

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

On the terms set forth below and to the full extent reflected herein, Mark Hinkle and Daniel Rossi, on the one hand, and Defendant Sports Research Corporation (“SRC”), on the other, enter this Settlement Agreement to effect, among other things, a full and final settlement, release and dismissal with prejudice of all claims against SRC alleged in the case captioned Mark Hinkle et al. v. Sports Research Corporation, Superior Court of California, County of San Diego, North County Division, Case No. 37-2020-00001422-CU-NP-NC (filed January 9, 2020). Capitalized terms shall have the meanings ascribed to them in Section II of this Settlement Agreement.

### **I. RECITALS**

A. SRC is a family owned company that manufactures health and wellness products, including Sports Research® Premium MCT Oil and Sports Research® Turmeric Curcumin. On January 9, 2020, a putative class action complaint relating to the Covered Products, captioned Mark Hinkle et al. v. Sports Research Corporation, was filed in the Superior Court of California, County of San Diego, North County Division, Case No. 37-2020-00001422-CU-NP-NC.

B. SRC is a California corporation with its principal place of business in San Pedro, California.

C. In the Action, Plaintiffs Mark Hinkle and Daniel Rossi allege, inter alia, that claims made on the labeling of the Covered Products, and the packaging of the Covered Products, as well as on the web pages for the Covered Products, are false, deceptive, and/or misleading. Based upon these and other allegations, Plaintiffs assert claims under California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq.; California’s Unfair Competition Law, Cal. Bus & Prof. Code § 17200, et seq.; California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.; and Plaintiffs have also asserted negligent and intentional misrepresentation claims.

D. SRC denies all material allegations in the Action and has asserted 25 affirmative defenses. SRC specifically denies that it has engaged in any wrongdoing whatsoever, that it has

violated any of the laws, statutes, or legal principles identified in the Action, that it has any liability in connection with the claims asserted or that could have been asserted in the Action, that its alleged wrongdoing or violations caused any damages to Named Plaintiffs or anyone else, and further denies that the claims in the Action are appropriate for handling on a class basis, other than for the purposes of settlement.

E. The Named Plaintiffs and Settlement Class Counsel have conducted an investigation into the business and practices of SRC, have received and reviewed information from SRC, and have conducted informal discovery with SRC.

F. This Settlement Agreement was reached after a full day of mediation before the Honorable Gail Andler (Ret.) of JAMS, and following several subsequent in-person and telephonic discussions between the Parties.

G. SRC has sold approximately 700,000 units of the Covered Products from 2016 through 2019.

H. Plaintiffs reserve the right to obtain confirmatory discovery in the form of (1) one set of Interrogatories, limited to 10 questions, (2) one Rule 30(b)(6) confirmatory deposition, not to exceed two hours, and (3) seek third-party document discovery from Retailers of the Covered Products.

I. The Named Plaintiffs and Settlement Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Settlement Class and the Settlement Class Members, as well as to Named Plaintiffs, and resolves all issues that were or could have been raised in the Action without prolonged Action and the risks and uncertainties inherent in the Action.

J. The Named Plaintiffs and Settlement Class Counsel have concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class and the Settlement Class Members.

K. Without admitting or conceding any wrongdoing, liability, or damages, or the appropriateness of the Named Plaintiffs' claims or similar claims for class treatment, SRC consents to the Settlement solely to avoid the expense, inconvenience, and inherent risk of the

Action as well as the concomitant disruption of its business operations.

L. Nothing in this Settlement Agreement shall be construed as an admission or concession by SRC of the truth of any allegations raised in the Action or of any fault, wrongdoing, liability, or damages of any kind, or of the suitability of this Action for class action treatment.

M. This Settlement Agreement, its terms, documents related to it shall not be offered or received into evidence in the Action or in any other action or proceeding to establish any liability or admission by SRC. Additionally, the negotiations or proceedings connected with the Settlement Agreement, including, without limitation, all discussions related to the mediations described above, are confidential and are protected by California Evidence Code Sections 1119, 1152 and 1154.

N. This Settlement Agreement, its terms, documents related to it, and the negotiations or proceedings connected with it are contingent on Amazon.com and The Vitamin Shoppe's production of contact information for the Settlement Class Members that is reasonably retrievable, which information may be provided before or after the issuance of the Preliminary Approval Order, or in the alternative, the provision of notice by those third-parties of the proposed Settlement to their customers.

## **II. DEFINITIONS**

As used herein, the following terms have the meanings set forth below.

A. "Action" means the action captioned Mark Hinkle and Daniel Rossi, et al. v. Sports Research Corporation, Superior Court of California, County of San Diego, North County Division, Case No. 37-2020-00001422-CU-NP-NC, filed January 9, 2020.

B. "Attorneys' Fees and Costs Award" means any Court-approved award of attorneys' fees and Action costs to Settlement Class Counsel made in accordance with Section VI, Paragraph A.

C. "Cash Award" means the voucher and cash compensation that each Settlement Class Member who submits a Valid Claim shall be entitled to receive as detailed in Section IV, Paragraph D.

D. “Claim Deadline” means one hundred and twenty (120) Days after the Preliminary Approval Date.

E. “Claim Form” means the claim form that Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for a Cash Award, which document shall be substantially in the form of Exhibit A hereto. Among other things, the Claim Form requires the Settlement Class Member to declare under penalty of perjury that s/he purchased at least one of the Covered Products during the Class Period, and if the Covered Product is an MCT Oil product purchased on or after January 1, 2019, declare under penalty of perjury that the MCT Oil product’s label contained the representation that it had “beneficial fats”; “healthy fats”; and “anti-bacterial, “anti-microbial” and “anti-viral properties”. Additional requirements relating to the completion of Claim Forms are set forth in Section V.

