

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 **CLARKSON LAW FIRM, P.C.**
Ryan J. Clarkson (SBN 257074)
2 rclarkson@clarksonlawfirm.com
Shireen M. Clarkson (SBN 237882)
3 sclarkson@clarksonlawfirm.com
Matthew T. Theriault (SBN 244037)
4 mtheriault@clarksonlawfirm.com
Bahar Sodaify (SBN 289730)
5 bsodaify@clarksonlawfirm.com
9255 Sunset Blvd., Ste. 804
6 Los Angeles, CA 90069
Tel: (213) 788-4050
7 Fax: (213) 788-4070

8 *Attorneys for Plaintiffs*

9 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
Eric Y. Kizirian (SBN 210584)
10 eric.kizirian@lewisbrisbois.com
Leo A. Bautista (SBN 149889)
11 leo.bautista@lewisbrisbois.com
Josephine Brosas (SBN 239342)
12 josephine.brosas@lewisbrisbois.com
633 West 5th Street, Suite 4000
13 Los Angeles, California 90071
Tel: (213) 250-1800
14 Fax: (213) 250-7900

15 *Attorneys for Defendant*
16 *Just Born, Inc.*

17 IN THE SUPERIOR COURT OF CALIFORNIA
18 FOR THE COUNTY OF SAN BERNARDINO
19

20 MARY MATESKI, ALISA CLAWSON,
individually and on behalf of all others
21 similarly situated,
22 Plaintiff,
23 vs.
24 JUST BORN, INC., and DOES 1 through 10,
inclusive,
25 Defendants.
26
27
28

Case No. CIVDS1926742

[CLASS ACTION]

**CLASS ACTION SETTLEMENT
AGREEMENT**

Hon. David Cohn

Department S-26

Complaint Filed: September 6, 2019

1 This Class Action Settlement Agreement (the “Agreement”), dated the date last signed
2 below, is made and entered into by and between the Class Representatives Mary Mateski, Alisa
3 Clawson, and Stephanie Escobar, (“Class Representative(s)”), on behalf of themselves and the
4 Settlement Class, as defined *infra*, and Defendant Just Born, Inc. (“Defendant” or “Just Born”), to
5 settle all past, present and future litigation involving Defendant’s allegedly slack-filled candy
6 boxes, as further described below, and resolve and discharge the Released Claims, as defined
7 below, according to the terms and conditions herein. Class Representatives and Defendant are
8 collectively referred to as the “Settling Parties.”

9 **PREAMBLE**

10 1. WHEREAS, on February 3, 2017, Class Representative Stephanie Escobar filed a
11 class action lawsuit against Defendant entitled *Escobar v. Just Born, Inc.*, C.D. Cal., Case No. 2:17-
12 cv-01826-TJH-PJW. On September 6, 2019, Class Representatives Mary Mateski and Alisa
13 Clawson filed the above-captioned class action lawsuit against Defendant entitled *Mateski, et al. v.*
14 *Just Born, Inc.*, San Bernardino Superior Court of California, Case No. CIVDS1926742. *Mateski*
15 and *Escobar* are collectively referred to as the “Actions.”

16 2. WHEREAS, Class Representatives allege that Defendant has engaged in acts that
17 violate state consumer protection laws (including California’s False Advertising Law (“FAL”),
18 Bus. & Prof. Code § 17500 *et seq.*, California’s Unfair Competition Law (“UCL”), Bus. & Prof.
19 Code § 17200 *et seq.*, and California’s Consumers Legal Remedies Act (“CLRA”), Civil Code §
20 1750 *et seq.*), as well as Federal and California slack-fill laws, 21 C.F.R. § 100.100 and Cal. Bus. &
21 Prof. Code § 12606.2, respectively, and that as a direct result of such violations, Class
22 Representatives and the putative class have suffered monetary damages and also seek equitable
23 remedies.

24 3. WHEREAS, Just Born denies any and all wrongdoing, and specifically denies each
25 and every claim in the Actions.

26 4. WHEREAS, the Settling Parties participated in two full day mediations on August
27 21, 2017 in Chicago, IL and on October 17, 2019 in New York City, NY.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 1.5. "Claim Fund" means the total of the Cash Claim Fund not to exceed Three Hundred
2 Thousand Dollars (\$300,000) in value, and Voucher Claim Fund not to exceed One Million Three
3 Hundred Thousand Dollars (\$1,300,000) in retail value.

4 1.6. "Cash Claim Fund" means the sum of cash available for payment of Valid Claims
5 not to exceed Three Hundred Thousand Dollars (\$300,000) in value.

6 1.7. "Claimant" means a Settlement Class Member who submits a claim for payment or
7 Replacement Product.

8 1.8. "Claims Administrator" refers to Digital Settlement Group LLC or other Court
9 approved administrator of settlements of Settlement Class Counsel's choosing retained to
10 administer the settlement as set forth in this Agreement and providing Notice in accordance with
11 the Preliminary Approval Order.

12 1.9. "Class Action Settlement Agreement," "Settlement Agreement," "Settlement," or
13 "Agreement" means this Class Action Settlement Agreement, including the attached exhibits.

14 1.10. "Class Counsel" means Ryan J. Clarkson, Shireen M. Clarkson, Matthew T.
15 Theriault, and Bahar Sodaify, and the law firm of Clarkson Law Firm, P.C.

16 1.11. "Class Member" means any and all persons who are within the Settlement Class.

17 1.12. "Class Period" means the time period between February 3, 2013 through the date the
18 Preliminary Approval Order is entered.

19 1.13. "Class Representatives" means Stephanie Escobar, Mary Mateski, and Alisa
20 Clawson.

21 1.14. "Court" means the San Bernardino Superior Court of California.

22 1.15. "Covered Products" or "Settlement Class Products" means all MIKE AND IKE®
23 and HOT TAMALES® candy products manufactured by Defendant and packaged in an opaque
24 cardboard box and purchased by consumers from February 6, 2013 through the date when the Court
25 enters the Preliminary Approval Order of the Settlement.

26 1.16. "Defendant" means Just Born, Inc., as well as its past, present, and future officers,
27 directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners,
28 distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors,

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 subcontractors, coconspirators, buyers, independent contractors, attorneys, representatives, heirs,
2 executors, experts, consultants, and assigns of all of the foregoing persons and entities.

3 1.17. "Defendant's Counsel" means Defendant's counsel of record in the Action, Eric Y.
4 Kizirian, Leo A. Bautista, Josephine Brosas and the law firm of Lewis Brisbois Bisgaard & Smith
5 LLP.

6 1.18. "Effective Date" means the first date by which all of the following events shall have
7 occurred: the Court has entered the Final Approval Order and Judgment on the docket in the
8 Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed,
9 (b) if such an appeal has been filed, it has finally been resolved and has resulted in an affirmation of
10 the Final Approval Order and Judgment, or (c) the Court, following the resolution of the appeal,
11 enters a further order or orders approving settlement on the terms set forth herein, and either no
12 further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s)
13 on appeal. Without limiting the generality of the foregoing, the Effective Date shall not occur
14 prior to final resolution of the Fee and Cost Application and any appeals regarding the Fee and Cost
15 Application.

