

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LESLIE HEDGES, individually and on behalf)	
of all others similarly situated,)	
)	
)	
Plaintiff,)	Case No. 14-CV-9858
)	
v.)	Honorable Harry D. Leinenweber
)	
EARTH INC., a Massachusetts corporation,)	Magistrate Judge Susan E. Cox
)	
Defendant.)	

This settlement agreement (“Agreement,” “Settlement,” or “Settlement Agreement”) is entered into by and among the Plaintiff Leslie Hedges (“Plaintiff”) and the Settlement Class (as defined herein), on the one hand, and Defendant Earth, Inc. (“Earth” or “Defendant”) on the other hand. The Plaintiff, the Settlement Class, and Earth are collectively referred to herein as the “Parties.” This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined herein) on the merits with prejudice, upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

RECITALS

A. Plaintiff Leslie Hedges filed this Action on December 9, 2014, against Earth on behalf of herself and a proposed class of all similarly situated individuals who, within the applicable statute of limitations, purchased Earth Exer-Walk shoes. Plaintiff alleged in her Complaint that Earth made false, misleading, and deceptive advertisements regarding the health benefits of its Exer-Walk shoes in order to induce consumers to purchase such products. Plaintiff

asserted claims for breach of express warranty, unjust enrichment, and consumer fraud. (*See generally* Docket No. 1.)¹

B. On February 2, 2015, Earth filed a motion to dismiss Plaintiff's breach of express warranty claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket No. 16.) On April 21, 2015, this Court denied that motion. (Docket No 24.)

C. After the ruling on the motion to dismiss, Class Counsel and Earth began settlement negotiations through telephonic conferences and written correspondence.

D. On April 22, 2015, the Parties filed an agreed motion for a 90-day extension of time to answer or otherwise respond to Plaintiff's class action complaint in order to have the necessary time to attend a mediation and explore settlement opportunities. (Docket No. 25). On April 29, 2015, this Court granted that motion and set a new status hearing for July 22, 2015. (Docket No. 26.)

E. In an effort to settle the claims, on June 9, 2015, the Parties engaged in a full day of mediation that went into the late evening before the Hon. Morton Denlow (Ret.) in the Chicago, Illinois, offices of JAMS. Prior to the mediation, the Parties exchanged written statements and documents supporting their respective positions. After nearly eleven hours of arms-length negotiations, the Parties were successful in reaching an agreement on the material terms of a settlement structure.

F. At all times, Earth has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened, or attempted to commit any wrongful act or violation of law or duty alleged in the Action. Earth also denies: (i) each and all of the claims and contentions alleged by Plaintiff in the Action; (ii) all charges of wrongdoing

¹ Unless otherwise stated, all references to docket entries relate to Case No.14-cv-9858.

or liability against it or its agents arising out of any conduct, statements, acts or omissions alleged in the Action; and (iii) that Plaintiff or the Settlement Class are entitled to any form of damages based on the conduct alleged in the Action. In addition, Earth maintains that it has meritorious defenses to the claims alleged in the Action and was prepared to vigorously defend all aspects of the Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Earth has concluded that further defense of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial to Earth that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Earth, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

G. Plaintiff and Class Counsel believe that the claims asserted in the Action against Earth have merit and that they would have ultimately been successful in certifying the proposed classes under Federal Rule of Civil Procedure 23 on a contested, adversarial basis and prevailing on the merits at summary judgment or trial. Nonetheless, Plaintiff and Class Counsel recognize and acknowledge that Earth has raised factual and legal defenses in the Action that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulties and delays inherent in such litigation. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, Plaintiff and Class

Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

H. Given the above, and considering all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and Earth, by and through its respective undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 “Action” means the case styled *Hedges v. Earth Inc.*, Case No. 14-cv-09858 pending in the Northern District of Illinois.

1.2 “Approved Claim” means the initial Claim Form submitted by a Settlement Class Member that is: (i) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (ii) fully and truthfully completed and

executed, with all of the information requested in the Claim Form by a Settlement Class Member; (iii) signed by the Settlement Class Member; and (iv) returned via online submission by the Claims Deadline or U.S. Mail post-marked by the Claims Deadline.