F. “Class Notice” means the Court-approved forms of notice to the Settlement Class, which shall notify Persons in the Settlement Class of the Claim Deadline, entry of the Preliminary Approval Order, the scheduling of the Final Approval Hearing, and the process for submitting a Claim Form, among other things. The Class Notice shall consist of (1) email notice to customers; (2) mail notice for those consumers that an email is unknown or the known email is invalid; (3) an internet banner ad campaign or national publication if there is not a 90% reach via the email and US mail notices; and (4) detailed notice on the Settlement Website. The email notice shall be substantially in the form attached hereto as Exhibit B. The mail notice shall be substantially in the form attached hereto as Exhibit C. The internet banners advertisements shall be substantially in the form attached hereto as Exhibit D. The notice on the Settlement Website shall be substantially in the form attached hereto as Exhibit E.

G. “Class Period” means January 9, 2016 through January 9, 2020.

H. “Court” means the Superior Court of California, County of San Diego, North County Division.

I. “Covered Products” means the MCT Oil products and Turmeric Curcumin C3 products manufactured by SRC and bearing one of the product labels shown on Exhibit F (the “MCT Product” and the “Turmeric Product,” respectively). A full list of such products and the

labels subject to the Settlement are attached hereto as Exhibit F.

J. “Cy Pres Recipients” means the two charitable entities to be selected by the Parties and approved by the Court, one of which is to be selected by the Named Plaintiffs and Settlement Class Counsel, and the other of which is to be selected by SRC.

K. “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Federal or State of California legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal or State of California legal holiday.

L. “Distributor” means Persons that sell or have sold Covered Products on a wholesale basis for resale to consumers by Retailers or others, but not SRC.

M. “Effective Date” means the date determined in accordance with Section XI.

N. “Final” means final as detailed in Section XI, Paragraph B.

O. “Final Approval Hearing” or “Fairness Hearing” means the hearing at which the Court considers the fairness, reasonableness, and adequacy of the Settlement, and whether it should be finally approved by the Court.

P. “Final Order And Judgment” or “Final Approval Order” means the order detailed in Section IX and in substantially the form attached hereto as Exhibit G, pursuant to Section 904.1 of the Code of Civil Procedure.

Q. “Motion for Preliminary Approval” means the motion requesting a Preliminary Approval Order.

R. “Named Plaintiffs” means Mark Hinkle and Daniel Rossi, collectively.

S. “Notice And Administration Costs” means any and all reasonable and authorized costs and expenses of notice and administration relating to this Settlement Agreement, as detailed in Section IV, Paragraph C.

T. “Notice Date” or “Notice Deadline” means the first day on which the Settlement

Administrator begins disseminating the Class Notice, and shall be no later than thirty (30) Days after the Preliminary Approval Date.

U. “Opt-Out” means a Person in the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section VII, Paragraph D, and who does not submit a Claim Form to the Settlement Administrator by the Claim Deadline (the submission of which rescinds any request for exclusion) or otherwise rescind his or her opt-out as specified in Section VII, Paragraph D.

V. “Opt-Out And Objection Date” means the date by which a Person in the Settlement Class may timely submit a request for exclusion from the Settlement Class as set forth in Section VII, Paragraph D, and the date by which Settlement Class Members must file objections, if any, to the Settlement Agreement in accordance with Section VII, Paragraph C. The Opt-Out And Objection Date shall be no later than one hundred and twenty (120) Days after the Preliminary Approval Date.

W. “Opt-Out List” means a list of Opt-Outs, which shall be compiled by the Settlement Administrator pursuant to Section VII, Paragraph D.

X. “Parties” means Named Plaintiffs and Settlement Class Members together with SRC. Named Plaintiffs and Settlement Class Members shall be collectively referred to as one “Party,” with SRC as the other “Party.”

Y. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, member, shareholder, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity, and such individual’s or entity’s spouse, heirs, and past, present, and future direct and indirect predecessors, successors, representatives and assignees, parents, subsidiaries, affiliates, joint venturers, unincorporated entities or associations, shareholders, joint stock companies, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers, and attorneys of any of the foregoing.

Z. “Preliminary Approval Date” means the date that the Preliminary Approval Order is executed and entered by the Court and received by counsel for the Parties.

AA. “Preliminary Approval Order” means the order described in Section VIII as proposed in substantially the form attached hereto as Exhibit H.

BB. “Release” means the release and discharge, as of and through the date that the Settlement Administrator first publishes Class Notice on the Settlement Website, by the Named Plaintiffs and all Settlement Class Members (and their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest, and successors), and shall include the agreement and commitment by the Named Plaintiffs and all Settlement Class Members not to now or hereafter initiate, maintain, or assert against the Released Persons or any of them, any Released Claim that has been, could have been, may be, or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Action or in any other legal proceeding, court action, or before any administrative body (including, without limitation, any regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body, arising out of or relating to the Released Claims.

CC. “Released Claims” means any and all claims, claims for damages, equitable (including injunctive relief), legal and/or administrative relief, interest, demands, or rights, including without limitation, claims for damages of any kind, including but not limited to those in excess of actual damages, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other sources, all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of any express or implied warranties, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of any consumer legal remedies statutes, breach of fiduciary duty, violation of elder abuse and dependent adult civil protection acts, unfair business or trade practices, unfair competition, false advertising, restitution, rescission, compensatory and exemplary or punitive damages, injunctive or declaratory relief, attorneys’ fees, interests, costs, penalties, and any other claims, whether known or unknown, alleged or

not alleged in the Action, suspected or unsuspected, contingent or matured, under federal, state, or local law, which the Named Plaintiffs and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences, during the Class Period, arising from or relating to the Covered Products (collectively, “Claims”), including, without limitation, the Claims made by the Named Plaintiffs in the Action, and also including, without limitation, causes of action for violation of the Consumers Legal Remedies Act, violation of the California Business & Professions Code, and breach of express or implied warranty, and including, without limitation, Claims that have been, could have been, may be or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Action or in any other court action or before any administrative body (including, without limitation, any regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body, arising out of or relating to the Claims, but excluding claims for bodily injury.

