9.4 If requested by either Kohl's or the Claims Administrator, the Claims
15 Administrator, the Trustee and Kohl's shall fully cooperate in filing a relation-back
16 election under Treasury Regulation § 1.468B-1(j)(2) to treat the QSF as coming
17 into existence as a settlement fund as of the earliest possible date.

18 9.5 Following its deposits as described in this Agreement Amended
19 Agreement, Kohl's shall have no responsibility, financial obligation, or liability
20 whatsoever with respect to the notifications to the Class required hereunder, the
21 processing of Claims and Opt-Out Requests, the allowance or disallowance of
22 claims by Claimants, payments to Class Counsel, investment of QSF funds,
23 payment of federal, state, and local income, employment, unemployment, excise,
24 and other taxes imposed on the QSF or its disbursements, or payment of the
25 administrative, legal, accounting, or other costs occasioned by the use or
26 administration of the QSF, since it is agreed that such deposits shall fully discharge
27 Kohl's obligations to Claimants and Class Counsel and for expenses of
28 administration in respect to the disposition of the Monetary Component hereunder.

1 Rather, the Claims Administrator shall have sole authority and responsibility for the
2 administration of such funds and income thereon, disbursement to Claimants and
3 Class Counsel, and payment of taxes and administrative costs in accordance with
4 the provisions hereof, subject only to the rights of Kohl's or Class Counsel to audit
5 determinations of the Claims Administrator in accordance with this
6 AgreementAmended Agreement or to seek redress for any breach of the terms
7 hereof.

8 9.6 The Claims Administrator shall cause to be timely and properly filed,
9 on behalf of the QSF, all required federal, state, and local tax returns, information
10 returns and tax withholdings statements in accordance with the provisions of
11 Treasury Regulation § 1.468B-2(k) and Treasury Regulation § 1.468B-2(1)(2), as
12 well as the timely and proper payments of any federal, state, or local taxes
13 (including estimated taxes) and associated tax-related penalties and interest for
14 which the QSF may be liable. The Claims Administrator shall also be responsible
15 for the timely and proper response to any questions from, or audits regarding, such
16 taxes by the IRS or any state or local tax authority, as well as compliance with any
17 other tax-related requirements. The Claims Administrator may, at its own expense,
18 retain legal counsel and an independent, certified public accountant to consult with
19 and advise the Claims Administrator or the Trustee with respect to the preparation
20 and filing of such materials and the federal, state and local tax compliance of the
21 QSF. Either Kohl's or the Claims Administrator, independently or jointly, may, but
22 are not required to, apply to the Internal Revenue Service and/or any applicable
23 state taxing authority for an advance ruling as to any issue pertinent to the
24 qualification of the QSF under Internal Revenue Code § 468B and Treasury
25 Regulations promulgated thereunder, its tax status under applicable state law, and/or
26 its tax payment, reporting and withholding duties. Settlement Class Members shall
27 be responsible for payment of appropriate federal, state, and local income taxes on
28 any claim paid out pursuant to this AgreementAmended Agreement. If, in any such

1 ruling or otherwise, it is determined that Kohl's has any responsibility whatsoever
2 for payment of any federal, state or local tax on any claim paid out pursuant to this
3 Agreement Amended Agreement, then Kohl's shall have the right to terminate this
4 Agreement Amended Agreement. The Parties agree that no portion of any
5 distributions from the QSF to the Settlement Class Members is made in satisfaction
6 of any excluded liability as described in Treasury Regulation § 1.468B-1(g) related
7 to Qualified Settlement Funds. Notwithstanding any effort, or failure, of the Parties,
8 the Trustee or the Claims Administrator to treat the QSF as a qualified settlement
9 fund within the meaning of Treasury Regulation § 1.468B-1, any additional tax
10 liability, interest, or penalties incurred by Kohl's resulting from income earned by
11 the QSF shall be reimbursed from the QSF in the amount of such additional tax
12 liability, interest or penalties upon Kohl's written request to the Claims
13 Administrator.