1.3 “Claim Form” means the form Settlement Class Members must complete and submit on or before the Claim Deadline, as defined in Paragraph 1.6 below, in order to be eligible for the benefits described herein, which document shall be substantially in the form of Exhibit A hereto. The Claim Form shall require a certification that the claiming Class Member purchased an Earth Exer-Walk shoe, but shall not require a notarization or any other form of verification. Claim Forms will be processed after the Effective Date.

1.4 “Class Counsel” means Joseph J. Siprut and Michael L. Silverman of Siprut PC.

1.5 “Class Representative” means the named Plaintiff in this Action, Leslie Hedges.

1.6 “Claims Deadline” means the date by which all Claims Forms must be postmarked or received to be considered timely and shall be set as a date no later than sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Published Notice, Direct Notice, Official Notice, and Claim Form.

1.7 “Court” means the United States District Court for the Northern District of Illinois, Judge Harry D. Leinenweber, or any judge who shall succeed him as the Judge in this Action, presiding.

1.8 “Defendant” means Earth, Inc.

1.9 “Defendant’s Counsel” means: (i) Russell Beck and Stephen Riden of Beck Reed Riden LLP; and (ii) Martin J. Bishop of Reed Smith LLP.

1.10 “Effective Date” means the date immediately upon which the last of the

following events and conditions have occurred or have been met:

(a) This Agreement has been signed by the Plaintiff, Defendant, and Class Counsel;

(b) The Court has entered the Preliminary Approval Order approving this Settlement Agreement, Notice, and Claim Form or with non-substantive revisions in the form tendered to the Court for Preliminary Approval;

(c) The Court has entered an order finally approving this Agreement in its entirety, following notice to the Settlement Class, approving the Claim Form and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered a judgment consistent with the Agreement (the “Judgment”); and

(d) The Judgment has become Final, as defined in Paragraph 1.12 below, or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and that has the consent of the Parties, such Alternative Judgment becomes Final.

1.11 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

1.12 “Final” means one business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered

on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.13 “Final Approval Hearing” means the hearing before the Court where the Parties will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and the incentive award to the Class Representative.

1.14 “Notice” means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which shall be in substantially the same form as Exhibit B (“Official Notice” available on the settlement website), Exhibit C (“Published Notice”), and Exhibit D (“Direct Notice”) attached hereto, which will notify the Settlement Class of preliminary approval of the Settlement and the scheduling of the Fairness Hearing, among other things, consistent with the requirements of Due Process and Federal Rule of Civil Procedure 23.

1.15 “Notice Date” means the date by which the Notice Plan set forth in Paragraph 4.2 is complete, which shall be a date no later than ninety (90) days after entry of the Preliminary Approval Order.

1.16 “Notice Plan” means the proposed plan developed by the Settlement Administrator of disseminating notice to members of the Settlement Class of the proposed Settlement Agreement and of the Final Approval Hearing. Other than mailing the Official Notice and Claim Form to the last known addresses of Class Members, the publication of the Published Notice, and the creation of the settlement website, no additional direct or publication notice is necessary or required.

1.17 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement

Class must be postmarked and/or filed with the Court, which shall be designated as a date no later than sixty (60) days after the Notice Date, or such other date as ordered by the Court.

1.18 “Parties” or “Settling Parties” means Plaintiff Leslie Hedges and the Settlement Class on the one hand, and Defendant Earth on the other hand.

1.19 “Person” shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. The definition of “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General’s office.

1.20 “Plaintiffs” means Plaintiff Leslie Hedges and the Settlement Class Members who do not request to be excluded from the Settlement Class (whether or not such members submit claims), collectively.

1.21 “Preliminary Approval” means the Court’s certification of the Settlement Class for settlement purposes only, preliminary approval of the Settlement Agreement, and approval of the form of the Notice and of the Notice Plan.

1.22 “Preliminary Approval Order” means the proposed order preliminarily approving the Agreement and directing notice thereof to the Settlement Class, to be submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

1.23 “Product” means the Earth Exer-Walk shoe.

