

FILED  
Court of the Superior Court

OCT 23 2020

By: L. Melin-Alvarez, Deputy

MARK HINKLE and DANIEL ROSSI,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

SPORTS RESEARCH CORPORATION,

Defendant.

Case No. 37-2020-00001422-CU-NP-NC

**[PROPOSED] ORDER (1)  
CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS, (2)  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT, (3) APPROVING  
NOTICE PROGRAM AND (4) SETTING  
FINAL APPROVAL HEARING**

Judge: Hon. Timothy M. Casserly

This matter came before the Court on Plaintiffs' Motion for Preliminary Approval of the Proposed Class Action Settlement in the case entitled *Mark Hinkle and Daniel Rossi, et al. v. SRC*, California Superior Court, County of San Diego, North County, Case No. 37-2020-00001422-CU-NP-NC (the "Action"). The Action is brought by plaintiffs Mark Hinkle and Daniel Rossi (together the "Named Plaintiffs"), individually and on behalf of all others similarly situated, against defendant Sports Research Corporation ("Defendant" or "SRC," and together with the Named Plaintiffs, the "Parties"). The Parties have entered into a Settlement Agreement and General Release (the "Agreement") to settle this Action, and Plaintiffs moved for preliminary approval of the proposed class action settlement (the "Motion for Preliminary Approval"). The Agreement, the exhibits thereto, and the exhibits to the Motion for Preliminary Approval, set forth the terms and

1 conditions for a proposed settlement and dismissal with prejudice of this Action (the "Settlement").

2 Having reviewed the Agreement and its exhibits, the Motion for Preliminary Approval and  
3 supporting memorandum of points and authorities, the pleadings and other papers on file in this  
4 Action, and statements of counsel, the Court finds that the Motion for Preliminary Approval should  
5 be GRANTED and that this Preliminary Approval Order should be entered. The terms and phrases  
6 used in this Preliminary Approval Order shall have the same meanings ascribed to them in the  
7 Agreement.

8 THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

9 1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall  
10 have the meanings ascribed to them in the Agreement.

11 2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the  
12 Parties, and all persons in the Settlement Class.

13 3. Scope of Settlement. The Agreement resolves claims alleged in the Complaint filed  
14 in this Action on January 9, 2020.

15 4. Preliminary Approval of Proposed Agreement. The Court has conducted a  
16 preliminary evaluation of the Settlement as set forth in the Agreement. The Court finds that the  
17 proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the  
18 Settlement Class. This determination permitting notice to the Settlement Class is not a final finding,  
19 but a determination that there is probable cause to submit the proposed Agreement to the Settlement  
20 Class and to hold a Fairness Hearing to consider the fairness, reasonableness, and adequacy of the  
21 proposed Settlement.

22 5. Class Certification for Settlement Purposes Only. The Court conditionally certifies,  
23 for purposes of the Settlement only, the Settlement Class (as defined below):

24 All residents of the United States and its territories who purchased  
25 for personal use, and not resale or distribution, a Covered Product  
26 between January 9, 2016 and January 9, 2020.

27 Specifically excluded from the Settlement Class are the following Persons:

28 1. SRC and its respective affiliates, employees, officers, directors,

1                   agents, and representatives, and their immediate family members;

2                 2. Settlement Class Counsel and partners, attorneys, and employees of  
3                   their law firms; and

4                 3. The judges who have presided over the Action, the case identified  
5                   in Paragraph I.A of the Agreement, or the mediations referenced in  
6                   Paragraph I.F of the Agreement, and their immediate family members.

7                 6. Class Representatives. The Court appoints the Named Plaintiffs (Mark Hinkle  
8                   and Daniel Rossi) to act as representatives of the Settlement Class.

9                 7. Class Counsel. The Court appoints Abbas Kazerounian and Jason A. Ibey of  
10                  Kazerouni Law Group, APC, as Class Counsel.