DD. “Released Persons” means: (1) SRC, (2) any Person in the chain of distribution of the Covered Products, including but not limited to (a) raw material suppliers, (b) Distributors, and (c) Retailers, (3) any Person or entity that manufactured or sold the Covered Products, (4) the affiliates of any of the foregoing Persons or entities described in (1)–(3) of this Paragraph II.FF, and (5) each of the respective past, present, and future direct and indirect predecessors, successors, assigns, parents, subsidiaries, owners (direct or indirect), shareholders, affiliates, joint venturers, partnerships, limited partnerships, limited liability companies, corporations, unincorporated entities or associations, any business entities or legal entities, associations, joint stock companies, legal representatives, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, and insurers of any of the foregoing entities and Persons described in (1)–(4) of this Paragraph II.FF.

EE. “Releasing Persons” includes (1) the Named Plaintiffs, on behalf of themselves and all Settlement Class Members, (2) all Settlement Class Members, and (3) the respective present, former and future administrators, agents, assigns, affiliates, attorneys, executors, heirs,



partners, predecessors-in-interest, and successors of each of the Named Plaintiffs and all Settlement Class Members.

FF. “Retailers” means Persons that sell or have sold the Covered Products directly to consumers, but not SRC or its Distributors.

GG. “Service Award” means any Court-approved award to the Named Plaintiffs, made in accordance with Section VI, Paragraph B.

HH. “Settlement” means the settlement of the Action as contemplated in the Settlement Agreement.

II. “Settlement Account” means the interest-bearing account designated by the Settlement Administrator to receive deposits into, hold, and disburse the monies paid by SRC, the interest thereon of which shall be added to the account.

JJ. “Settlement Administrator” means the settlement administrator appointed by the Court which will administer Class Notice, maintain the Settlement Website, undertake the other actions specified in this Settlement Agreement, and engage in any other tasks related to the Settlement as directed by the Court, or jointly by Settlement Class Counsel and SRC’s Counsel. The Parties recommend ILYM Group, Inc. to serve as Settlement Administrator.

KK. “Settlement Agreement” means this Settlement Agreement and General Release, including all exhibits hereto.

LL. “Settlement Class” or “Class” means all Persons who fall within the description of the class as detailed in Section III, Paragraph A.

MM. “Settlement Class Counsel” means Abbas Kazerounian and Jason A. Ibey of Kazerouni Law Group, APC.

NN. “Settlement Class Members” means all Persons in the Settlement Class who are not Opt-Outs.

OO. “Settlement Class Notice Program” or “Notice Program” means the program by which notice of this Settlement Agreement shall be provided to the Settlement Class.

PP. “Settlement Website” means the dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the

Settlement, including, without limitation, this Settlement Agreement, the Class Notice, and the Claim Form.

QQ. “SRC” means Defendant Sports Research Corporation.

RR. “SRC’s Counsel” means Jeffrey M. Blank and Norma V. Garcia of Garcia Rainey Blank & Bowerbank, LLP.

SS. “Valid Claim” means a timely and fully completed Claim Form submitted by a Person in the Settlement Class as detailed in Section V.

TT. The plural of any defined term includes the singular, and vice versa, as made necessary in context.

### **III. PROPOSED CLASS FOR SETTLEMENT PURPOSES**

A. Pursuant to California Code of Civil Procedure 382, for purposes of the Settlement only, and subject to Court approval, the following Settlement Class shall be certified:

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

Specifically excluded from the Settlement Class are the following Persons:

1. SRC and its respective affiliates, employees, officers, directors, agents, and representatives, and their immediate family members;
2. Settlement Class Counsel and partners, attorneys, and employees of their law firms; and
3. The judges who have presided over the Action, the case identified in Paragraph I.A, or the mediations referenced in Paragraph I.F, and their immediate family members.

B. Solely for the purpose of implementing this Settlement Agreement, Named Plaintiffs and Settlement Class Counsel will apply for, and SRC will not oppose, an order preliminarily certifying the Settlement Class, appointing Mark Hinkle and Daniel Rossi as

representatives of the Settlement Class, and appointing the following as counsel for the Settlement Class:

Abbas Kazerounian KAZEROUNI LAW GROUP, APC 245 Fischer Avenue, Suite D1 Costa Mesa, CA 92626 Telephone: (800) 400-6808	Jason A. Ibey KAZEROUNI LAW GROUP, APC 321 N Mall Drive, Suite R108 St. George, Utah 84790 Telephone: (800) 400-6808
--	--

C. Solely for the purpose of implementing this Settlement Agreement, Named Plaintiffs and Settlement Class Counsel will seek, and SRC will not oppose, an order from the Court appointing ILYM Group, Inc. as the Settlement Administrator.

D. Any dispute relating to the Settlement Administrator and Class Notice prior to moving for preliminary approval of the proposed Settlement shall be resolved by a neutral mediator.

E. Solely for the purpose of implementing this Settlement Agreement, Named Plaintiffs and Settlement Class Counsel will seek, and SRC will not oppose, an order from the Court preliminarily finding that the Named Plaintiffs and Settlement Class Counsel are adequate representatives of the Settlement Class.

F. SRC does not agree to the certification of the Settlement Class (or any other class) or to the appointment or adequacy of the Named Plaintiffs or Settlement Class Counsel for any purpose other than to effectuate the Settlement Agreement, and would oppose any such certification, appointment, or finding of adequacy, respectively, for any other purpose.

G. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated, and no reference to the Settlement Class, this Settlement Agreement, or any documents, communications or negotiations related in any way thereto shall be made for any purpose, by any Person (including Opt-Outs), in the Action or in any other action or proceeding; in addition, the Action shall proceed as if the Settlement Class had never been preliminarily certified or certified and all documents and communications that

have been exchanged by counsel for the parties in this matter, including this Agreement and all drafts of such Agreement, shall be deemed as Confidential-Attorney Eyes' Only under the stipulated protective order whether such documents have previously been so marked, unless such documents have been filed with the Court and are not under seal.

H. Upon execution of this Settlement Agreement, the Parties shall immediately and jointly move for a complete stay of the Action, except insofar as filings, motions, or hearings may be necessary in connection with the Preliminary Approval Order or Final Order And Judgment.

I. SRC shall be responsible for payment of Notice and Administration Costs, as further described herein, and may participate in the settlement administration process.