1.24 “Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands,

liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions or failures to act relating to, or any individual or entity on Earth's behalf; allegedly misrepresenting or omitting statements concerning a Product, and any resulting damages arising therefrom that were or could have been alleged or asserted in the Action, including but not limited to violations of a consumer fraud statute, and Released Claims belonging to Plaintiff and her respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these Persons and entities. Nothing herein is intended to release any claims that any governmental agency or governmental actor has against Earth. Notwithstanding the foregoing, "Released Claims" does not include: (i) personal or bodily injury claims; or (ii) class claims that do not relate in any way to the purchase of a Product.

1.25 "Released Parties" means Earth and any and all of its present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, affiliates, subsidiaries, associates, employers, employees, agents, consultants, independent contractors,

insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, distributors, retailers, and resellers and persons, firms, trusts, corporations, officers, directors, other individuals or entities in which Earth has a controlling interest or which is affiliated with any of them, or any other representatives of any of these persons and entities.

1.26 “Releasing Parties” means Plaintiff, those Settlement Class Members who do not request to be excluded from the Settlement Class (whether or not such members submit claims); to the extent any Settlement Class Member is not an individual, all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, predecessors-in-interest, and all of the aforementioned’s present, former, and future officers, directors, employees, shareholders, attorneys, agents, independent contractors; and, to the extent any Settlement Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns of each of them.

1.27 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice to and processing Claim Forms submitted by the Settlement Class in relation to this Settlement, as well as any costs incurred in sending the CAFA notices described in Paragraph 4.2(e) below, with such expenses to be paid from the Settlement Fund.

1.28 “Settlement Administrator” means, subject to Court approval, the firm of Kurtzman Carson Consultants LLC (“KCC”), which has been selected by the Parties to oversee

the distribution of Notice as well as the processing and payment of claims to the Settlement Class as set forth in this Settlement Agreement.

1.29 “Settlement Class” means all individuals or entities who, from January 1, 2009 up to the date of entry of the Preliminary Approval Order, purchased a Product. The following individuals and entities are specifically excluded from the Settlement Class: (i) Earth, its parents, subsidiaries, affiliates, officers, directors, distributors, retailers, and resellers; (ii) any person or entity who purchased the Product for purpose of resale; (iii) the judge to whom this case is assigned and any immediate family members thereof; or (iv) any Person who has submitted a valid request for exclusion.

1.30 “Settlement Class Member” or “Class Member” means a Person who falls within, and is not excluded from, the definition of the Settlement Class as set forth above.

1.31 “Settlement Fund” means a non-reversionary common fund of \$270,000 established by Defendant to pay Class Members who submit Approved Claims as further defined herein. The Settlement Fund shall be distributed *pro rata* to claiming Class Members based on each Approved Claim Form submitted. There can be only one Approved Claim Form per Class Member. From this Settlement Fund, Defendant shall pay all costs associated with the Settlement, including: (i) Approved Claims; (ii) Settlement Administrative Expenses; (iii) the Fee Award; and (iv) an incentive award to the Class Representative. The Settlement Fund represents the maximum amount of Defendant’s monetary obligations under this Agreement. Under no circumstances shall any amount of the Settlement Fund revert to Defendant. Within twenty-one (21) days of the Court entering the Preliminary Approval Order, Defendant shall transfer the full amount of the Settlement Fund into an escrow account held by the Settlement Administrator in trust for the benefit of the Settlement Class.

1.32 “Special Master” means an independent person to be agreed upon by the Parties or appointed by the Court to evaluate those Claim Forms submitted by purported members of the Settlement Class the acceptance or rejection of which has been challenged by Defendant, Defendant’s representatives or Class Counsel.

1.33 “Unknown Claims” means claims that could have been raised in the Action and that the Plaintiffs or any or all other Persons and entities whose claims are being released, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released, also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiffs acknowledge that they may discover facts in addition to or different from those that they now know or believe to be

true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF.

2.1 Payments.

(a) **Payments Available to All Class Members.** Class Members shall have until the Claims Deadline to submit an Approved Claim in accordance with the Notice. There can be only one Approved Claim per Class Member. Each Class Member who submits an Approved Claim shall receive a *pro rata* distribution of the Settlement Fund, after Settlement Administration Expenses, Fee Award, and an incentive award to the Class Representative have been deducted.