11                 8. Final Approval Hearing. At 1:30 p.m. on 3-21-21, at Department 31  
12                  of California Superior Court, County of San Diego, North County Division, 325 S. Melrose Dr,  
13                  Vista, CA 92081, or at such other date and time later set by Court order, this Court will hold a  
14                  Fairness Hearing on the fairness, adequacy, and reasonableness of the Agreement and to determine  
15                  whether (a) final approval of the Settlement embodied in the Agreement should be granted, and (b)  
16                  Class Counsel's application for attorneys' fees and costs, and service awards to Plaintiffs, should  
17                  be granted, and in what amount.

18                 9. Settlement Administrator. ILYM Group, Inc. ("ILYM") is hereby appointed as  
19                  the Settlement Administrator and shall be required to perform all the duties of the Settlement  
20                  Administrator as set forth in the Agreement and this Order.

21                 10. Class Notice. The Court approves the proposed plan for giving notice to the  
22                  Settlement Class through an appropriate notice program (consisting of email notice where  
23                  available, postcard notice to the extent a valid email address is not available, and an internet banner  
24                  ad campaign) and establishment of a Settlement Website, as more fully described in Plaintiffs'  
25                  Motion and the Agreement (the "Notice Program"). The Settlement Website shall include, at a  
26                  minimum, downloadable copies of the Class Notice, Claim Form, and Agreement, and shall be  
27                  maintained in accordance with the terms of the Agreement. The Notice Program, in form, method  
28                  and content, complies with the requirements of due process, and (i) constitutes the best notice

1 practicable under the circumstances, (ii) is reasonably calculated, under the circumstances, to  
2 apprise the Settlement Class of the pendency of the Action and of their right to object to or to  
3 exclude themselves from the proposed Settlement, (iii) is reasonable and constitutes due, adequate,  
4 and sufficient notice to all persons entitled to receive notice, and (iv) meets all requirements of  
5 applicable law. The Court hereby directs the Parties and the Settlement Administrator to commence  
6 the Notice Program no later than \_\_\_\_\_, 2020, which is thirty (30) days from the date of  
7 this Order (“Notice Deadline”). The Court further orders the Settlement Administrator to file proof  
8 of compliance with the Settlement Class Notice Program at or before the Fairness Hearing.

9       11.     Claim Form. The Court approves the Claim Form, Exhibit A to the Agreement,  
10 and directs that the Claim Form be available on request (either by letter, email or telephone) from  
11 the Settlement Administrator and downloadable from the Settlement Website.

12       12.     Requesting Benefits. The Court orders that any Settlement Class Member who  
13 wishes to request benefits under the Settlement sign and return a complete and timely Claim Form  
14 in compliance with the process set forth in the Agreement no later than \_\_\_\_\_, 2020, which  
15 is one hundred and twenty (120) days from the entry of this Order, and is also ninety (90) days from  
16 the Notice Deadline. Any Settlement Class Member who does not submit a complete and timely  
17 Claim Form in compliance with the Agreement shall not be entitled to any benefits under the  
18 Settlement, but, unless they opt out, nonetheless shall be barred by the Release and provisions of  
19 the Agreement and the Final Order and Judgment.

20       13.     Claims Deadline. Persons in the Settlement Class must submit online via the  
21 Settlement Website or postmark their completed Claim Form addressed to the Settlement  
22 Administrator no later than ninety (90) days following the Notice Deadline.

23       14.     Opt-Out and Objection Deadline. Persons in the Settlement Class who wish to either  
24 object to the Settlement or request exclusion from the Settlement Class must do so by \_\_\_\_\_,  
25 2020, which is ninety (90) calendar days after the Notice Deadline. Persons in the Settlement Class  
26 may not both object and opt-out. If a Person both requests to opt-out (be excluded) and objects,  
27 the request to opt-out will control.

1           15. Exclusion from the Settlement Class (Opt-Outs). The Court orders any members of  
2 the Settlement Class who wish to exclude themselves from the Settlement Class to submit  
3 appropriate, timely requests for exclusion in accordance with the procedures outlined in the  
4 Agreement and Class Notice, postmarked no later than \_\_\_\_\_, 2020 which is ninety (90)  
5 calendar days after the Notice Deadline.