16 1.19. "Fee and Cost Application" means the written motion or application by which the
17 Class Representatives and/or Class Counsel request that the Court approve attorneys' fees, costs,
18 expenses, and incentive awards to be paid in accordance with the Total Cash Settlement Amount
19 defined below, and not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000).
20 Neither the pendency of the Fee and Cost Application, nor any appeal pertaining solely to a
21 decision on the Fee and Cost Application, shall in any way delay or preclude the Final Approval
22 Order and Judgment from becoming final.

23 1.20. "Final Approval Hearing" means the hearing scheduled to take place at least ninety
24 (90) days after the date of entry of the Preliminary Approval Order at which the Court shall: (a)
25 determine whether to grant final approval to this Class Action Settlement Agreement and to certify
26 the Settlement Class; (b) consider any timely objections to this Settlement and all responses thereto;
27 and (c) rule on the Fee and Cost Application.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 1.21. "Final Approval Order" means the order in which the Court grants final approval of
2 this Class Action Settlement Agreement, certifies the Settlement Class, and authorizes the entry of
3 a final judgment and dismissal of the Action with prejudice.

4 1.22. "Judgment" means the judgment to be entered by the Court pursuant to the
5 Settlement.

6 1.23. "Notice" shall mean a document substantially in the form of Exhibit C hereto, and
7 "Summary Notice," meaning a document substantially in the form of Exhibit D hereto, to be
8 disseminated in accordance with the Preliminary Approval Order, informing persons who fall
9 within the Settlement Class definition of, among other things, the pendency of the Action, the
10 material terms of the Proposed Settlement, and their options with respect thereto.

11 1.24. "Notice Date" means the date thirty (30) days after the Court provides Preliminary
12 Approval to the Settlement Agreement, by which the Claims Administrator shall commence
13 dissemination of Notice to the Settlement Class.

14 1.25. "Notice Plan" means the method of providing the Settlement Class with notice of
15 the Class Action Settlement Agreement, as approved by the Court.

16 1.26. "Notice Response Deadline" means the deadline for all members of the Settlement
17 Class to respond to the Notice, which shall be at least sixty (60) days after the Notice Date.

18 1.27. "Opt-Out Date" means the date that is the end of the period to request exclusion
19 from the Settlement Class established by the Court and set forth in the Notice.

20 1.28. "Participating Claimant" means a Claimant who submits a Qualifying Settlement
21 Claim Form in response to the Notice.

22 1.29. "Parties" means Class Representatives Mary Mateski, Alisa Clawson, and Stephanie
23 Escobar, and Defendant Just Born, Inc. "Party" shall refer to each of them individually.

24 1.30. "Person" means any natural person, individual, and such individual's spouse, heirs,
25 predecessors, successors, representatives, and assignees.

26 1.31. "Plaintiffs" means Mary Mateski, Alisa Clawson, and Stephanie Escobar.

27 1.32. "Preliminary Approval Order" means the order in which the Court grants its
28 preliminary approval to this Class Action Settlement Agreement, preliminarily certifies the

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 Settlement Class, authorizes dissemination of Notice to the Settlement Class, and appoints the
2 Claims Administrator.

3 1.33. "Publication Notice" means the long-form and short-form notices, substantially in
4 the form of Exhibits C and D attached hereto. The long-form Publication Notice and the short-form
5 Publication Notice will be published as set forth in the Preliminary Approval Order.

6 1.34. "Qualifying Settlement Claim Form" shall mean a Claim Form that is fully
7 completed, properly executed, and timely returned to the Claims Administrator on or before the
8 Notice Response Deadline by a Settlement Class Member. A "Qualifying Settlement Claim Form"
9 must be either returned with a postmark via U.S. mail or submitted online through the Class
10 Settlement Website to be created and maintained by the Claims Administrator, at the Participating
11 Claimant's discretion. The Claims Administrator reserves the right to seek additional information
12 beyond the Qualifying Settlement Claim Form, as necessary.

13 1.35. "Receipt" shall mean documentary evidence establishing the purchase of one or
14 more Covered Products (including the product name), the date of purchase, store name and location
15 of purchase, and the purchase price.

16 1.36. "Released Claims" means all of the claims alleged in the operative Class Action
17 Complaints filed in the Actions and any and all claims or causes of action based on the identical
18 factual predicate, whether in law or equity, whether seeking damages or any other relief (including
19 attorneys' fees), of any kind or character, known or unknown, that are now recognized by law or
20 that may be created or recognized in the future by statute, regulation, judicial decision, or in any
21 other manner, based upon any federal or state statutory or common law, including, without
22 limitation, claims sounding in tort, contract, and the consumer protection laws of the United States
23 or of any other state or jurisdiction within the United States, as well as under the unfair or deceptive
24 trade practices, trade regulation, consumer fraud, misrepresentation, and false advertising law of the
25 United States or any state or other jurisdiction within the United States. Excluded from the
26 Released Claims are any and all claims for personal injury, wrongful death, and/or emotional
27 distress arising from personal injury. With respect to the claims released pursuant to this
28 paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section
2 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States of
3 America or any state or territory thereof, or of the common law or civil law). Section 1542
4 provides that:

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

10 Each and every term of this paragraph shall inure to the benefit of each and all of the Released
11 Parties and Released Persons, and each and all of their respective successors and personal
12 representatives, which persons and entities are intended to be beneficiaries of this paragraph.

13 1.37. "Released Parties" and "Released Persons" means Defendant, its past, present, and
14 future parent companies, subsidiary companies, affiliated companies, officers, directors,
15 shareholders, employees, predecessors, affiliates, parents, subsidiaries, joint partners, distributors,
16 principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors,
17 coconspirators, buyers, independent contractors, attorneys, representatives, heirs, executors,
18 experts, consultants, and assigns of all of the foregoing persons and entities, and all suppliers,
19 wholesalers, distributors, and retailers of any Covered Products.

20 1.38. "Releasing Parties" means all Settlement Class Members.

21 1.39. "Replacement Product" means one retail unit of MIKE AND IKE® or HOT
22 TAMALES® candy product (any flavor variety) packaged in an opaque cardboard box available at
23 Dollar Tree (or other comparable nationwide retailer(s) as designated by Defendant). stores at the
24 time of Voucher redemption.

25 1.40. "Request for Exclusion" means a valid request for exclusion from a member of the
26 Settlement Class. To be valid, a request for exclusion must: (a) be submitted by the member of the
27 Settlement Class to the Claims Administrator and postmarked by a date no later than the Notice
28 Response Deadline; (b) contain the submitter's name, address, and telephone number; and (c)
otherwise comply with the instructions set forth in the Notice.

1.41. "Settlement" means the settlement set forth in this Agreement.

1 1.42. "Settlement Class" means, collectively, all persons in the United States of America
2 who purchased one or more of Defendant's Covered Products at any time during the Class Period.
3 Excluded from the Settlement Class are any officers, directors, or employees of Defendant, and the
4 immediate family members of any such person. Also excluded is any judge who may preside over
5 the Actions.

6 1.43. "Settling Parties" means, collectively, Defendant, the Class Representatives, and all
7 Settlement Class Members.

8 1.44. "Settlement Class Member" means any Class Member who does not submit a timely
9 and valid Request for Exclusion.