14 9.7 The taxable year of the QSF shall be the calendar year in accordance
15 with Treasury Regulation § 1.468B-2(j). The QSF shall utilize the accrual method
16 of accounting within the meaning of § 446 (c) of the Internal Revenue Code.

17 9.8 The Claims Administrator may amend, either in whole or in part,
18 any administrative provision of this Section or the trust instrument through which
19 the QSF is established to maintain the qualification of the QSF pursuant to the
20 above described authorities provided that the rights and liabilities of the Parties
21 hereto and the Class are not altered thereby in any material respect.

22 **10. Comprehensive Waiver, Release, and Dismissal**

23 10.1 Settlement Class Member Released Claims - Released by Settlement
24 Class Members:

25 10.1.1 Subject to final approval by the Court of the Settlement and
26 other than for those payments, costs and expenses required to be paid pursuant to this
27 Agreement Amended Agreement, and for good and valuable consideration set forth
28 herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing

1 Settlement Class Members do hereby irrevocably release, acquit, and forever
2 discharge Kohl's (and all affiliates, parents or subsidiaries, officers, employees,
3 agents, and attorneys) against any and all claims, rights, penalties, demands, damages,
4 costs and expenses (including attorneys' fees and costs, other than those costs and
5 expenses required to be paid pursuant to this AgreementAmended Agreement),
6 causes of action, or liability of any kind arising out of or in connection with all of the
7 claims or causes of action that were made or could have been made in this Litigation
8 or in any other forum relating, in whole or in part, to the alleged acts, omissions,
9 facts, matters, transactions, circumstances asserted by in the Litigation, including
10 assertions that Kohl's improperly inflated or misstated its original and/or regular
11 prices in order to make its sale prices appear more attractive and thereby harmed
12 consumers.

13 10.1.2 The Settlement Class Member Released Claims includes a
14 release of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement
15 Class Members or by Class Counsel or any other attorney in connection with the
16 Litigation and this Settlement.

17 10.1.3 Releasing Settlement Class Members understand and agree that
18 the release of the Settlement Class Member Released Claims is a full and final
19 general release applying to both those Settlement Class Member Released Claims that
20 are currently known, anticipated, or disclosed to Releasing Settlement Class Members
21 and to all those Settlement Class Member Released Claims that are presently
22 unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members
23 arising out of the alleged facts, circumstances, and occurrences underlying: (i) the
24 claims set forth in the Litigation; or (ii) Kohl's conduct with respect to the Litigation.
25 Releasing Settlement Class Members acknowledge that the facts could be different
26 than they now know or suspect to be the case, but they are nonetheless releasing all
27 such unknown claims. In exchange for the good and valuable consideration set forth
28 herein, all Releasing Settlement Class Members further waive any and all rights or

1 benefits that they as individuals or the class may now have as a result of the alleged
2 facts, circumstances, and occurrences underlying the claims set forth in the Litigation
3 under the terms of § 1542 of the California Civil Code (or similar statute in effect in
4 any other jurisdiction), which provides as follows:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
6 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
7 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
8 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
9 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
10 **WITH DEBTOR.**

11 10.2 Kohl's Released Claims - Release by Kohl's:

12 10.2.1 Subject to final approval by the Court of the Settlement, and for
13 good and valuable consideration set forth herein, the receipt and sufficiency of which
14 is hereby acknowledged, Kohl's does hereby irrevocably release, acquit, and forever
15 discharge all Releasing Settlement Class Members of and from any and all claims,
16 rights, penalties, demands, damages, debts, accounts, duties, attorneys' fees, costs and
17 expenses (other than those costs and expenses required to be paid pursuant to this
18 AgreementAmended Agreement), liens, charges, complaints, causes of action,
19 obligations, or liability that could have been asserted but were not asserted as a
20 compulsory counterclaim against Releasing Settlement Class Members in this
21 Litigation.