6           a. To request exclusion from the Settlement Class, the request for exclusion must be  
7 personally signed by the Person in the Settlement Class requesting exclusion, contain a statement  
8 that indicates his or her desire to be excluded from the Settlement Class in the matter of *Mark*  
9 *Hinkle and Daniel Rossi, et al. v. SRC* (or sufficient words to indicate the present Action against  
10 SRC), and contain a statement that he or she is otherwise a Person in the Settlement Class and  
11 purchased one or more of the Covered Products during the Settlement Class Period.

12           b. No Person in the Settlement Class, nor any Person acting on behalf of or in concert  
13 or participation with that Person in the Settlement Class, may exclude any other Person or any  
14 group of Persons from the Settlement Class. Requests for exclusion must be made on an  
15 individual basis.

16           c. The Settlement Administrator will retain a copy of all requests for exclusion. Not  
17 later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator  
18 will file with the Court a declaration that lists all of the exclusion requests received.

19           d. The Court orders that any member of the Settlement Class who does not submit a  
20 timely, written request for exclusion from the Settlement Class (*i.e.*, become an Opt-Out) will be  
21 bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class  
22 Member has previously initiated or subsequently initiates individual litigation or other  
23 proceedings encompassed by the Release (as set forth in the Agreement).

24           e. If a timely and valid exclusion request is made by a Person in the Settlement Class,  
25 then the Agreement and any determinations and judgments concerning the Settlement will not bind  
26 the excluded Person.

27           f. All Settlement Class Members who do not exclude themselves or Opt-Out will be  
28 bound by all determinations and judgments concerning the Settlement.

1           22.     Opt-Out List. The Court orders the Settlement Administrator to provide the Opt-Out  
2 List to Settlement Class Counsel and SRC's Counsel no later than fourteen (14) Days after the Opt-  
3 Out and Objection Date, and then file with the Court the Opt-Out List with an affidavit attesting to  
4 the completeness and accuracy thereof no later than five (5) Days thereafter or on such other date  
5 as the Parties may direct.

6           23.     Objections. The Court orders any Settlement Class Member who does not become  
7 an Opt-Out and who wishes to object to the fairness, reasonableness, or adequacy of the Agreement  
8 to file with the Court and serve on Settlement Class Counsel and SRC's Counsel no later than  
9 \_\_\_\_\_, 2020 which is ninety (90) Days after the Notice Deadline, or as the Court may  
10 otherwise direct, a statement of objection signed by the Settlement Class Member containing all of  
11 the following information:

- 12           a.     The objector's full name, address, and telephone number;
- 13           b.     If represented by an attorney, the attorney's full name, address, and telephone  
number;
- 15           c.     A signed declaration that he or she is a member of the Settlement Class and  
purchased Covered Product(s);
- 17           d.     A written statement of all grounds for the objection;
- 18           e.     A statement of whether the objector intends to appear at the Fairness Hearing; and
- 19           f.     If the objector intends to appear at the Fairness Hearing through counsel, the  
objection must also identify the attorney representing the objector who will appear at the Fairness  
Hearing.

22           24.     The Court orders that any Settlement Class Member who does not file a timely  
23 written objection to the Settlement or who fails to otherwise comply with the requirements of  
24 Section VII.C of the Agreement shall be foreclosed from seeking any adjudication or review of the  
25 Settlement by appeal or by any other means.

26           25.     The Court orders any attorney hired by a Settlement Class Member for the purpose  
27 of objecting to the proposed Agreement, the Attorneys' Fees and Costs Award or the Service  
28 Awards and who intends to make an appearance at the Fairness Hearing to file with the Court and

1 serve on Class Counsel and SRC's Counsel a notice of intention to appear no later than  
2 \_\_\_\_\_, 2020, which is ninety (90) Days after the Notice Deadline or as the Court may  
3 otherwise direct. Counsel who do not adhere to these requirements will not be heard at the Fairness  
4 Hearing.