(b) **No Unclaimed Property.** In no event will any unclaimed funds constitute abandoned or unclaimed property.

(c) Within sixty (60) days after the Effective Date has occurred, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check and mail them to the claimants via first-class mail, unless challenged pursuant to Paragraph 5.3 below.

(d) All payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void. Within Sixty (60) days of the final date to cash a check, the Settlement Administrator shall take the necessary action for the funds to escheat to the appropriate state government(s).

2.2 Prospective Relief. As part of this settlement, Defendant represents that it no longer manufactures or sells the Product, and further warrants that it will refrain from disseminating advertisements for the Products that were sold by Defendant from January 1, 2009 up to the date of the preliminary approval.

3. RELEASES.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims and Unknown Claims, as against all Released Parties for the Settlement Class.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims and Unknown Claims against the Released Parties, and each of them.

4. NOTICE TO THE CLASS.

4.1. Upon issuance of Preliminary Approval of this Agreement, the Claims Administrator shall cause Notice describing the Final Approval Hearing and the terms of the settlement embodied in this Agreement to be disseminated to the Settlement Class. Such Notice shall comport with due process and be effectuated pursuant to a Notice Plan. All Settlement Administration Expenses shall be paid from the Settlement Fund.

4.2. The Notice Plan shall include:

(a) **Publication Notice.** By the Notice Date, the Settlement Administrator shall cause the Published Notice attached hereto as Exhibit C to be published in one or more of the following media: *Cooking Light*, *TV Guide*, *Shape*, *Bon Appetit*, *Runner's World*, or *Internet Media*. The Published Notice shall be in the form of a one quarter-page or third-page

advertisement.

(b) **Direct Notice.** Direct Notice is contingent on the cooperation of Earth's distributors, retailers, and resellers. Within five (5) business days after Preliminary Approval, Earth shall provide the Settlement Administrator with (1) the identity of Earth's distributors, retailers, and resellers, and (2) a letter encouraging Earth's distributors, retailers, and resellers to cooperate with the Settlement Administrator in acquiring the following information regarding Settlement Class Members for use by the Settlement Administrator in sending Direct Notice via post-card of the Settlement: (i) names; (ii) physical addresses; (iii) e-mail addresses (the "Notice List"). Within ten (10) days after Earth provides the Settlement Administrator with (1) and (2), the Settlement Administrator shall cause letters to be sent to each of Earth's distributors, retailers, and resellers, as identified by Earth. The letters shall state that the recipients have thirty (30) days to respond with the information comprising the Notice List. By the Notice Date, the Settlement Administrator shall, based upon a review of the Notice List, disseminate the Direct Notice in the form of Exhibit D via post-card to each of the Settlement Class Members set forth in the Notice List. Class Members who receive Direct Notice via post-card shall be able to sign and return the prepaid Claim Form in Exhibit D to the Settlement Administrator by the Claims Deadline. Class Members who receive Direct Notice via e-mail shall be able to submit a Claim Form on the Settlement Website.

(c) **Settlement Website.** Within twenty-one (21) days following the entry of the Preliminary Approval Order, the Official Notice in the form of Exhibit B shall be provided on a website at **www.EarthExer-WalkShoeSettlement.com**, which shall be administered by the Settlement Administrator. On the Settlement Website, Class Members can download the Claim Form and Official Notice attached as Exhibits A and B, respectively, and submit the Claim Form

online.

(d) *Class Counsel's Website.* Class Counsel, at its own expense, will also post the settlement information on its website at **www.EarthExer-WalkShoeSettlement.siprut.com**. On Class Counsel's website, Settlement Class Members can view the Official Notice and other relevant documents. Settlement Class Members, however, cannot submit Claim Forms online from Class Counsel's website.

(e) *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendant shall serve upon the Attorneys General of each U.S. State in which there are members of the Class, the Attorney General of the United States, and other required government officials, notice of the proposed settlement, which shall include: (i) a copy of the most recent complaint and all materials filed with the complaint or notice of how to electronically access such materials; (ii) notice of all scheduled judicial hearings in the Action; (iii) all proposed forms of Notice to the Settlement Class; and (iv) a copy of this Agreement. To the extent known, the Defendant shall serve upon the above-referenced government official the names of Class Members who reside in each respective state and the share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such members to the entire Agreement.