#### **IV. BENEFITS TO THE CLASS**

A. **Timing of SRC's Payment Obligations.** SRC shall have no obligation to make any payments until the Court enters a Preliminary Approval Order. Within twenty-one (21) Days after the Preliminary Approval Order, SRC shall wire transfer to the Settlement Account the amount as stated by the Settlement Administrator as necessary for the Settlement Class Notice Program, but not to exceed \$110,000. SRC shall have no other obligations to make any other payments until the Effective Date.

B. **Limitations on Payments or Distributions from the Settlement Account.** Until the Effective Date, the Settlement Administrator shall make no payments or distributions from the Settlement Account, except as provided in Section IV Paragraph C. All distributions or payments of Cash Awards, Attorney Fees and Costs Awards, Service Awards and any payments to the Cy Pres Recipient shall only be made after the Effective Date and as provided in this Settlement Agreement.

C. **Notice And Administration Costs.** After the Court enters a Preliminary Approval Order, the Settlement Administrator may pay from the Settlement Account reasonable Notice And Administration Costs arising under this Settlement Agreement, as those costs are incurred and payment becomes due.

D. **Cash Awards.** Settlement Class Members who submit Valid Claims shall be

entitled to receive from SRC: (1) voucher of \$7.00 towards any product manufactured or sold by SRC, valid for one year and freely transferrable; and (2) payment of \$3.00 cash. The details, requirements, terms and limits of the claims process are further set forth in Section IV, Paragraph E, and in Section V, of this Settlement Agreement. Settlement Class Members may submit only one Claim Form to participate in the Settlement, regardless of the number of bottles of the Covered Products purchased during the Class Period.

**E. Distribution of Cash Awards.**

1. No later than ten (10) Days after the Parties have resolved any disputes regarding rejected claims, in accordance with the process identified in Section V, Paragraphs B and C, the Settlement Administrator will provide Class Counsel and SRC's Counsel with a report identifying the total of the Cash Awards that would be payable if all Valid Claims were paid.

2. Payment of Valid Claims shall commence within thirty (30) Days after the Effective Date, to be completed no later than one hundred twenty (120) Days after the Effective Date.

3. The checks for the cash portion of the Settlement shall have a notation on them stating that they will be void after ninety (90) Days. After the ninety (90) Day period expires, the Settlement Administrator shall void any uncashed checks and distribute any remainder to the Cy Pres Recipient within sixty (60) Days of voiding all uncashed checks, or as otherwise ordered by the Court.

**F. Labeling, Website, and Literature Changes.**

1. Without admitting wrongdoing or liability and solely to avoid the cost and disruption of proceeding further with the Action, SRC shall, to the extent it has not already done so, commencing ninety (90) Days after the Effective Date, and except as described herein, modify the labels of Covered Products, any written material provided to Retailers who sell Covered Products, and SRC's website to: (i) cease representing that the MCT Product contains "healthy fats" and "beneficial fats"; describing the MCT Product

as “healthy” describing the products as “a natural sustained energy”; representing the MCT Product contains “anti-bacterial,” “anti-microbial” and “anti-viral properties”: and (ii) cease representing that the Turmeric Product has “anti-inflammatory” and “anti-oxidant benefits”. SRC’s website presentations regarding the Covered Products shall, to the extent reasonably commercially practicable, conform to Section IV Paragraph F.1.

2. Modifications made by SRC under Section IV, Paragraph F.1 shall not be construed or interpreted as an admission by SRC regarding the validity of any claims asserted in the Action or of any alleged impropriety of statements used or omitted on other versions of the labeling or packaging of the Covered Products or on any web pages.

3. Covered Products manufactured by SRC starting ninety (90) Days after the Effective Date shall be labeled and/or packaged in conformity with the terms of the Settlement Agreement.

4. SRC shall not be required to recall, relabel, repackage, remove from shelves, or pull or withdraw from distribution or inventory any Covered Products that have been manufactured or shipped by SRC prior to the date starting ninety-one (91) Days after the Effective Date.

G. **Cy Pres Distribution.** If the Effective Date occurs, SRC shall have no reversionary interest in any portion of the cash payments to Settlement Class Members, and any unclaimed portion of the cash component of the Settlement, including any sums allocated to settlement checks that have not been cashed within one hundred and twenty (120) Days of the Effective Date, shall be paid to the Cy Pres Recipient.

## V. **CLAIMS PROCESS**

A. **Notice and Submission of Claims.** The Class Notice shall provide information regarding the filing of Claim Forms. Claim Forms shall be available from the Settlement Administrator and on the Settlement Website. To make a Valid Claim, Settlement Class Members must: (1) complete a Claim Form, providing all of the information and documentation required by the Settlement Agreement and the Claim Form to the Settlement

Administrator no later than one hundred and twenty (120) Days after the Preliminary Approval Date, i.e., the Claim Deadline. Only Settlement Class Members who submit Valid Claims by the Claim Deadline shall be entitled to a Cash Award.

B. **Determination of Validity.** The Settlement Administrator shall be responsible for reviewing all Claim Forms to determine which claims represent Valid Claims.

1. Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement, or is postmarked or submitted electronically later than the Claim Deadline, shall be rejected.

2. Following the Claim Deadline, the Settlement Administrator shall provide a report of any rejected claims to SRC's Counsel and Settlement Class Counsel. If Settlement Class Counsel do not agree with the rejection of a claim, they shall bring it to the attention of SRC's Counsel, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, the Parties shall provide the Settlement Administrator with their positions regarding the disputed, rejected claim. The Settlement Administrator, after considering the positions of the Parties, will make the final decision in its sole discretion.

C. **Fraudulent Filings.** At any time during the claims' process, if the Settlement Administrator has a reasonable suspicion of fraud, the Settlement Administrator shall immediately notify both Settlement Class Counsel and SRC's Counsel of that fact and the basis for its suspicion. Settlement Class Counsel and SRC's Counsel shall endeavor to reach an agreed upon appropriate solution to any suspected fraud. If necessary, SRC may suspend the claims' process, and the Parties will promptly seek assistance from the Court.