10 1.45. "Total Cash Settlement Amount" means an amount not to exceed Two Million
11 Dollars (\$2,000,000) in total cash that Defendant will pay pursuant to the timelines set forth herein,
12 and that will be used for the payment of a) claims not to exceed Three Hundred Thousand Dollars
13 (\$300,000); b) Administrative Costs not to exceed Five Hundred Thousand Dollars (\$500,000),
14 plus postage; and c) any incentive awards to the Class Representatives approved by the Court
15 (which will be paid from the Cash Claim Fund); and d) attorneys' fees, costs, and expenses
16 approved by the Court, not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

17 1.46. "Total Voucher Settlement Amount" means an amount not to exceed One Million
18 Three Hundred Thousand Dollars (\$1,300,000) retail value of Vouchers that Defendant will
19 provide pursuant to the timelines set forth herein.

20 1.47. "Total Monetary Settlement Amount" means an amount not to exceed Three Million
21 Three Hundred Thousand Dollars (\$3,300,000), comprising the Total Cash Settlement Amount and
22 Total Voucher Settlement Amount.

23 1.48. "Valid Claim" means a claim for cash or Vouchers (as applicable) submitted by a
24 Settlement Class Member that satisfies all the criteria for submission of a Qualifying Settlement
25 Claim Form and any additional information reasonably requested by the Settlement Administrator,
26 if any.

27 1.49. "Voucher" means a document provided by the Claims Administrator in response to a
28 Valid Claim that can be redeemed at a Dollar Tree store (or other comparable nationwide retailer(s)

1 as designated by Defendant). for a free Replacement Product. All Vouchers will be issued at or
2 near the same time and will have the same expiration date that is one hundred eighty (180) days
3 from date of issuance. No more than eight (8) Vouchers may be redeemed at any one time by a
4 single Class Member.

5 1.50. "Voucher Claim Fund" means the same as "Total Voucher Settlement Amount" that
6 Defendant shall make available for redemption and processing of valid claims vouchers for
7 Replacement Product, not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) in
8 retail value. All costs associated with the Voucher setup, processing, redemption (including any
9 costs for Voucher clearinghouse) are to be paid from the Voucher Claim Fund.

10 1.51. The singular of any defined term includes the plural, and the plural of any defined
11 term includes the singular.

12 **2. DENIAL OF WRONGDOING AND LIABILITY**

13 2.1. Defendant has denied and continues to deny the material factual allegations and
14 legal claims asserted by Plaintiffs, including any and all charges of wrongdoing or liability arising
15 out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in
16 the Actions. Defendant also denies that Plaintiffs or any Class Members were harmed or damaged
17 in any way by the conduct alleged in the Actions. In addition, Defendant maintains that it has
18 meritorious defenses to all claims alleged in the Actions. Nonetheless, as set forth below and in
19 consideration of the expense, burden and uncertainties involved in continued litigation, Defendant
20 has agreed to settle the Actions on the terms set forth herein.

21 **3. THE BENEFITS OF SETTLEMENT**

22 3.1. The Parties and their counsel recognize and acknowledge the expense and length of
23 continued proceedings that would be necessary to prosecute the Actions through trial and appeals.
24 The Parties and their counsel also have taken into account the uncertain outcome and the risk of
25 any litigation, especially in complex cases such as these Actions, as well as the difficulties and
26 delays inherent in such litigation. The Class Representatives and Class Counsel are mindful of the
27 inherent issues of proof and possible defenses to the claims asserted in the Actions. The Class
28 Representatives and Class Counsel believe that the proposed settlement set forth in this Agreement

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these
2 factors, the Class Representatives and Class Counsel have determined that the Agreement is in the
3 best interests of the Class Representatives and the Settlement Class.

4 3.2 Consistent with the desire to avoid additional expenses and length of continued
5 proceedings, upon execution of the Agreement, the Parties agree to file a “Notice of Settlement” in
6 the *Escobar* case with a concurrent request for relief of any pending deadlines in that matter. Upon
7 the Effective Date of this Agreement, class representative Stephanie Escobar agrees to file a request
8 for dismissal in *Escobar* or otherwise take all necessary steps to secure the full and final dismissal
9 of *Escobar*, with prejudice.

10 **4. SETTLEMENT CONSIDERATION**

11 **4.1 Injunctive Relief**

12 4.1.1. While Defendant maintains that the Covered Products comply with all Federal and
13 State packaging regulations, Defendant will provide injunctive relief in the form of either: (i) an
14 actual size depiction of an individual piece of the Product’s candy accompanied by the term “actual
15 size,” (ii) a fill line, or (iii) other packaging changes to remain compliant with evolving Federal
16 and State packaging regulations that may come into existence after this agreement is signed.
17 Shipment of the modified packaging into the marketplace shall occur within twelve (12) months
18 after the Effective Date. Nothing in this provision shall prevent Defendant from taking necessary
19 action to comply with governmental or regulatory requirements.

20 4.1.2. To the extent that any state and/or federal statute, regulation, policy, and/or code
21 may at any future time impose other, further, different and/or conflicting obligations or duties on
22 Defendant with respect to the Covered Products, this Class Action Settlement Agreement and any
23 Judgment which may be entered pursuant thereto, as well as the Court’s continuing jurisdiction
24 with respect to implementation and enforcement of the terms of this Class Action Settlement
25 Agreement, shall cease as to the Settlement Class’s and Defendant’s conduct covered by that
26 statute, regulation and/or code as of the effective date of such statute, regulation, and/or code.

27 **4.2 Monetary Relief**

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 4.2.1. Defendant shall make available the Total Monetary Settlement Amount for payment
2 of Valid Claims, Administrative Costs, any attorneys’ fees, costs, and expenses awarded by the
3 Court, and any incentive award approved by the Court, as set forth below. Defendant’s obligation
4 to pay the various components that comprise the Total Monetary Settlement Amount shall be
5 pursuant to the following schedule:

6 (a) Administrative Costs in the amount of Five Hundred Thousand Dollars (\$500,000) (not
7 including any postage) shall be paid to the Claims Administrator as follows: Two Hundred Fifty
8 Thousand Dollars (\$250,000) within fourteen (14) days after entry of the Preliminary Approval
9 Order, subject to the Claims Administrator furnishing Defendant with a Form W9 and invoice
10 thirty (30) days prior thereto; Two Hundred Fifty Thousand Dollars (\$250,000) not later than
11 fourteen (14) days after the Effective Date.

12 (b) Attorneys’ fees, costs, and expenses, not to exceed One Million Two Hundred Thousand
13 Dollars (\$1,200,000), as set forth in paragraph 9.1 herein (within forty-five (45) days after the
14 Court’s final order approving the settlement and fee award, notwithstanding any appeal), subject to
15 the additional requirements set forth in paragraph 9.1 herein.

16 (c) Additional amounts owed of the Total Cash Settlement Amount after payment of
17 amounts set forth in 4.2.1(a) and 4.2.1(b), shall be paid within forty-five (45) days after the
18 Effective Date.

19 (d) Vouchers owed toward the Total Voucher Settlement Amount will be issued to the
20 Claims Administrator by Defendant within thirty (30) days after the Claims Administrator reports
21 on the total number of Vouchers Claimed by Class Members under paragraphs 4.2.4 and 4.2.5
22 herein.