22 10.2.2 Kohl's understands and agrees that the release of the Kohl's
23 Released Claims is a full and final general release applying to both those Kohl's
24 Released Claims that are currently known, anticipated, or disclosed to Kohl's and to
25 all those Kohl's Released Claims that are presently unknown, unanticipated, or
26 undisclosed to Kohl's arising out of the alleged facts, circumstances, and occurrences,
27 underlying any compulsory counterclaim that could have been asserted in the
28 Litigation. Kohl's acknowledges that the facts could be different than it now knows

1 or suspects to be the case, but it is nonetheless releasing all such unknown
2 counterclaims. In exchange for the good and valuable consideration set forth herein,
3 Kohl's further waives any and all rights or benefits that it may now have as a result of
4 the alleged facts, circumstances, and occurrences underlying such a potential
5 compulsory counterclaim under the terms of § 1542 (a) of the California Civil Code
6 (or similar statute in effect in any other jurisdiction), which provides as follows:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
8 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
9 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
10 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
11 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
12 **WITH DEBTOR.**

13 10.3 The Parties acknowledge that this Settlement, including the releases
14 provided in this section, reflects a compromise of disputed claims.

15 10.4 The Final Judgment shall dismiss the Litigation with prejudice as to
16 Kohl's and shall incorporate the terms of this release.

17 **11. Duties Of The Parties With Respect To Preliminary Court Approval**

18 11.1 On or before March 14, 2016, or such other date as the Court approves,
19 Class Counsel shall apply to the District Court for the entry of an order granting
20 preliminary approval of the Settlement substantially in the following form:

21 11.1.1 Conditionally Certifying the Settlement Class;

22 11.1.2 Preliminarily approving the Settlement;

23 11.1.3 Approving as to form and content the proposed notices and
24 notice plan, including the Email, Postcard and Publication Notices, Claim Form and
25 Opt-Out Request Form;

26 11.1.4 Scheduling a fairness hearing on the question of whether the
27 proposed Settlement should be finally approved as fair, reasonable, and adequate as
28 to the Settlement Class;

1 11.1.5 Approving Steven Russell and Donna Caffey as Settlement
2 Class Representatives;

3 11.1.6 Approving DOUGLAS CAIAFA, A Professional Law
4 Corporation, and LAW OFFICE OF CHRISTOPHER J. MOROSOFF as Class
5 Counsel for the Settlement Class; and

6 11.1.7 Approving KCC LLC as Claims Administrator.

7 11.2 Kohl's shall cooperate with Class Counsel as reasonably necessary to
8 obtain Preliminary Approval.

9 **12. Duties Of The Parties Following Preliminary Court Approval**

10 12.1 Following preliminary approval by the District Court of the Settlement,
11 and prior to the final fairness hearing, Class Counsel will submit a proposed Final
12 Judgment that will be agreed to by the Parties. The proposed Final Judgment shall:

13 12.1.1 Approve the Settlement, adjudging the terms thereof to be fair,
14 reasonable, and adequate, and directing consummation of its terms and provisions;

15 12.1.2 Approve Class Counsel's application for an award of
16 Attorneys' Fees and Costs;

17 12.1.3 Approve the Class Representative Enhancement Payment;

18 12.1.4 Certify the Settlement Class for Settlement purposes in
19 accordance with applicable legal standards and this ~~Agreement~~Amended Agreement;
20 and

21 12.1.5 Dismiss this Litigation between the Class Representatives and
22 the Settlement Class Members, on the one hand, and Kohl's on the other hand, on the
23 merits and with prejudice and permanently bar the Class Representatives, and all
24 Settlement Class Members (other than those who timely filed valid Opt-Out
25 Requests) from further prosecuting any of the Settlement Class Member Released
26 Claims against Kohl's.

27 12.2 Kohl's shall cooperate with Class Counsel as necessary to obtain final
28 approval and the dismissal of the Litigation as to Kohl's.

1 12.3 The Final Judgment shall not be considered final until the occurrence
2 of the Settlement Effective Date.

3 **13. Mutual Full Cooperation**

4 13.1 The Parties agree to cooperate fully with each other to accomplish the
5 terms of this Settlement, including but not limited to execution of all necessary
6 documents, and to take such other action as may reasonably be necessary to
7 implement the terms of this Settlement. The Parties shall use their best efforts,
8 including all efforts contemplated by this Settlement and any other efforts that may
9 become necessary by order of the Court or otherwise, to effectuate the terms of this
10 Settlement. As soon as practicable after execution of this Settlement, Class Counsel
11 shall, with the assistance and cooperation of Kohl's and its counsel, take all necessary
12 steps to secure the Court's Final Judgment.