## VI. **ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

A. **Attorneys' Fees and Costs Award.** Settlement Class Counsel will apply to the Court for an aggregate Attorneys' Fees and Costs Award of up to three-hundred twenty-five thousand dollars (\$325,000) to be paid by SRC. SRC will not oppose a properly supported application(s) for an aggregate Attorneys' Fees and Costs Award of up to three-hundred twenty-five thousand dollars. Any Attorneys' Fees and Costs Award to be paid pursuant to this

Paragraph VI.A will be paid by SRC within twenty-one (21) Days after the Effective Date by wire transfer to an account designated by Settlement Class Counsel.

B. **Service Award.** The Named Plaintiffs will apply for Service Awards not to exceed two thousand five hundred dollars (\$2,500.00) to each Named Plaintiff. Any Service Award provided by the Final Order And Judgment (up to, but not exceeding two thousand five hundred dollars (\$2,500.00) to each Named Plaintiff) shall be paid by SRC. Any Service Award to be paid pursuant to this, Paragraph VI.B will be paid by SRC within twenty-one (21) Days after the Effective Date.

C. **Attorneys' Fees and Costs Award and Service Awards.** Any order or proceedings relating to the applications for the Attorneys' Fees and Costs Award and the Service Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement and is not a basis for anyone withdrawing from the Settlement Agreement.

## VII. **SETTLEMENT NOTICE, OBJECTIONS AND OPT-OUT RIGHTS**

A. **Direction.** The Settlement Administrator will work under the direction of Settlement Class Counsel and SRC's Counsel.

B. **Settlement Class Notice Program.** The Parties will seek a determination from the Court regarding the Settlement Class Notice Program as described in the Motion for Preliminary Approval and in the exhibits thereto.

C. **Objections.** Any Settlement Class Member who intends to object must do so on or before the Opt-Out And Objection Date. In order to object, the Settlement Class Member must include in the objection submitted to the Court and served on Settlement Class Counsel and SRC's Counsel: (1) the name, address, telephone number of the Person objecting and, his/her counsel, if any; (2) a signed declaration stating that he or she is a Person in the Settlement Class and purchased one or more of the Covered Products; (3) a statement of all objections to the Settlement Agreement and any supporting documentation; and (4) a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without



counsel, and if with counsel, the name of his or her counsel who will attend. Any Settlement Class Member who fails to file and timely serve a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Paragraph VII.C and as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means.

**D. Opt-Outs.**

1. A Person in the Settlement Class who wishes to opt-out of the Settlement Class must complete and send to the Settlement Administrator a request for exclusion that is post-marked or submitted electronically no later than the Opt-Out And Objection Date. The request for exclusion must be personally signed by the Person in the Settlement Class requesting exclusion, contain a statement that indicates his or her desire to be excluded from the Settlement Class in the matter of Hinkle et al. v. Sports Research Corporation (or sufficient words to indicate the present lawsuit against Sports Research Corporation), and contain a statement that he or she is otherwise a Person in the Settlement Class and purchased one or more of the Covered Products.

2. A Person in the Settlement Class may opt-out on an individual basis only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of class members or multiple class members where no personal statement has been signed by each and every Person who desires to Opt-Out, shall not be allowed.

3. An Opt-Out who submits a Claim Form to the Settlement Administrator thereby rescinds any request for exclusion, and is no longer an Opt-Out. An Opt-Out may rescind his/her opt-out in any manner that makes his/her desire to rescind clearly known to the Court in advance of the Opt-Out And Objection Date. Anyone who does so is no longer an Opt-Out.

4. Except for Opt-Outs, all Persons in the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and

upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any Cash Award.

5. Any Opt-Out shall not: (a) be entitled to relief under the Settlement Agreement; (b) gain any rights by virtue of the Settlement Agreement; or (c) be entitled to object to any aspect of the Settlement Agreement.

6. The Settlement Administrator shall maintain an Opt-Out List and shall provide it to Settlement Class Counsel and SRC's Counsel within fourteen (14) Days after the Opt-Out And Objection Date.

### **VIII. SETTLEMENT APPROVAL PROCESS**

After execution of this Settlement Agreement and obtaining necessary discovery from third-party Retailers, the Parties shall promptly move the Court to enter the Preliminary Approval Order that is without material alteration from Exhibit H hereto, which:

- A. Preliminarily approves this Settlement Agreement;
- B. Preliminarily certifies the Settlement Class;
- C. Finds that the proposed Settlement Agreement is sufficiently fair, reasonable and adequate to warrant providing notice to the Settlement Class;
- D. Schedules a Final Approval Hearing on final approval of this Settlement Agreement to consider its fairness, reasonableness, and adequacy, and whether it should be finally approved by the Court, which Final Approval Hearing shall take place not less than one hundred and fifty (150) Days after the Preliminary Approval Date;
- E. Appoints the Settlement Administrator in accordance with Section III, Paragraph C of this Settlement Agreement;
- F. Approves the Class Notice, and directs the Settlement Administrator to disseminate the Class Notice in accordance with the Settlement Class Notice Program;
- G. Finds that the Settlement Class Notice Program: (1) is the best practicable notice under the circumstances, (2) will fairly apprise the Settlement Class of the pendency of the Action, of the right to object to or Opt-Out of the proposed Settlement Agreement, of the right of any Person in the Settlement Class who has not Opted-Out to appear at the Final Approval

Hearing, and of the right to seek monetary and other relief, (3) constitutes reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice, and (4) meets all requirements of due process and any other applicable law.