23
24 4.2.2 Defendant’s total financial commitment and obligation under this Settlement
25 Agreement shall not, under any circumstances, exceed the Total Monetary Settlement Amount
26 Three Million Three Hundred Thousand Dollars (\$3,300,000).

27 4.2.3. Valid Claims shall be paid from the Claim Fund as soon as practicable but in no event
28 later than ninety (90) days after the Effective Date.

1 4.2.4. The amount of the payment for any claim shall be determined as follows: Settlement
2 Class Members who previously purchased a Covered Product and have a Receipt may submit a
3 Claim Form along with said Receipt to receive either (i) Fifty Cents (\$0.50) per unit of Covered
4 Product purchased (with Receipt), or (ii) a Voucher equal to one unit of Replacement Product for
5 every two units of Covered Product purchased, equating up to a maximum of Eight Dollars (\$8.00)
6 or eight (8) Vouchers.

7 4.2.5. Settlement Class Members who previously purchased a Covered Product but who
8 cannot produce a Receipt may submit a Claim Form, signed under penalty of perjury, that states “to
9 the best of [the Claimant’s] ability” the date of purchase, store name and location of purchase, the
10 purchase price and quantity of Covered Product purchased to receive one Voucher for every two
11 units of Covered Product purchased, up to a maximum of eight (8) Vouchers. Sales taxes, if any,
12 associated with the redemption of a Voucher, must be paid for by the Claimant. No more than
13 eight (8) vouchers may be redeemed at any one time, assuming there is a pro rata upward
14 adjustment as set forth herein. Each Settlement Class Member may submit a claim either
15 electronically through a settlement website or by mail. All Vouchers will expire 180 days from the
16 date they issue, and will be redeemable at Dollar Tree stores, a nationwide retailer with over 5,000
17 retail outlets, or other comparable nationwide retailer(s) as designated by Defendant.

18 4.2.6. Participating Claimants cannot combine claims with Receipts with claims without
19 Receipts.

20 4.2.7. Payment will be made directly to the Participating Claimant within ninety (90) days
21 after the Effective Date.

22 4.2.8. Adequate and customary procedures and standards will be used by the Claims
23 Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims
24 including requesting additional information from Claimants (beyond the online claim form), if
25 necessary.

26 4.2.9. If the amount in the Claim Fund is either less or more than the amount of the total
27 cash claims submitted by Claimants, the claims of each Claimant will be decreased or increased,
28 respectively, pro rata, to ensure the Claim Fund is exhausted, with no reversion from the Claim

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 Fund to Defendant. For avoidance of doubt, cash payouts will be adjusted pro rata up or down in
 2 the event of under-subscription or over-subscription, respectively, of the Cash Claim Fund;
 3 Voucher payouts will be adjusted pro rata up or down in the event of under-subscription or over-
 4 subscription, respectively, of the Voucher Claim Fund. Pro rata upward adjustment of cash claims
 5 shall be capped at a multiple of nine (9) times the claimed amounts, and Voucher claims shall be
 6 capped at a multiple of three (3) times the claim amounts (i.e. a maximum of twenty-four (24)
 7 Vouchers). Any amounts remaining in the Cash Claim Fund after checks are issued and cashed
 8 shall be disbursed *cy pres* to Blessings in a Backpack. Any unclaimed Vouchers remaining in the
 9 Voucher Claim Fund after all Vouchers have been issued to Class Member claimants shall be
 10 distributed as donated product (valued at retail price including shipping costs). The donated
 11 product under this paragraph can consist of any product sold by Defendant at the time of Voucher
 12 expiration and will be provided as *cy pres* to Feed the Children. Thus, for example, if One Million
 13 Dollars (\$1,000,000) in retail value Vouchers, out of the One Million Three Hundred Thousand
 14 Dollars (\$1,300,000) total Voucher Claim Fund, is distributed to the Class Members in response to
 15 Claims, Defendant must provide the equivalent of Three Hundred Thousand Dollars (\$300,000) in
 16 retail value product remaining under the Voucher Claim Fund to *cy pres*. To ensure the proper
 17 amount of donated product is provided, the Claims Administrator will provide to the parties an
 18 accounting of the total retail value for all Vouchers distributed to the Class. Any party may request
 19 an audit of such accounting from the Claims Administrator with reasonable notice.

20 4.2.10. There will be no reversion of cash or Vouchers from the Claim Fund to Defendant.

21 **5. ADMINISTRATION AND NOTICE**

22 5.1. All Administrative Costs shall be paid out of the Total Cash Settlement Amount, and
 23 shall not exceed Five Hundred Thousand Dollars (\$500,000). Postage, if any, will be paid out of
 24 the Cash Claim Fund. Administrative Costs shall be inclusive of printing cost of any Notice and
 25 issuing and delivering cash payments and Vouchers to the Class.

26 5.2. Defendant shall pay the Administrative Costs, or cause the Administrative Costs to be
 27 paid in accordance with the schedule set forth in paragraph 4.2.1(a) herein. The payments shall be
 28 subject to the Claims Administrator providing applicable tax I.D. number(s), payment routing

CLARKSON LAW FIRM, P.C.
 9255 Sunset Blvd., Suite 804
 Los Angeles, CA 90069

1 information, and invoices for the charges no later than thirty (30) days in advance of the required
2 payments. If the settlement does not receive final approval or does not become effective for any
3 reason, Defendant shall have no obligation to pay the second installment of the Administrative
4 Costs Two Hundred Fifty Thousand Dollars (\$250,000), which are due after the Effective Date..

5 5.3. Appointment and Retention of Claims Administrator

6 5.3.1. The Parties agree to retain Digital Settlement Group LLC as a Claims Administrator
7 to implement the Notice Plan, to establish a settlement website, and to receive and process claims
8 pursuant to the terms of the Agreement.

9 5.3.2. The Claims Administrator will facilitate the notice process by assisting the Parties in
10 the implementation of the Notice Plan and administering all aspects of the Settlement.

11 5.4. Class Settlement Website

12 5.4.1. The Claims Administrator will create and maintain the Class Settlement Website, to
13 be activated within twenty (20) days of the entry of the Preliminary Approval Order by the Court.
14 The Claims Administrator’s responsibilities will also include securing an appropriate URL
15 incorporating the words “Just Born” and “Settlement.” The Class Settlement Website will post the
16 settlement documents and case-related documents such as the Class Action Settlement Agreement,
17 the Long-Form Notice, the Claim Form (in English and Spanish versions), and the Preliminary
18 Approval Order. In addition, the Class Settlement Website will include procedural information
19 regarding the status of the Court-approval process, such as an announcement of the Final Approval
20 Hearing Date, when the Final Approval Order and Judgment have been entered, and when the
21 Effective Date has been reached. Claimants will be able to submit their claims electronically via the
22 Class Settlement Website.

23 5.4.2. The Class Settlement Website will terminate (be removed from the internet) and no
24 longer be maintained by the Claims Administrator thirty (30) days after either (a) the Effective
25 Date or (b) the date on which the Class Action Settlement Agreement is terminated or otherwise not
26 approved by a court, whichever is later. The Claims Administrator will then transfer ownership of
27 the URL to Defendant.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 5.4.3. All costs and expenses related to the Class Settlement Website shall be paid by
2 Defendant as part of the Administrative Costs as set forth in 5.1 and 5.2 of this Agreement.