13 **14. Statement of No Admission**

14 14.1 Nothing contained in this AgreementAmended Agreement shall be
15 construed or deemed an admission of liability, culpability, or wrongdoing. Kohl's
16 expressly denies liability for the claims asserted and specifically denies and does not
17 admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor
18 shall this AgreementAmended Agreement constitute an admission by Kohl's as to
19 any interpretation of laws or as to the merits, validity, or accuracy of any claims made
20 against it in the Litigation. Likewise, nothing in this AgreementAmended Agreement
21 shall be construed or deemed an admission by Class Representatives or the
22 Settlement Class with regard to the validity of any of Kohl's defenses or affirmative
23 defenses. Each of the Parties has entered into this Settlement with the intention to
24 avoid further disputes and litigation with the attendant inconvenience and expenses.

25 14.2 This AgreementAmended Agreement, and all related documents,
26 including the Settlement Agreement Term Sheet, the original Settlement
27 Agreement, the certification for settlement purposes entered pursuant to this
28 AgreementAmended Agreement, and any Claim Forms, Requests to Opt-Out or

1 Objections submitted by Settlement Class Members and all other actions taken in
2 implementation of the Settlement, including any statements, discussions, or
3 communications, and any materials prepared, exchanged, issued, or used during the
4 course of the negotiations leading to this Agreement Amended Agreement, are
5 settlement documents and shall be inadmissible in evidence and shall not be used
6 for any purpose in this Litigation or any other judicial, arbitral, administrative,
7 investigative, or other court tribunal, forum, or proceeding, or any other litigation
8 against Kohl's, for any purpose, except in an action or proceeding to approve,
9 interpret, or enforce the terms of this Agreement Amended Agreement.

10 14.3 The Claim Forms, Opt-Out Requests or Objections, or other evidence
11 produced or created by any Settlement Class Member in connection with the claims
12 resolution procedures pursuant to this Settlement, and any actions taken by Kohl's in
13 response to such Claim Forms, Opt-Out Requests, Objections, or other evidence, do
14 not constitute, and will not be deemed to constitute an admission by Kohl's of any
15 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or
16 executive order, or any obligation or duty at law or in equity.

17 **15. Voiding The Agreement Amended Agreement**

18 15.1 In the event that this Settlement is not approved, or if for any reason
19 the Settlement Effective Date does not occur, the Settlement Agreement Amended
20 Agreement shall be deemed null, void, and unenforceable and shall not be used nor
21 shall it be admissible in any subsequent proceedings either in this Court or in any
22 other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or
23 other proceeding, or other litigation against Kohl's.

24 15.2 In the event that the Court does not approve the Attorneys' Fees and
25 Costs in the amount request by Class Counsel, or in the event that the Attorneys' Fees
26 and Costs requested by Class Counsel are reduced, that finding shall not be a basis for
27 rendering the entire Amended Settlement Agreement null, void, or unenforceable.
28

1 Class Counsel retains their right to appeal any decision by the Court regarding the
2 Attorneys' Fees and Costs or Enhancement Award.

3 **16. Authority To Execute**

4 16.1 The respective signatories to this AgreementAmended Agreement each
5 represent that they are fully authorized to enter into this Settlement on behalf of the
6 respective Parties for submission to the Court for preliminary and final approval.

7 **17. No Prior Assignments**

8 17.1 The Parties represent, covenant, and warrant that they have not directly
9 or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber, to any person or entity any portion of any liability, claim, demand, action,
11 cause of action, or right released and discharged in this Settlement.

12 **18. Miscellaneous Provisions**

13 18.1 Construction. The Parties agree that the terms and conditions of this
14 Settlement are the result of lengthy, intensive arms-length negotiations between the
15 Parties and that this Settlement shall not be construed in favor of or against any party
16 by reason of the extent to which any party or her or his counsel participated in the
17 drafting of this Settlement.