H. Requires the Settlement Administrator to file proof of compliance with the Settlement Class Notice Program at or before the Final Approval Hearing;

I. Approves the Claim Form, the content of which is without material alteration from Exhibit A to this Settlement Agreement, and sets a Claim Deadline;

J. Approves the creation of the Settlement Website in accordance with the terms of this Settlement Agreement;

K. Requires any Person in the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked or submitted electronically no later than the Opt-Out And Objection Date, or as the Court may otherwise direct, to the Settlement Administrator at the address on the Class Notice;

L. Orders that any Person in the Settlement Class who does not Opt-Out will be bound by all proceedings, orders, and judgments in the action, even if such Settlement Class Member has previously initiated or subsequently initiates an individual Action or other proceedings encompassed by the Release;

M. Requires any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement (the "Objector") to file with the Court and serve on Settlement Class Counsel and SRC's Counsel no later than the Opt-Out And Objection Date, or as the Court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing all of the following information:

1. The Objector's full name, address, and telephone number;
2. A signed declaration that he or she is a Person in the Settlement Class;
3. A written statement of all grounds for the objection and any supporting documentation;
4. A statement of whether the Objector intends to appear at the Final Approval Hearing; and

5. If the Objector intends to appear at the Final Approval Hearing through counsel, the objection must also identify the attorney representing the Objector who will appear at the Final Approval Hearing;

N. Orders that any response to an objection shall be filed with the Court no later than seven (7) Days prior to the Final Approval Hearing;

O. Specifies that any Settlement Class Member who does not file a timely written objection to the Settlement Agreement or who fails to otherwise comply with the requirements of Paragraph VII.C of this Settlement Agreement shall be foreclosed from seeking any adjudication or review of this Settlement Agreement by appeal or otherwise;

P. Requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement Agreement, the Attorneys' Fees and Costs Award, or the Service Award(s), and who intends to make an appearance at the Final Approval Hearing, must provide to the Settlement Administrator (who shall forward it to Settlement Class Counsel and SRC's Counsel) and must file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out And Objection Date or as the Court may otherwise direct;

Q. Directs the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications, and providing that only the Settlement Administrator, Settlement Class Counsel, SRC's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Settlement Agreement;

R. Directs that Settlement Class Counsel shall file their applications for the Attorneys' Fees and Costs Award and Service Award(s) in accordance with the terms set forth in Section VI of this Settlement Agreement;

S. Orders the Settlement Administrator to provide the Opt-Out List to Settlement Class Counsel and SRC's Counsel no later than fourteen (14) Days after the Opt-Out And Objection Date, and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than ten (10) Days thereafter or on such other date as the Parties may direct;

T. Preliminarily enjoins all Persons in the Settlement Class who are not Opt-Outs from (1) filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; (2) filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action or otherwise on behalf of any Person in the Settlement Class who is not an Opt-Out (including, without limitation, by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; and (3) attempting to cause a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims to opt out of any settlement thereof. Any Person who violates such injunction shall pay the attorneys' fees and costs incurred by SRC and/or any other Released Person and Settlement Class Counsel as a result of the violation. This Settlement Agreement is not intended to prevent Persons in the Settlement Class from participating in any action or investigation initiated by a state or federal agency; and

U. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

## **IX. FINAL ORDER AND JUDGMENT AND RELEASES**

A. **Final Order And Judgment.** If this Settlement Agreement (including, without limitation, any modification thereto made with the consent of the Parties as provided for herein) is approved by the Court following the Final Approval Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request the Court to enter a Final Order And Judgment pursuant to the California Rules of Civil Procedure and all applicable laws that,

among other things:

1. Finds that the Court has personal jurisdiction over the Named Plaintiffs and Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement Agreement (and all exhibits thereto) and the Settlement described herein;
2. Certifies a Settlement Class solely for purposes of approving and implementing this Settlement Agreement;
3. Grants final approval to this Settlement Agreement as being fair, reasonable, and adequate as to all Parties and consistent and in compliance with all requirements of due process and applicable law, as to and in the best interests of all Parties, and directs the Parties and their counsel to implement and consummate this Settlement Agreement in accordance with its terms and provisions;
4. Declares this Settlement Agreement and the Final Order And Judgment to be binding on and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release, maintained by or on behalf of the Named Plaintiffs and any or all Settlement Class Members, as well as their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest, and successors;
5. Finds that the Settlement Class Notice Program (a) constitutes the best practicable notice under the circumstances, (b) will fairly apprise Persons in the Settlement Class of the pendency of the Action, of their right to object to or Opt-Out of the proposed Settlement Agreement, of their right (if they have not Opted-Out) to appear at the Final Approval Hearing and of their right to seek monetary and other relief, (c) constitutes reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice, and (d) meets all requirements of due process and any other applicable law;
6. Approves the Claim Form that was made available to all Persons in the Settlement Class, the content of which was without material alteration from Exhibit A to

this Settlement Agreement;

7. Finds that Settlement Class Counsel and the Named Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Settlement Agreement;

8. Dismisses the Action now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order And Judgment;

9. Adjudges that, as of the Effective Date, the Named Plaintiffs and the Settlement Class and the Settlement Class Members have conclusively compromised, settled, dismissed and released, any and all Released Claims against SRC and the Released Persons;

10. Approves the Attorneys' Fees and Costs Award and the Service Award(s) (if any);

11. Without affecting the finality of the Final Order And Judgment for purposes of appeal, reserves jurisdiction over the Settlement Administrator, SRC, the Named Plaintiffs, and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement Agreement and Final Order And Judgment and for any other necessary purposes;

12. Provides that, as of the Effective Date, the Named Plaintiffs and all Settlement Class Members, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against SRC and/or any Released Persons, and all Settlement Class Members shall have released any and all Released Claims as against SRC and all Released Persons;

13. Determines that the Settlement Agreement and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of, a presumption, concession, or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by SRC or any

Released Persons or of the suitability of these or similar (or any other) claims to class treatment in the Action and/or trial; provided, however, that reference may be made to this Settlement Agreement in proceedings solely as may be necessary to effectuate the Settlement;

14. Approves the Opt-Out List and determines that the Opt-Out List is a complete list of Opt-Outs and who, accordingly, shall neither share in nor be bound by the Final Order And Judgment.

B. **Release Provisions.** As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of and from all Released Claims, in accordance with the terms of this Settlement Agreement, by operation of entry of the Final Order And Judgment.

1. All Settlement Class Members shall be bound by this Settlement Agreement and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement Agreement.

2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs, or disbursements incurred by Settlement Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement, the Settlement Agreement, the administration of such Settlement Agreement and/or the Released Claims as well as any and all claims for any Service Award(s) or any Attorneys' Fees and Costs Award.