3 5.5. Notice Plan

4 5.5.1. The class notice shall conform to all applicable requirements of the California Code
5 of Civil Procedure and State of California Constitution, and any other applicable Federal and State
6 laws, and shall otherwise be in the manner and form agreed upon by the Parties and approved by
7 the Court. The class notice shall constitute the best notice that is practicable under the
8 circumstances.

9 5.5.2. Within thirty (30) days after preliminary approval by the Court of this Class Action
10 Settlement Agreement, the Claims Administrator shall provide notice to the Settlement Class
11 according to the Notice Plan.

12 5.5.3. The Notice Plan will include internet and print notice. The Notice Plan will have a
13 calculated reach of seventy percent (70%) or greater, to be attested to by affidavit or declaration of
14 the Settlement Administrator. A true and correct copy of the initial proposal for the Notice Plan is
15 attached hereto as Exhibit A.

16 5.5.4. The Settlement Claims Administrator shall purchase the print notice and other forms
17 of notice associated with the Notice Plan, which shall be included in the amount paid to Digital
18 Settlement Group LLC and paid as set forth in paragraphs 5.1 and 5.2 herein.

19 5.5.5. The Parties agree to the content of these notices substantially in the forms attached to
20 this Agreement as Exhibits C and D.

21 5.6. Taxes

22 Settlement Class Members, the Class Representatives, and Class Counsel shall be
23 responsible for paying any and all federal, state, and local taxes due on any payments made to them
24 pursuant to the Class Action Settlement Agreement, if any.

25 **6. RELEASES**

26 6.1. Upon the Effective Date, the Class Representatives and each of the Settlement Class
27 Members will be deemed to have, and by operation of the Judgment will have fully, finally, and
28

1 forever released, relinquished, and discharged the Released Parties from all Released Claims during
2 the Class Period.

3 **7. CLASS CERTIFICATION**

4 7.1. The Parties agree that, for settlement purposes only, the *Mateski* Action shall be
5 certified as a class action pursuant to the California Code of Civil Procedure, with Class
6 Representatives serving as class representatives and Class Counsel as counsel for the Settlement
7 Class.

8 7.2. In the event the Class Action Settlement Agreement is terminated or for any reason the
9 Class Action Settlement Agreement is not effectuated, each individual Action shall proceed as
10 before the Class Action Settlement Agreement was entered into.

11 **8. SETTLEMENT HEARING**

12 8.1. Promptly after execution of this Class Action Settlement Agreement, Plaintiffs will
13 submit the Class Action Settlement Agreement together with its Exhibits to the Court and will
14 request that the Court grant preliminary approval of the Class Action Settlement Agreement, issue
15 the Preliminary Approval Order, and schedule a hearing on whether the Class Action Settlement
16 Agreement should be granted final approval and whether the Fee and Cost Application should be
17 granted (“Settlement Hearing”).

18 8.2. Procedures for Objecting to the Class Action Settlement Agreement

19 8.2.1. Settlement Class Members shall have the right to appear and show cause, if they
20 have any reason why the terms of this Class Action Settlement Agreement should not be given
21 Final Approval, subject to each of the subprovisions of this Paragraph. Any objection to this Class
22 Action Settlement Agreement, including any of its terms or provisions, must be in writing, filed
23 with the Court, with a copy sent the Court and Class Counsel, Counsel for Defendant, and the
24 Claims Administrator at the addresses set forth in the Class Notice, and postmarked no later than
25 the Notice Response Deadline. Settlement Class Members may object either on their own or
26 through an attorney hired at their own expense. Pursuant to the Court’s standing order, the Court
27 will only require substantial compliance with these requirements from Class Members who wish to
28 object, which shall be stated in the Class Notice.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 8.2.2. If a Settlement Class Member hires an attorney to represent him or her at the Final
2 Approval Hearing, he or she must do so at his or her own expense.

3 8.2.3. Any objection regarding or related to the Class Action Settlement Agreement shall
4 contain a caption or title that identifies it as “Objection to Class Settlement in *Mateski, et al. v. Just*
5 *Born, Inc.*” and also shall contain the following information: (i) the objector’s name, address, and
6 telephone number, (ii) the name, address, and telephone number of any attorney for the objector
7 with respect to the objection; (iii) the factual basis and legal grounds for the objection, including
8 any documents sufficient to establish the basis for their standing as a Settlement Class Member,
9 e.g., Receipt, or verification under oath as to the approximate date(s) and location(s) of their
10 purchase(s) of the Covered Products; and (iv) identification of the case name, case number, and
11 court for any prior class action lawsuit in which the objector and the objector’s attorney (if
12 applicable) has objected to a proposed class action settlement, the general nature of such prior
13 objection(s), and the outcome of said prior objection(s). If an objecting party chooses to appear at
14 the hearing, no later than the Notice Response Deadline, a notice of intention to appear, either in
15 person or through an attorney, must be filed with the Court and list the name, address, telephone
16 number, facsimile number, and email address of the attorney, if any, who will appear.

17 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at the Final
18 Approval Hearing in support of a timely and validly submitted objection, all witnesses must be
19 identified in the objection, and true and correct copies of all supporting evidence must be appended
20 to, or filed and served with, the objection. Failure to identify witnesses or provide copies of
21 supporting evidence in this manner waives any right to introduce such testimony or evidence at the
22 Final Approval Hearing. While the declaration described above is prima facie evidence that the
23 objector is a member of the Settlement Class, Class Representative or Defendant or both may take
24 discovery regarding the matter, subject to Court approval.

25 8.2.5. Any Class Member who does not timely object to the Class Action Settlement
26 Agreement or timely submit a Request for Exclusion is deemed to be a Settlement Class Member
27 and bound by the Class Action Settlement Agreement or any further orders of the Court in this
28 Action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8.3. Right to Respond to Objections

8.3.1. Class Counsel and Defendant shall have the right, but not the obligation, to respond to any timely-filed objection no later than seven (7) days prior to the Final Approval Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Class Representative and Defendant.

8.4. Opt Outs

8.4.1. Any Class Member who does not wish to participate in this Class Action Settlement Agreement must make a Request for Exclusion in writing to the Claims Administrator stating an intention to be “excluded” from this Class Action Settlement Agreement by the Opt-Out Date, which is also the Notice Response Deadline. This written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than the Notice Response Deadline. The Request for Exclusion must be personally signed by the Class Member. So-called “mass” or “class” opt-outs shall not be allowed. A Class Member who timely submits a valid Request for Exclusion pursuant to this paragraph shall not be a Settlement Class Member and shall not be considered a party to this Action for any purpose.

8.4.2. Any Class Member who does not request exclusion from the Settlement has the right to object to the Settlement as set forth in Paragraphs 8.2.1 to 8.2.5 above. If a Class Member submits a written Request for Exclusion, he or she shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Class Action Settlement Agreement if approved by the Court. However, any objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Class Action Settlement Agreement and by all proceedings, orders and judgments in the Action.