18 18.2 Captions and Interpretations. Paragraph titles or captions contained in
19 this AgreementAmended Agreement are a matter of convenience and for reference,
20 and in no way define, limit, extend, or describe the scope of this Settlement or any
21 provision of this AgreementAmended Agreement. Each term of this
22 AgreementAmended Agreement is contractual and not merely a recital.

23 18.3 Modification. This AgreementAmended Agreement may not be
24 changed, altered, or modified, except in a writing signed by the Parties and approved
25 by the Court. Notwithstanding the foregoing, the Parties agree that any dates
26 contained in this AgreementAmended Agreement may be modified by agreement of
27 the Parties without Court approval if the Parties agree and cause exists for such
28

1 modification. This Settlement may not be discharged except by performance in
2 accordance with its terms or by a writing signed by the Parties.

3 18.4 Integration Clause. This Amended Agreement, the Exhibits hereto,
4 and any other documents delivered pursuant hereto contain the entire agreement
5 between the Parties relating to the resolution of the Litigation, and all prior or
6 contemporaneous agreements, understandings, representations, and statements,
7 whether oral or written and whether by a Party or such Party's legal counsel, are
8 merged in this AgreementAmended Agreement, except that this AgreementAmended
9 Agreement supersedes in its entirety the Settlement Agreement Term Sheet entered
10 into and as exchanged as an executed version on February 16, 2016, by and between
11 the Parties, as well as the original Settlement Agreement. No rights under this
12 Settlement may be waived except in writing and signed by the Party against whom
13 such waiver is to be enforced.

14 18.5 Binding on Assigns. This Settlement shall be binding upon, and insure
15 to the benefit of, the Parties and their respective heirs, trustee, executors,
16 administrators, successors, and assigns.

17 18.6 Class Counsel Signatories. It is agreed that because the Settlement
18 Class Member are so numerous, it is impossible or impractical to have each
19 Settlement Class Member execute this Settlement. The Email, Postcard, and
20 Publication Notices will provide all Settlement Class Members with a summary of the
21 Settlement, and will advise all Settlement Class Members of the binding nature of the
22 release. Excepting only those Settlement Class Members who timely submit an Opt-
23 Out Request, the Email, Postcard, and Publication Notice shall have the same force
24 and effect as if this Settlement was executed by each Settlement Class Member.

25 18.7 Counterparts. This AgreementAmended Agreement may be
26 executed by facsimile signature and in any number of counterparts, and when each
27 party has signed and delivered to each other at least one such counterpart, each
28 counterpart shall be deemed an original, and, when taken together with other signed

1 counterparts, shall constitute one and the same AgreementAmended Agreement,
2 which shall be binding upon and effective as to all Parties.

3 18.8 Applicable Law. This AgreementAmended Agreement shall be
4 governed by California law without regard to its choice of law or conflicts of law
5 principles or provisions.

6 **19. Disputes**

7 19.1 Mediation. The Parties agree that they will first attempt to resolve any
8 disagreements or disputes over the implementation of the terms of the Settlement, this
9 AgreementAmended Agreement, or any other documents necessary to effectuate the
10 Settlement through mediation with Judge Eugene Lynch (Ret.) or through another
11 mediator who is mutually agreeable to the Parties. In the event that one or more of
12 the Parties institutes a legal action, arbitration or other proceeding against any other
13 party or parties to enforce the provisions of this Settlement or to declare rights and/or
14 obligations under this Settlement, they will bear their own costs, expenses and
15 attorney's fees.

16 **20. Confidentiality**

17 20.1 Any and all negotiations related to this AgreementAmended
18 Agreement (including the negotiations related to the drafting of this
19 AgreementAmended Agreement, and any negotiations prior to preliminary approval
20 or between the time of preliminary and final approval) will remain strictly
21 confidential and shall not be discussed with anyone other than the Class
22 Representatives and Kohl's, their retained attorneys, their accountants and financial
23 or tax advisers, the retained consultants, the Court, and the mediator Hon. Eugene
24 Lynch and his staff, unless otherwise agreed to by Class Counsel and Kohl's or unless
25 otherwise ordered by the Court. The Parties will not issue any press release or
26 equivalent, nor will they respond to any press or media inquiry, other than to state
27 that the case has been settled and to direct any member of the press or media to the
28 Settlement Website, this AgreementAmended Agreement, the original Settlement

1 Agreement and the documents filed in the Litigation. This provision does not
2 prohibit the Parties from presenting to the Court as much information about their
3 settlement negotiations as they mutually agree is necessary, or as the Court requires,
4 to procure approval of this Settlement.