3. The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**



## SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

California or other law notwithstanding, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights, and benefits of Section 1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released, and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons acknowledge that this is an essential term of the Release. In connection with the Release, the Releasing Persons acknowledge that they are aware that they may hereafter discover claims presently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished, and discharged.

4. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including, without limitation, participation in any of the processes detailed herein.

C. **Additional Releases.** Except as to the rights and obligations established by this Settlement Agreement, and solely with respect to Released Claims, SRC releases and forever discharges as of the Effective Date the Named Plaintiffs, Settlement Class Members who are not Opt-Outs, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which SRC may now have, own or hold or which the Released Persons at any time may have, own, or hold, against the Named Plaintiffs, Settlement Class Members who are not Opt-Outs, or Settlement Class Counsel arising out of Released Claims.

**X. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT AGREEMENT**

A. Within fifteen (15) Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from and terminate this Settlement Agreement:

1. If the Court fails, on motion or following remand, to approve the Settlement Agreement or if on appeal the Court's approval is reversed;

2. If the Court (or an appellate court, on appeal) materially alters any of the terms of the Settlement Agreement, provided however that a reduction in the Attorneys' Fees and Costs Award below \$325,000.00 and/or a reduction of the Service Award below \$2,500.00 to each Named Plaintiff, shall not be deemed to be a material alteration; and/or

3. Subject to Paragraph X.A.2, if the Preliminary Approval Order, as described in Section VIII, or the Final Order And Judgment, as described in Section IX, is not entered by the Court or is reversed or materially modified on appeal or remand to the detriment of the Party seeking withdrawal and termination, or otherwise fails for any reason.

B. In the event of a withdrawal pursuant to Paragraph X.A, any certification of a Settlement Class will be vacated, without prejudice (or benefit) to any Party's position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the Parties shall be restored to their Action position existing immediately before the execution of this Settlement Agreement.

C. If Opt-Outs number more than 100, then SRC may elect in its sole discretion to withdraw from and terminate this Settlement Agreement. In that event, all of SRC's obligations under this Settlement Agreement shall cease to be of any force and effect; the certification of any Settlement Class shall be vacated without prejudice to SRC's position on the issue of class certification (and without any benefit to any Party's position on that issue); and SRC shall be restored to its Action position existing immediately before the execution of this Settlement

Agreement. In order to elect to withdraw from and terminate this Settlement Agreement on the basis set forth in this Paragraph X.C, SRC must notify Settlement Class Counsel in writing of its election to do so within fourteen (14) Days after the Opt-Out List has been served on the Parties.

D. In the event of withdrawal by any Party in accordance with the terms set forth in this Section X, the Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action and shall not be offered in evidence or used in any Action for any purpose by any Person (including any Opt-Outs), including, without limitation, the existence, certification, or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice or benefit to SRC, the Named Plaintiffs, or the Settlement Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties shall stand in the same position as if this Settlement Agreement (other than the provisions that survive termination, including, without limitation, Paragraph III.F, Paragraph VII.B, Paragraph XI.C, and Paragraphs XIII.I and XIII.L) had not been negotiated, made or filed with the Court.

#### **XI. EFFECTIVE DATE**

A. The Effective Date of this Settlement Agreement shall be the date when each and all of the following conditions have occurred:

1. This Settlement Agreement has been fully executed by all Parties and SRC's Counsel and Settlement Class Counsel;
2. Orders have been entered by the Court certifying the Settlement Class, and approving the forms of Class Notice and Claim Form, all as provided above;
3. A Preliminary Approval Order has been entered;
4. The Settlement Class Notice Program has been executed in accordance with the Preliminary Approval Order;

5. The Court has entered a Final Order And Judgment approving this Settlement Agreement, as provided above; and

6. The Final Order And Judgment has become Final as defined in Paragraph XI.B.

B. "Final," when referring to a judgment or order means (1) a judgment or order which is a non-tentative, appealable judgment or order and as to which all times to appeal therefrom have expired with no appeal or other review proceeding having been commenced; and (2) a judgment or order which is a non-tentative, appealable judgment or order and from which an appeal or other review proceeding has been commenced, and on which such appeal or other review is concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and as to which such appeal or other review has been resolved in a manner that affirms the Final Order And Judgment in all material respects.

C. If, for any reason, there is no Effective Date, the orders, judgment and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the status quo ante with respect to the Action as if this Settlement Agreement (other than the provisions that survive termination, including, without limitation, Paragraph III.F, Paragraph VII.B, Paragraph XI.C, and Paragraphs XIII.I and XIII.L) had never been entered into and any amounts remaining in the Settlement Account will be paid to SRC.

## **XII. NOTICES**

A. All notices (other than the Class Notice) required by the Settlement Agreement shall be made in writing and communicated both by mail and e-mail to the following addresses:

All notices to Settlement Class Counsel shall be sent to Settlement Class Counsel, c/o:

Abbas Kazerounian  
Kazerouni Law Group, APC  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626  
Telephone: (800) 400-6808  
E-mail: ak@kazlg.com

All notices to SRC's Counsel provided herein shall be sent to SRC's Counsel, c/o:

Jeffrey M. Blank  
Norma V. Garcia  
Garcia Rainey Blank & Bowerbank LLP  
695 Town Center Drive, 7<sup>th</sup> Floor  
Costa Mesa, CA 92626  
[jblank@garciarainey.com](mailto:jblank@garciarainey.com)  
[ngarciaguillen@garciarainey.com](mailto:ngarciaguillen@garciarainey.com)

B. The notice recipients and addresses designated above may be changed by written notice.

C. Upon the request of any of the Parties, the Parties shall promptly provide each other with copies of comments, objections, requests for exclusion, or other documents or filings received as a result of the Class Notice.

### **XIII. MISCELLANEOUS PROVISIONS**

A. **Interpretation.** This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, negotiations, exchanges, agreements or understandings among them as well as any and all prior drafts of this Settlement Agreement, term sheets, and written or oral communications about settlement and/or this Settlement Agreement. All terms are contractual. For the purpose of construing or interpreting this Settlement Agreement, the Settlement Agreement is deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party, and any prior drafts may not be used to construe or interpret this Settlement Agreement.