8.4.3. At least seven (7) calendar days prior to the Final Approval Hearing, Class Counsel shall prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and Class Counsel shall file that list with the Court.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 8.4.4. Defendant shall have the right to withdraw from this Settlement if the total number
2 of Opt-Outs exceeds One Thousand (1,000) Class Members. Defendant agrees not to make or cause
3 to be made any statements or pronouncements to discourage Class Member participation in the
4 Settlement.

5 **9. ATTORNEYS’ FEES, COSTS, AND EXPENSES**

6 9.1. Class Counsel may apply to the Court for an award of attorney’s fees of up to thirty
7 percent (30%) of the Three Million Three Hundred Thousand Dollars (\$3,300,000) Settlement
8 Fund, plus costs and expenses, not to exceed One Million Two Hundred Thousand Dollars
9 (\$1,200,000). This amount will be paid out of the Total Cash Settlement Fund. Such attorney’s
10 fees, costs and expenses, if approved by the Court, shall be payable within thirty (30) days
11 following the Court’s final order approving the Settlement and fee award, notwithstanding any
12 appeal, subject to Class Counsel providing applicable tax I.D. number(s) and providing payment
13 routing information. If the Final Approval Order and Judgment or any part of it is vacated,
14 overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is
15 voided, rescinded, or otherwise terminated for any other reason, or the Court’s award of attorney
16 fees, costs or expenses is reduced on appeal or otherwise prior to the Effective Date, then within
17 thirty (30) days of such event, Class Counsel shall return to Defendant all attorneys’ fees, costs,
18 and other payments received by Class Counsel under this paragraph and this Agreement, in
19 amounts proportionate to payments received from Defendant, respectively. The following persons
20 and/or entities shall be jointly and severally liable for the return of such payments to Defendant: (a)
21 Clarkson Law Firm, P.C., (b) Ryan J. Clarkson, Esq., (c) Shireen Clarkson, Esq., and (d) any
22 attorneys of Clarkson Law Firm, P.C. (or other law firm, if any) in their individual capacity who
23 receive a share of such payments. To effectuate this provision, Clarkson Law Firm, P.C. and each
24 individual attorney or other law firm who receives a share of payments made under this paragraph
25 shall execute a guarantee of repayment (“Undertaking”) prior to receiving such funds, and Clarkson
26 Law Firm P.C.’s share shall be collateralized by an irrevocable letter of credit or other acceptable
27 form of collateral. Any collateralized obligation under this paragraph shall expire upon the
28 Effective Date.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 9.2. Plaintiffs may apply to the Court for a total incentive award of Fifteen Thousand
2 Dollars (\$15,000) for their service as named plaintiffs and putative class representatives. The
3 amount of the incentive award ordered by the Court shall be paid by the Claim Administrator or
4 Class Counsel out of the Total Cash Settlement Fund within forty-five (45) days after the Effective
5 Date, subject to the prior delivery to Defendant of tax I.D. number(s) and address for delivery for
6 each individual receiving such award.

7 **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

8 10.1. The Effective Date of this Class Action Settlement Agreement shall be the date as
9 defined in Paragraph 1.18.

10 10.2. If this Class Action Settlement Agreement is not approved by the Court or the
11 Settlement is terminated or fails to become effective in accordance with the terms of this Class
12 Action Settlement Agreement, the Settling Parties will be restored to their respective positions in
13 the Actions as of the date the Motion for Preliminary Approval of this Class Action Settlement
14 Agreement is filed. In such event, the terms and provisions of this Class Action Settlement
15 Agreement and the Term Sheet Agreement executed in January of 2020 will have no further force
16 and effect with respect to the Settling Parties and will not be used in either Action or in any other
17 proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the
18 terms of this Class Action Settlement Agreement will be treated as vacated. The Parties will meet
19 and confer regarding a proposed class certification schedule, and will submit to the Court a
20 proposed schedule, or competing alternative schedules if they cannot reach agreement. For the
21 avoidance of doubt, nothing in this Paragraph shall affect the obligations in Paragraph 9.1, which
22 shall survive non-approval of the Class Action Settlement Agreement, termination of the
23 Settlement, and/or failure of the Settlement to become effective in accordance with the terms of this
24 Class Action Settlement Agreement.

25 **11. MISCELLANEOUS PROVISIONS**

26 11.1. The Parties acknowledge that it is their intent to consummate this Class Action
27 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate
28 and implement all terms and conditions of this Class Action Settlement Agreement and to exercise

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 their best efforts to accomplish the foregoing terms and conditions of this Class Action Settlement
2 Agreement.

3 11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes
4 between them with respect to the Action. The Settlement compromises claims that are contested
5 and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.
6 The Parties agree that the consideration provided to the Settlement Class and the other terms of the
7 Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached
8 voluntarily after consultation with competent legal counsel.

9 11.3. Neither this Class Action Settlement Agreement nor the Settlement, nor any act
10 performed or document executed pursuant to or in furtherance of this Class Action Agreement or
11 the Settlement, or any fees or costs approved or awarded by the Court is or may be deemed to be or
12 may be used as an admission of, or evidence of, the validity of any Released Claims, or of any
13 wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission
14 of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative
15 proceeding in any court, administrative agency or other tribunal. Any party to this Action may file
16 this Class Action Settlement Agreement and/or the Judgment in any action that may be brought
17 against it in order to support any defense or counterclaim, including without limitation those based
18 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
19 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
20 counterclaim.

21 11.4. All agreements made and orders entered during the course of the Actions relating to
22 the confidentiality of information will survive this Class Action Settlement Agreement.

23 11.5. Any and all Exhibits to this Class Action Settlement Agreement are material and
24 integral parts hereof and are fully incorporated herein by this reference.

25 11.6. This Class Action Settlement Agreement may be amended or modified only by a
26 written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

27 11.7. This Class Action Settlement Agreement and any Exhibits attached hereto constitute
28 the entire agreement among the Parties, and no representations, warranties, or inducements have

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 been made to any Party concerning this Class Action Settlement Agreement or its Exhibits other
2 than the representations, warranties, and covenants covered and memorialized in such documents.
3 Except as otherwise provided herein, the Parties will bear their own respective costs.

4 11.8. Class Counsel, on behalf of the Settlement Class, are expressly authorized by the
5 Class Representative to take all appropriate actions required or permitted to be taken by the
6 Settlement Class pursuant to this Class Action Settlement Agreement to effectuate its terms, and
7 are expressly authorized to enter into any modifications or amendments to this Class Action
8 Settlement Agreement on behalf of the Settlement Class that Class Counsel deem appropriate.

9 11.9. Each counsel or other Person executing this Class Action Settlement Agreement or
10 any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to
11 do so.

12 11.10. This Class Action Settlement Agreement may be executed in one or more
13 counterparts. All executed counterparts and each of them will be deemed to be one and the same
14 instrument. The parties further agree that signatures provided by portable document format (PDF)
15 or other electronic transmission shall have the same force and effect as original signatures.

16 11.11. This Class Action Settlement Agreement will be binding upon, and inure to the
17 benefit of, the successors and assigns of the Settling Parties.

18 11.12. Except as provided herein, the Court will retain jurisdiction with respect to
19 implementation and enforcement of the terms of this Class Action Settlement Agreement, and all
20 parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing
21 the Settlement.

