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~~ELECTRONICALLY RECEIVED~~
Superior Court of California,
County of San Diego

~~03/10/2021~~

FILED
Clerk of the Superior Court

MAR 26 2021

By: L. Melin-Alvarez, Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
NORTH COUNTY DIVISION**

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~~ FINAL APPROVAL
ORDER AND JUDGMENT

Judge: Hon. Timothy M. Casserly

The Court having held a Final Approval Hearing on March 26, 2021, notice of the Final Approval Hearing having been duly given in accordance with this Court's order (1) preliminarily approving class action settlement, (2) conditionally certifying Settlement Class, (3) approving Notice Program, and (4) setting Final Approval Hearing ("Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and good cause appearing therefore,

It is ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and Release, including its exhibits, fully executed on June 17, 2020 (the "Agreement"), and the definitions contained therein are incorporated by

1 reference in this Final Approval Order. The terms of this Court’s Preliminary Approval Order
2 issued on October 23, 2020 are also incorporated by reference in this Final Approval Order.

3 2. This Court has jurisdiction over the subject matter of this Action and over the
4 Parties, including all members of the Settlement Class certified for settlement purposes in this
5 Court’s Preliminary Approval Order.

6 3. The Settlement Class is defined as follows:

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

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

11 A. SRC and its respective affiliates, employees, officers, directors, agents,
12 and representatives, and their immediate family members;

13 B. Settlement Class Counsel and partners, attorneys, and employees of their
14 law firms; and

15 C. The judges who have presided over the Action, the case identified in
16 Paragraph I.A of the Agreement, or the mediations referenced in Paragraph I.F of the
17 Agreement, and their immediate family members.

18 4. The deadline for Settlement Class Members to request exclusion from the
19 settlement contemplated by the Agreement (the “Settlement”) was February 23, 2021. The two
20 persons who timely and validly excluded themselves from the Settlement Class include Monica
21 Martinez of Texas and Jan Toomer of New Mexico.

22 5. The deadline for Settlement Class Members to file an objection was February 23,
23 2021. No objections to the Settlement were received.

24 6. The Court finds that the Agreement is the product of arm’s-length settlement
25 negotiations between the Plaintiffs and Settlement Class Counsel, on the one hand, and Defendant
26 and Defendant’s Counsel, on the other hand, including following private mediation with the
27 Honorable Gail Andler (Ret.) of JAMS and several months of further negotiations between the
28 Parties.

1 7. The Court finds that Class Notice was disseminated to the Settlement Class
2 Members in accordance with the terms set forth in the Agreement and this Court's Preliminary
3 Approval Order. The Court further finds that the Class Notice was provided in accordance with
4 the terms set forth in the Agreement.

5 8. The Court finds that the Notice Program and claims submission procedures fully
6 satisfy the requirements of due process, and constitute the best notice practicable under the
7 circumstances.

8 9. The Court finds that the Agreement's terms constitute, in all respects, a fair,
9 reasonable, and adequate settlement as to all Settlement Class Members in accordance with
10 Section 382 of the Code of Civil Procedure, and directs consummation of the Settlement pursuant
11 to the terms and conditions of the Agreement. The Plaintiffs, Mark Hinkle and Daniel Rossi, in
12 their role as Class Representatives, and Settlement Class Counsel (Abbas Kazerounian and Jason
13 A. Ibey) adequately represented the Settlement Class for purposes of entering into and
14 implementing the Agreement. Accordingly, the Agreement is finally approved in all respects,
15 and the Parties are directed to perform its terms. The Parties and Settlement Class Members who
16 were not excluded from the Settlement Class are bound by the terms and conditions of the
17 Agreement.

18 10. The Court approves Class Counsel's application for attorneys' fees and litigation
19 costs, which the Court finds to be fair and reasonable according to the lodestar method. The also
20 Court finds Plaintiffs' counsel's hourly rates are reasonable. Accordingly, Class Counsel is
21 awarded a total of \$325,000 (in attorneys' fees and costs combined), and such amount is to be
22 paid by Defendant pursuant to and in the manner provided by the terms of the Agreement.

23 11. The Court finds the payment of a Service Award in the amount of \$2,500 to each
24 of the two Named Plaintiffs, Mark Hinkle and Daniel Rossi, is fair and reasonable. Accordingly,
25 each Class Representative is awarded \$2,500, paid by Defendant pursuant to and in the manner
26 provided by the terms of the Agreement.

27 12. The Settlement Administrator shall be paid reasonable notice and claims
28 administration expenses by Defendant, not to exceed \$104,192.50.