5       26. Concurrently with the filing of a request for final approval of the Settlement, the  
6 Settlement Administrator shall file a declaration with the Court that includes all objections to the  
7 Settlement that were received by the Settlement Administrator.

8       27. Either Class Counsel or the Settlement Administrator shall give notice to an  
9 objecting party of any continuance of the Final Approval Hearing.

10      28. Establishment of a P.O. Box. The Court directs the Settlement Administrator to  
11 establish a post office box in the name of the Settlement Administrator to be used for receiving  
12 requests for exclusion, and any other communications, and providing that only the Settlement  
13 Administrator, Settlement Class Counsel, SRC's Counsel, the Court, the Clerk of the Court and  
14 their designated agents shall have access to this post office box, except as otherwise provided in  
15 the Agreement.

16      29. Settlement Class Counsel applications. The Court directs that Settlement Class  
17 Counsel shall file their applications for the Attorneys' Fees and Costs Award and Named Plaintiffs'  
18 Service Awards within one hundred and five (105) Days from the entry of this Order in accordance  
19 with the terms set forth in the Agreement, and any supplemental briefing no later than ten (10) Days  
20 before the Final Approval Hearing.

21      30. Stay. Pending the final determination of whether the Settlement should be approved,  
22 all pre-trial proceedings and briefing schedules in the Action are stayed and suspended until further  
23 order of this Court.

24      31. Preliminary injunction. The Court preliminary enjoins all Settlement Class  
25 Members unless and until they have timely excluded themselves from the Settlement Class from  
26 (i) filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class  
27 member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any  
28 jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and

1       circumstances giving rise to the Action and/or the Released Claims; (ii) filing, commencing, or  
2       prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action  
3       on behalf of any member of the Settlement Class who has not timely excluded himself or herself  
4       (including by seeking to amend a pending complaint to include class allegations or seeking class  
5       certification in a pending action), based on, relating to, or arising out of the claims and causes of  
6       action or the facts and circumstances giving rise to the Action and/or the Released Claims; and  
7       (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative,  
8       regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and  
9       causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims.  
10      Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred  
11      by SRC and/or any other Released Person and Settlement Class Counsel as a result of the violation.  
12      The Agreement is not intended to prevent Settlement Class Members from participating in any  
13      action or investigation initiated by a state or federal agency. Such injunction will remain in force  
14      until the Court enters the Final Approval Order or until such time as the Parties notify the Court  
15      that the Settlement has been terminated. Nothing herein will prevent any Person in the Settlement  
16      Class, or any Person actually or purportedly acting on behalf of any such Person(s), from taking  
17      any actions to stay or dismiss any Released Claim(s). This injunction is necessary to protect and  
18      effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority  
19      to effectuate the Agreement and to enter judgment when appropriate, and is ordered in aid of this  
20      Court's jurisdiction and to protect its judgments. This injunction does not apply to any person who  
21      requests exclusion from the Settlement.

22      32. In the event final Settlement is not approved. If for any reason whatsoever the  
23      Agreement is terminated pursuant to its terms, the Settlement is not finalized, or the Settlement as  
24      detailed in the Agreement is not finally approved in all material respects by the Court, or if such  
25      approval is reversed, vacated, or modified in any material respect by the Court or by any other  
26      court, the certification of the Settlement Class shall be void and deemed vacated, and the Parties  
27      and the Action will return to the status quo as each existed prior to the Agreement as if the  
28      Settlement Class had never been certified, and no doctrine of waiver, estoppel, or preclusion will

1       be asserted in any proceedings, in response to any motion seeking class certification, any motion  
2       seeking to compel arbitration or otherwise asserted at any other stage of the Action or in any other  
3       proceeding. No reference to the Settlement Class, the Agreement, or any documents,  
4       communications, or negotiations related in any way thereto shall be made for any purpose in the  
5       Action or in any other action or proceeding, except as provided in the Agreement. No agreements,  
6       documents, or statements made by or entered into by any Party in connection with the Settlement  
7       may be used by the Named Plaintiffs, any Person in the proposed Settlement Class, Defendant, or  
8       any other Person to establish liability, any defense, and/or any of the elements of class certification,  
9       whether in the Action or in any other proceeding.