22 11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of
23 this Class Action Settlement Agreement or its Exhibits for purposes of construing the provisions
24 thereof. The language in all parts of this Class Action Settlement Agreement and its Exhibits will
25 be interpreted according to its plain meaning, and will not be interpreted for or against any of the
26 Settling Parties as the drafter thereof.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 11.14. This Class Action Settlement Agreement and any Exhibits hereto will be construed
2 and enforced in accordance with, and governed by, the internal, substantive laws of the State of
3 California without giving effect to that State’s choice-of-law principles.

4 11.15. The time periods and/or dates described in this Settlement Agreement with respect
5 to the giving of notices and hearings are subject to approval and change by the Court or by the
6 written agreement of Class Counsel and Defendant’s Counsel, without notice to Class Members.
7 The Parties reserve the right, by agreement and subject to the Court’s approval, to grant any
8 reasonable extension of time that might be needed to carry out any of the provisions of this
9 Settlement Agreement.

10 11.16. If the date for performance of any act required by or under this Settlement
11 Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next
12 business day with the same effect as if it had been performed on the day or within the period of
13 time specified by or under this Settlement Agreement. 11.17 Neither party shall be held liable or
14 responsible to the other party or to the Class, nor be deemed to have defaulted under or breached
15 this Agreement for failure or delay in fulfilling or performing any obligation under this Class
16 Action Settlement Agreement if it is altogether prevented or delayed in performing those
17 obligations by an event of force majeure. An event of force majeure, as used in this paragraph, is
18 an event or circumstance which is beyond the control and without the fault or negligence of the
19 party affected and which by the exercise of reasonable diligence the party affected was unable to
20 prevent provided that event or circumstance is limited to the following: war (whether declared or
21 not), armed conflict or the serious threat of the same (including but not limited to hostile attack,
22 blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military
23 mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil
24 commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or
25 piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health
26 crisis, including quarantine or other employee restrictions; act of authority whether lawful or
27 unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew
28 restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane,
 2 tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or
 3 destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and
 4 of any kind of installation, prolonged break-down of transport, telecommunication or electric
 5 current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow,
 6 occupation of factories and premises; shortage or inability to obtain critical material or supplies to
 7 the extent not subject to the reasonable control of the subject Party (“Force Majeure Event”). This
 8 provision shall become effective only if the Party failing to perform notifies the other party within a
 9 reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to
 10 that required by the Event, and takes all reasonable steps to minimize damages and resume
 11 performance. Performance under any term of this Agreement which has become delayed or
 12 impossible to perform due to the Force Majeure Event shall resume as soon as that aspect of the
 13 Force Majeure Event as subsided. The Parties agree that the circumstances of the COVID19
 14 pandemic as presently known to exist will not delay or make impossible performance under this
 15 Agreement.

SIGNATURE BLOCK ON NEXT PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: April ____, 2020
5/2/2020

DocuSigned by:
Mary Mateski
31FA7B28087E433...

Mary Mateski

DATED: April ____, 2020
5/1/2020

DocuSigned by:
Alisa Clawson
8A7E47B51019412...

Alisa Clawson

DATED: April ____, 2020
5/5/2020

DocuSigned by:
Stephanie A. Escobar
F7BEE11BCB8D4CE...

Stephanie Escobar

DATED: April 30, 2020
4/30/2020 | 22:26 EDT

DocuSigned by:
Ronald J. Izewski
7EBCCB433AF4493...

Just Born, Inc.
Ronald J. Izewski
SVP and CFO

APPROVED AS TO FORM:

DATED: April ____, 2020
5/1/2020

CLARKSON LAW FIRM, P.C.

DocuSigned by:
Ryan Clarkson
749910637694D7

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Matthew T. Theriault, Esq.
Bahar Sodaify, Esq.

Attorneys for Plaintiffs

DATED: April ____, 2020
May 1, 2020

LEWIS BRISBOIS BISGAARD
& SMITH LLP

Eric Y. Kizirian

Eric Y. Kizirian, Esq.
Leo A. Bautista, Esq.
Josephine Brosas, Esq.

Attorneys for Defendant Just Born, Inc.

CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

1 **DECLARATION OF MARK SCHEY**

2 I, MARK SCHEY, hereby declare under penalty of perjury as follows:

3 1. I am a founding partner of Digital Settlement Group, LLC (“DSG”), a company that
4 provides class action notice and claims administration. The following statements are based on my
5 personal knowledge and information provided by other DSG principals and employees working
6 under my supervision, and if called upon to do so, I could and would testify competently about
7 these issues.

8 2. DSG was retained to provide notice and claims administration services for the proposed
9 settlement in this action.

10 3. Digital Settlement Group has served as a court-approved notice provider in over a dozen
11 state and federal court class actions and has worked in the class action category for over eight years
12 and provided expertise in Internet notice to some of the largest class action administration
13 companies in the industry, including the following class actions: *Iglesias v. Ferrara Candy*
14 *Company*, No. 3:17-cv-00849-VC (District Court for the Northern District of California) (National
15 purchaser class of opaque theater candy box products at retail nearly identical to this case), *Keller*
16 *v. Gaspari Nutrition*, No. CV11-06158 (U.S. Dist. Ct., Central Dist. Cal.); *Taromina, v. Gaspari*
17 *Nutrition*, No. CV12-05424 (U.S. Dist. Ct., Central Dist. Cal.); *Wike v. HCG Platinum, LLC*, No.
18 BC451080 (Los Angeles County Superior Court). Most recently, we managed notice and
19 administration for *Garcia v. Iovate Health Sciences USA Inc.* (Santa Barbara Superior Court)
20 (National indirect purchaser class of a consumer product at retail).

21 4. In approving *In Re: Wellnx Marketing & Sales Practices* (a national, 18 state multidistrict
22 class action litigation with a substantial indirect purchaser class), the Court noted: “the effort to
23 provide notice to the class went well beyond what due process would require at its minimum. In
24 fact, it was both an intelligent and effusive, if I can use that word, notification process, which has
25 given me new some ideas for similar cases in the future for the proper way of giving notice in a
26 case like this where it is hard to otherwise ascertain the identity of the class members.”

27 5. Additionally, Digital Settlement Group has over twenty years of marketing experience with
28 a specialty in television and Internet advertising, including managing the official online sites for

1 20th Century Fox on behalf of News Corporation from 1993 to 1996. Our founders have served as a
2 marketing consultant to a variety of consumer product companies, where responsibilities included
3 creative directing national marketing campaigns and producing and directing national television
4 commercials (which have been featured in trade magazines, like *Advertising Age*, and generated
5 hundreds of millions of dollars in retail revenue). Digital Settlement Group personally managed
6 tens of millions of dollars in Internet advertising for consumer products. Due to the extensive
7 Internet marketing experience, our area of specialty is providing class notice in cases where the
8 identities of individual Class Members is not known, including classes comprised of purchasers of
9 consumer products. *See Arreguin v. Telebrands*, No. CIVRS1307798 (Superior Court of California,
10 San Bernardino County) (Indirect purchaser class of nationwide Pocket Hose consumer product.);
11 and *Eggnatz et al v. The Kellogg Company et al*, S.D. Fla., Case No. 1:12-cv-21678. (Indirect
12 purchaser class of nationwide Kashi products with no direct mail component.)