- 1 13. The Court approves the 14,862 valid and timely claims.
- 2 14. The Court denies the duplicative claims and any untimely claims.
- 3 15. The Settlement Class Members who submitted a timely and valid claim shall be
4 paid in accordance with the Agreement.
- 5 16. To the extent required under the terms of the Agreement, the Court approves the
6 National Consumer Law Center and the Constitutional Rights Foundation Orange County as the
7 *cy pres* beneficiaries, to share equally in any *cy pres* distribution of unclaimed settlement funds.
8 The Settlement Administrator shall certify to this Court what, if any amount is donated to the *cy*
9 *pres* beneficiaries and on what date that donation was transmitted and file the certification with
10 the Court.
- 11 17. The Settlement Class described in paragraph 3 above is finally certified, solely for
12 purposes of effectuating the Agreement and this Final Approval Order.
- 13 18. The requirements of Section 382 of the Code of Civil Procedure have been
14 satisfied for settlement purposes.
- 15 19. The Settlement Administrator is directed to distribute the settlement awards to the
16 Settlement Class pursuant to the terms of the Agreement, following the Effective Date.
- 17 20. Defendant shall commence the labeling changes required by the Agreement,
18 following the Effective Date.
- 19 21. Plaintiffs and each and every one of the Settlement Class Members
20 unconditionally, fully, and finally release and forever discharge the Released Persons from the
21 Released Claims as provided for in the Agreement. In addition, any rights of the Class
22 Representative and each and every one of the Settlement Class Members to the protections
23 afforded under Section 1542 of the California Civil Code and/or any other similar, comparable, or
24 equivalent laws, are terminated pursuant to IX.B.3 of the Settlement Agreement.
- 25 22. The Agreement (including, without limitation, its exhibits), and any and all
26 negotiations, documents, and discussions associated with it, shall not be deemed or construed to
27 be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of
28 common law or equity, of any liability or wrongdoing, by Defendant, or of the truth of any of the

1 claims asserted by Plaintiffs, and evidence relating to the Agreement shall not be discoverable or
2 used, directly or indirectly, in any way, whether in this Action or in any other action or
3 proceeding, except for purposes of enforcing the terms and conditions of the Agreement, the
4 Preliminary Approval Order, and/or this Order.

5 23. Solely for purposes of such suit, action, or other proceeding, to the fullest extent
6 they may effectively do so under applicable law, the Parties irrevocably waive and agree not to
7 assert, by way of motion, as a defense or otherwise, any claim or objection that they are not
8 subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an
9 inconvenient forum. These provisions are necessary to protect the Agreement, this Final
10 Approval Order and this Court's authority to effectuate the Agreement, and are ordered in aid of
11 this Court's jurisdiction and to protect its judgment.

12 24. As of the Effective Date, the Plaintiffs and all Settlement Class Members, whether
13 or not they have returned a Claim Form within the time and in the manner provided for, shall be
14 barred from asserting any Released Claims against SRC and/or any Released Persons, and all
15 Settlement Class Members shall have released any and all Released Claims as against SRC and
16 all Released Persons.

17 25. The Settlement Agreement and the Final Approval Order are binding on and
18 have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings
19 encompassed by the Release, maintained by or on behalf of the Plaintiffs and any or all
20 Settlement Class Members.

21 26. The Court hereby bars and permanently enjoins all Settlement Class Members
22 from (a) filing, commencing, prosecuting, intervening in, or participating in any way (as class
23 members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other
24 proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of
25 action or the facts and circumstances giving rise to the Action and/or the Released Claims, and (b)
26 organizing Settlement Class Members (or any subgroup thereof) into a separate class for purposes
27 of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including,
28 without limitation, by seeking to amend a pending complaint to include class allegations or

1 seeking class certification in a pending action) based on, relating to, or arising out of the claims
2 and causes of action or the facts and circumstances giving rise to the Action and/or the Released
3 Claims, except that Settlement Class Members are not precluded from participating in any
4 investigation or suit initiated by a state or federal agency.

5 27. If an appeal is filed as to this Final Approval Order, and if thereafter the Final
6 Approval Order is not ultimately upheld, all orders entered, stipulations made and releases
7 delivered in connection herewith, or in the Agreement or in connection therewith, shall be null
8 and void to the extent provided by and in accordance with the Agreement. If for any reason
9 whatsoever this Settlement is not finalized or there is no Effective Date of the Settlement as
10 detailed in the Agreement, the certification of the Settlement Class shall be void and the Parties
11 and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of
12 waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion
13 seeking class certification, any motion seeking to compel arbitration or otherwise asserted at any
14 other stage of the Action or in any other proceeding. No agreements, documents or statements
15 made by or entered into by any Party in connection with the Settlement may be used by Plaintiffs,
16 any person in the proposed Settlement Class, Defendant or any other person to establish liability,
17 any defense and/or any of the elements of class certification, whether in the Action or in any other
18 proceeding.

19 28. Finding that there is no just reason for delay, the Court orders that this Final
20 Approval Order shall constitute a final judgment pursuant to Section 904.1 of the Code of Civil
21 Procedure. The Court orders that, upon the Effective Date, the Agreement shall be the exclusive
22 remedy for any and all Released Claims of the Plaintiffs and each and every Settlement Class
23 Member against the Released Persons. The Clerk of the Court is directed to enter this Final
24 Approval Order on the docket forthwith.

25 29. The Court retains jurisdiction over the Parties and the Settlement to enforce the
26 Settlement and terms of this Final Approval Order, pursuant to California Rules of Court, rule
27 3.769(h).

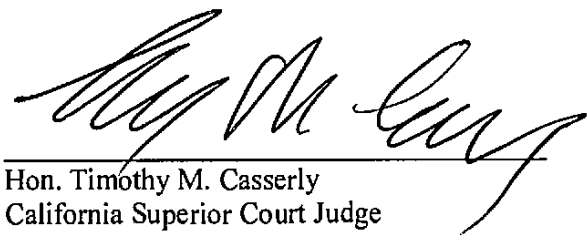
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30. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement.

IT IS SO ORDERED.

Dated: 3-26, 2021


Hon. Timothy M. Casserly
California Superior Court Judge