5 **21. Documents And Discovery**

6 21.1 Within thirty (30) days after a final, non-appealable Judgment is
7 entered disposing of all claims in the Litigation, Class Counsel agrees to take steps
8 necessary to destroy or erase all documents and data provided by Kohl's in the
9 Litigation. Upon request from Kohl's, Class Counsel shall certify in writing to
10 Kohl's their compliance with this provision. Nothing in this provision or
11 AgreementAmended Agreement shall prohibit Class Counsel from retaining a case
12 file, including all pleadings, motion papers, court filings, deposition transcripts, legal
13 memoranda, correspondence, notes, and work product, so long as any exhibits to such
14 documents which contain documents or data marked "CONFIDENTIAL" continue to
15 be treated as such under the Protective Order in this case.

16 #

17 I hereby attest that all other signatories listed, and on whose behalf the filing is
18 submitted, concur in the filing's content and have authorized the filing.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 FOR PLAINTIFFS AND THE PLAINTIFF CLASS

2 Dated: _____

By: _____

3 Christopher J. Morosoff
4 Law Office of Christopher J. Morosoff
5 Counsel for the Class

6 Dated: _____

By: _____

7 Douglas Caiafa
8 Douglas Caiafa, A Professional Law Corporation
9 Counsel for the Class

10 Dated: _____

By: _____

11 Steven Russell

12 Dated: _____

By: _____

13 Donna Caffey

14
15 FOR DEFENDANT

16 Dated: _____

By: _____

17 Kohl's Department Stores, Inc.

18 By: _____

19 Its: _____

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8
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15 Attorneys for Defendant
KOHL'S DEPARTMENT STORES, INC.

16
17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19
20 STEVEN RUSSELL, et al.
21 Plaintiff,
22 vs.
23 KOHL'S DEPARTMENT STORES,
INC., et al.,
24 Defendants.

Case No. 5:15-cv-01143-RSK-SP

**[PROPOSED] ORDER ON JOINT
STIPULATION RE (1) SETTING
HEARING DATE FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT; AND
(2) CLARIFICATION OF
SETTLEMENT THROUGH
AMENDMENT**

Courtroom: 850
Judge: Hon. R. Gary Klausner
Action Filed: June 11, 2015

1 Having read and considered the parties joint stipulation re (1) setting of hearing
2 date for final approval of the settlement of this action and (2) clarification of
3 settlement through amendment, it is hereby ORDERED AS FOLLOWS:
4

5 1. On March 14, 2016, Plaintiffs submitted a Motion for Preliminary
6 Approval of Class Action Settlement and Conditional Certification (the “Motion”),
7 seeking to certify for settlement purposes a class of “all persons who, while in the
8 State of California, and between June 11, 2011, and the present (the ‘Class Period’),
9 purchased from Kohl’s one or more items at a discount of at least 30% off of the
10 stated ‘original’ or ‘regular’ price, and who have not received a refund or credit for
11 their purchase(s).”

12 2. On April 11, 2016, this Court granted Plaintiffs’ Motion.

13 3. The hearing to consider final approval of the class settlement in this
14 action is set for November 7, 2016, at 9:00 am.

15 4. In addition, the Court preliminarily approves the proposed Amended
16 Class Action Settlement Agreement, which modifies the Class Action Settlement
17 Agreement to clarify that the Gift Card Credits to be provided to eligible class
18 members “are not redeemable for cash, except where required by law.” Amended
19 Class Action Settlement Agreement at 1.13 (emphasis added).
20

21 Dated: _____

HON. R. GARY KLAUSNER
UNITED STATES DISTRICT COURT