13 6. This declaration will describe the notice program that my colleagues and I suggest using in
14 this matter, including the considerations that informed the development of the plan and why it will
15 provide Due Process of Law to the Class Members. This case's Notice Plan will largely mirror but
16 improve upon *Iglesias v. Ferrara Candy Company*, No. 3:17-cv-00849-VC (District Court for the
17 Northern District of California) (National purchaser class of opaque theater candy box products at
18 retail nearly identical to this case) based on information learned through the Notice and Claims
19 Administration process of that case.

20 **SUMMARY OF NOTICE PROGRAM**

21 7. This Litigation involves Products sold predominantly at movie theater locations and retail,
22 so the identity of purchasing Class Members is not readily known. In such cases, Internet and/or
23 publication notice typically is the best way to inform Class Members about the Settlement. Digital
24 Settlement Group relies heavily on recommendations from the Federal Judicial Center's Judges'
25 Class Action Notice and Claims Process Checklist and Plain Language Guide ("Claims Guide") in
26 designing its notice plans.

27 8. DSG developed a comprehensive notice program consisting of efficient media vehicles
28 with the objective of reaching a substantial portion of Class Members. A detailed breakout of the

1 notice plan is outlined in the Service Agreement. DSG believes this provides the best practicable
2 methods to reach potential class members and has seen successful results in similar plans with
3 similar class members.

4 9. Before any of the notices begin, DSG will review all materials and work with Counsel to
5 help comply with Claims Guide recommendations and timelines. All the advertisements will direct
6 potential Class Members to the Settlement Website, where they will be able to download all
7 important documents, review frequently asked questions, and file a claim either online and/or
8 postal as stated in the agreement. Administration will notify claimants of any missing or invalid
9 claim information after the Approval Hearing. A toll-free number with an Interactive Voice
10 Response (“IVR”) system will also be available to answer potential questions.

11 10. One of the concerns noted in the Claims Guide is that claims administrators are “often
12 accountants by training and may lack personal knowledge or the training to conduct reach
13 analyses.” Digital Settlement Group, however, has extensive expertise in marketing and media-
14 planning that is essential to conducting reach analysis that has been approved by Courts in similar
15 cases with a large indirect purchaser class.

16 11. The notice plan is supported by “unbiased evidence supporting the plan’s adequacy” as
17 recommended by the Claims Guide. DSG previously developed the notice plan for *Iglesias v.*
18 *Ferrara Candy Co.*, which was a substantially similar action. In developing the plan, DSG used
19 industry-standard reporting tools from comScore, the leading cross-platform measurement
20 company that provides independent data, metrics, products and services to clients in the media,
21 advertising and marketing industries. They provide digital media analytics that help advertisers
22 understand the composition, reach, and frequency of consumer media audiences. The accuracy of
23 reporting from comScore has been approved by Courts in previous notice plans DSG has
24 developed. This notice plan will take advantage of the experiences from the previous notice plan.

25 12. Our notice programs create the best practicable plan because they are designed in the same
26 way a company would design an advertising campaign to sell that very same product. Specifically,
27 we used industry standard advertising tools to identify media properties where purchasers of candy
28 were most likely to be located. In addition, the methods used have been approved in multiple cases

1 with a substantial indirect purchaser class (See *Arreguin v. Telebrands* and *Eggnatz et al v. The*
2 *Kellogg Company*).

3 **CLASS DEFINITION**

4 13. The “Settlement Class” is defined as: “All persons in the United States of America who
5 purchased one or more MIKE AND IKE® and/or HOT TAMALES® candy products
6 manufactured by Defendant and packaged in an opaque cardboard box and purchased by
7 consumers from February 3, 2013 through the date when the Court enters the Preliminary Approval
8 Order of the Settlement.”

9 **SETTLEMENT WEBSITE**

10 14. Digital Settlement Group will create and maintain a dedicated web site for the Class
11 Members to learn about the Settlement. It will feature the ability to download all relevant
12 documents (in industry standard PDF format), including Claim Forms, Important Dates, Frequently
13 Asked Questions, Long Form Notice, and the Short Form notice. The site will be designed for
14 broad compatibility with browsers and platforms using best practices.

15 15. All traffic to the site will be monitored with proprietary fraud detection systems, similar to
16 those used on e-commerce platforms, to help ensure legitimate Class Members receive the
17 maximum benefit. A 3rd party monitoring service will check the site at regular intervals to ensure
18 the site is functioning properly and, if required, provide an independent report on the total up-time
19 of the site. The Settlement Web Site will be updated in a timely manner, based upon the Court-
20 approved schedule. For example, when the deadline for filing a claim has passed, that option will
21 be removed from the site.

22 **PRESS RELEASE**

23 16. DSG will release a press release, with language to be agreed upon by Counsel, through PR
24 Newswire. PR Newswire is the industry’s largest content distribution network reaching more than
25 4,000 US websites, nearly 3,000 media outlets, and more than 550 news content systems. The
26 network also includes PR Newswire for Journalists, an exclusive, media-only community with over
27 20,000 daily unique visitors.

1 **INTERNET ADVERTISEMENTS**

2 17. The Internet is an extremely powerful tool for reaching potential class members and
3 driving them to the settlement website. According to Pew Research (2019), 90% of all adults in the
4 United States use the Internet, up from 79% in 2010. Over a decade of Internet marketing
5 experience has been leveraged to design the most effective plan.

6 18. DSG will target Class Members with impressions on the *ComScore Ranked Tier 1 websites*
7 over the course of 30 days defined in the agreement. An impression is defined as when the internet
8 ad is shown or loaded on a Website. The sites selected for the Internet notice reach at least 70% or
9 higher of the Internet population and are the most popular on the United States Internet, based upon
10 comScore data. This notice plan will deliver impressions using demographic, interest, and/or
11 behavioral targeting. Whenever possible and cost effective, behavioral and “transactional
12 targeting” from the site, networks or 3rd party data sources will be used to deliver advertisements to
13 users who have purchased the product or shown interest in a specific product or category. Digital
14 Settlement Group will also use targeted native ads to help provide information to those individuals
15 that may not fall into the other targeted segments. Unlike traditional media (like print
16 publications), this allows a notice plan to target potential class members more accurately with
17 significantly less “wasted” impressions.

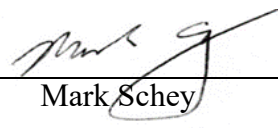
18 19. In addition, targeted “search terms” advertisements on popular search engines and
19 networks will be incorporated into the plan. Per the *Claims Guide*, this is to help satisfy “extra
20 effort” where the class is “highly concentrated.” Whenever possible and cost effective, settlement
21 notice advertisements will be targeted based on past user behavior. In addition, contextual, in-
22 market, topic and affinity targeting are used to ensure the most relevant audience is reached. This
23 type of advertising targets the right potential class members at the right time.

24 20. The notice program will consist of over 61.5 million targeted Internet impressions on Tier
25 1 properties (e.g. Yahoo, Google, Facebook), using 3rd party tools to verify reach and frequency.
26 Behaviors, interests, and topics will be used to target the notice in the most efficient manner. For
27 example, targeting will include adults in the United States who are known to have purchased
28 “candy,” while excluding “health and fitness” consumers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on June 2, 2020.



Mark Schey