10       33. No Admission of Liability. The Agreement and any and all negotiations,  
11       documents, and discussions associated with it, will not be deemed or construed to be an admission  
12       or evidence of any violation of any statute, law, rule, regulation, or principle of common law or  
13       equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence  
14       relating to the Agreement will not be discoverable or used, directly or indirectly, in any way,  
15       whether in the Action or in any other action or proceeding, except for purposes of demonstrating,  
16       describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and  
17       the Final Approval Order.

18       34. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized  
19       to use all reasonable procedures in connection with approval and administration of the Settlement  
20       that are not materially inconsistent with this Order or the Agreement, including making, without  
21       further approval of the Court, minor changes to the form or content of the Class Notice and Claim  
22       Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves  
23       the right to approve the Agreement with such modifications, if any, as may be agreed to by the  
24       Parties, provided the Settlement Class Members are informed of the modifications through a notice  
25       available on the Settlement Website.

26

27

28

1           35. Schedule of Future Events. Accordingly, the following are the deadlines by which  
2 certain events must occur:

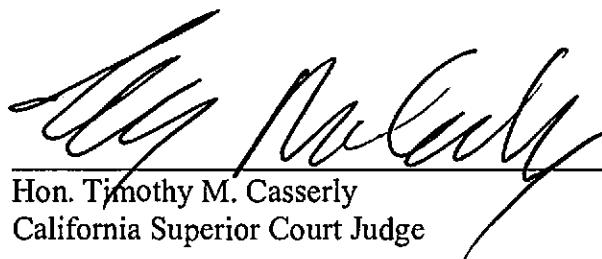
3	<u>1-25</u> , 2020 [30 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
5	<u>2-8</u> , 2020 [105 days after the date of this Order]	Deadline for filing of Plaintiffs' Motion for Attorneys' Fees and Costs Award and Service Awards
7	<u>2-23</u> , 2020 [120 days after the date of this Order]	Deadline for Settlement Class Members to Submit a Claim Form (Claim Period)
9	<u>2-23</u> , 2020 [120 days after the date of this Order]	Deadline to file objections OR submit requests for exclusion (Opt-Out and Objection Deadline)
11	<u>3-10</u> , 2020 [135 days after the date of this Order]	Deadline for Parties to file the following: (1) List of persons who made timely and proper requests for exclusion; (2) Proof of Class Notice; and (3) Motion for final approval of proposed class action settlement.
13	<u>3-9-2021</u> , 2020 at <u>1</u> .m. [7 days before the Final Approval Hearing]	Deadline for Plaintiffs to respond to any objections to the proposed class action settlement.
15	<u>3-26-2021</u> , 2020 at <u>1:30</u> p.m.	Final Approval Hearing (Fairness Hearing)

1           36. The Court reserves the right to adjourn or continue the Fairness Hearing, or any  
2 further adjournment or continuance thereof, without further notice other than announcement at the  
3 Fairness Hearing or at any adjournment or continuance thereof, and to approve the Settlement with  
4 modifications, if any, consented to by the Settlement Class Counsel and SRC's Counsel without  
5 further notice.

6           37. Neither the Agreement, nor any of its provisions, nor any of the documents  
7 (including but not limited to drafts of the Agreement, this Preliminary Approval Order, or the Final  
8 Approval Order and Judgment), negotiations, or proceedings relating in any way to the Settlement,  
9 shall be construed as or deemed to be evidence of an admission or concession by any Person,  
10 including SRC, and shall not be offered or received in evidence, or subject to discovery, in this or  
11 any other action or proceeding except in an action brought to enforce its terms or except as may be  
12 required by law or Court order.

13           IT IS SO ORDERED.

14  
15           Dated: 10-23-20

16             
Hon. Timothy M. Casserly  
California Superior Court Judge

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28