B. **Voluntariness.** The Parties have signed this Settlement Agreement voluntarily and knowingly in exchange for the consideration and equitable relief described herein, and they agree such consideration and equitable relief is adequate and satisfactory.

C. **Review Of Agreement.** The Parties have been provided with a reasonable period of time to review and consider this Settlement Agreement, and they have executed this Agreement after concluding that this Settlement Agreement is satisfactory to them.

D. **Binding Effect.** The terms are and shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest, and successors, as well as upon all other Persons

claiming any interest in the subject matter hereto by or through any of the Parties hereto including, without limitation, any Settlement Class Members.

E. **Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

F. **No Rescission on Grounds of Mistake.** The Parties have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, no Party will seek to set aside the Settlement Agreement or any part or parts thereof on the grounds of mistake. Moreover, the Parties expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may be other than, different from, or contrary to the facts now known to them or believed by them to be true, and that the Settlement Agreement shall be effective in all respects and shall not be subject to termination, modification, or rescission, any such difference in facts notwithstanding.

G. **Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their counsel. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

H. **Integration of Exhibits.** The exhibits to this Settlement Agreement are an integral and material part of the Settlement Agreement and are hereby incorporated by reference and expressly made a part of the Settlement Agreement.

I. **No Admission.** Neither this Settlement Agreement nor any of its provisions, or related documents (including, for example, but not limited to drafts of the Settlement Agreement, term sheets, the Preliminary Approval Order or the Final Order And Judgment), its negotiation or any proceedings relating in any way to the Settlement Agreement shall be construed as or deemed to be evidence of an admission or concession by any Person, including, without limitation, SRC, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its

terms or except as may be required by law or Court order. The provisions of this Paragraph XIII.I shall become effective when this Settlement Agreement has been signed by the Parties and their counsel and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise terminated and/or becomes null and void pursuant to Section X.

J. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of California.

K. **Counterparts.** This Settlement Agreement may be executed in counterparts and may be executed by electronic signatures, and as so executed shall constitute one agreement.

L. **Confidentiality.** All agreements made and orders entered during the course of, or prior to, the Action relating to the confidentiality of information shall survive this Settlement Agreement.

M. **Return of Material.** Within sixty (60) Days after the Effective Date, Settlement Class Counsel and SRC's Counsel will return all confidential material produced by one to the other in connection with the Action, or shall destroy such confidential material and certify in writing that the confidential material has been destroyed.

N. **No Assignment.** Each Named Plaintiff represents and warrants that no portion of any claim, right, demand, action, or cause of action against the Released Persons that each Named Plaintiff has or may have arising out of any allegations made in any of the actions comprising the Action or pertaining to any of the Released Claims, and no portion of any Service Award, recovery or settlement to which each Named Plaintiff may become entitled, has been assigned, transferred, or conveyed by or for each Named Plaintiff in any manner; and no Person other than each Named Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Settlement Agreement as those of each Named Plaintiff.

O. **Stay.** The Parties stipulate to stay all proceedings in the Action until the

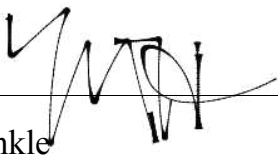
Effective Date or until the Parties inform the Court of any withdrawal from and voiding of this Settlement Agreement, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve the Final Order And Judgment.

P. **Retention of Jurisdiction.** Upon entry of the Final Order And Judgment, the Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementation and enforcing the Settlement embodied in this Agreement, pursuant to California Rule of Court, rule 3.769(h).

IN WITNESS WHEREOF, the Parties have executed and caused this Settlement Agreement to be executed by their authorized representatives below.

**Plaintiffs:**

Dated: 06/17/2020

By:  \_\_\_\_\_  
Mark Hinkle

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Rossi



Effective Date or until the Parties inform the Court of any withdrawal from and voiding of this Settlement Agreement, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve the Final Order And Judgment.

P. **Retention of Jurisdiction.** Upon entry of the Final Order And Judgment, the Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementation and enforcing the Settlement embodied in this Agreement, pursuant to California Rule of Court, rule 3.769(h).

IN WITNESS WHEREOF, the Parties have executed and caused this Settlement Agreement to be executed by their authorized representatives below.

**Plaintiffs:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Mark Hinkle

Dated: 06/17/2020

By: *Daniel Rossi*

Daniel Rossi

**Defendant SRC:**

Dated: \_\_\_\_\_

SPORTS RESEARCH CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Approved as to form by counsel for Plaintiffs and the Settlement Class:**

KAZEROUNI LAW GROUP, APC

By: \_\_\_\_\_  
Abbas Kazerounian  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626  
Telephone: (800) 400-6808  
E-mail: ak@kazlg.com

**Approved as to form by counsel for Defendant SRC:**

GARCIA RAINEY BLANK & BOWERBANK, LLP

By: \_\_\_\_\_  
Jeffrey M. Blank  
Norma V. Garcia  
Garcia Rainey Blank & Bowerbank LLP  
695 Town Center Drive, 7<sup>th</sup> Floor  
Costa Mesa, CA 92626  
[jblank@garciarainey.com](mailto:jblank@garciarainey.com)  
NGarciaGuillen@garciarainey.com

**Defendant SRC:**

Dated: JUNE 16, 2020

SPORTS RESEARCH CORPORATION

By: Jeff Pederson

Its: CEO & CHAIRMAN

**Approved as to form by counsel for Plaintiffs and the Settlement Class:**

KAZEROUNI LAW GROUP, APC

By: \_\_\_\_\_

Abbas Kazerounian  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626  
Telephone: (800) 400-6808  
E-mail: ak@kazlg.com

**Approved as to form by counsel for Defendant SRC:**

GARCIA RAINEY BLANK & BOWERBANK, LLP

By: Jeffrey M. Blank

Jeffrey M. Blank  
Norma V. Garcia  
Garcia Rainey Blank & Bowerbank LLP  
695 Town Center Drive, 7<sup>th</sup> Floor  
Costa Mesa, CA 92626  
[jblank@garciarainey.com](mailto:jblank@garciarainey.com)  
NGarciaGuillen@garciarainey.com