4.3. The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the

Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time: (i) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court; (ii) that any objection made by a Settlement Class Member represented by counsel must be filed through the Court's CM/ECF system; and (iii) send copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendant's Counsel.

4.4. Any Settlement Class Member who intends to object must do so on or before the Objection/Exclusion Deadline. To be valid, any objections must be appropriately filed with the Court no later than the Exclusion/Objection Deadline, or alternatively they must be mailed to the Court at the address below and postmarked no later than the Exclusion/Objection Deadline.

Clerk of Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Attention: "*Hedges v. Earth, Inc.*, Case No. 14-cv-09858"

A copy of the objection must also be mailed to KCC at the post office box that KCC will establish to receive requests for exclusion or objections, Claim Forms, and any other communications relating to this Settlement.

4.5. The Settlement Class Member must include in any such objection the name, address, telephone number of the Person objecting and, if represented by counsel, of his or her counsel. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to timely file and serve a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Paragraph, as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval

Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

4.6. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the case, and a statement that he/she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the Persons serving such a request shall be members of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.

5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational,

responsive, cost effective, and timely manner. Settlement Administration Expenses should not exceed \$80,000. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Defendant's Counsel, and the Parties and/or their representatives upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to members of the Settlement Class on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel and Class Counsel electronic copies of all original documents and other materials received in connection with the administration of the Settlement Agreement within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed per the terms of the Settlement Agreement;

(b) Receive exclusion forms and other requests from Class Members to exclude themselves from the Settlement Agreement and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any exclusion forms or other requests from Class Members after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and

Defendant's Counsel;

(c) Provide summaries to Class Counsel, Defendant's Counsel, and the Parties and/or their representatives as provided in the contract to be entered into by Defendant with the Settlement Administrator, including without limitation, reports regarding the number of Claim Forms received and the amount of benefits sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

(d) Make available for inspection by Class Counsel, Defendant's Counsel, and the Parties and/or their representatives the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud, and shall reject a Claim Form, or any part of a claim for a payment reflected therein, where the name provided on a Claim Form does not appear on the list of Persons who will receive direct Notice or where there is evidence of abuse or fraud. The Settlement Administrator shall also reject a Claim Form that does not contain all requested information necessary to screen the claim for fraud or abuse.

5.3 Defendant's Counsel, Class Counsel, and the Parties and/or their representatives shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Class Members. The Settlement Administrator shall follow any agreed to decisions of Defendant's Counsel and Class Counsel. To the extent Defendant's Counsel and Class Counsel are not able to agree on the disposition of a challenge, the Special Master shall timely decide such challenge. The Parties agree that the Settlement Administrator shall thereafter follow the decision of the Special Master resulting from any such challenge.

5.4 In the event that any Claim Forms are defective, incomplete, inaccurate, and/or evidence fraud, then the Settlement Administrator may reject those Claim Forms without seeking additional information or providing an opportunity to cure the defect.

5.5 Any Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a Claim Form will not be entitled to receive any cash award or any other benefits pursuant to this Settlement Agreement, but will otherwise be bound together with all Class Members by all of the terms of this Settlement Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

5.6 Class Counsel and Defendant's Counsel each agree to keep all information about the settlement administration process—including without limitation all information received pursuant to Paragraph 5 of this Agreement, such as claims reports, information concerning opt-outs, and the Class List—confidential and may use it only for purposes of effectuating this Agreement. Notwithstanding the foregoing, as required by the Court or to effectuate the intent of this Agreement, the Parties may disclose: Opt-outs, Objections, Claims and other documents needed to enforce the terms and conditions of this Agreement.

6. TERMINATION OF SETTLEMENT.

6.1 Subject to Paragraph 9 below, the Class Representative, on behalf of the Settlement Class, or Defendant, shall have the right to terminate this Settlement Agreement by providing notice ("Termination Notice") to the Defendant or Class Representative, respectively, within ten (10) days, of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement; (ii) the Court's material modification of the Claim Form, Official

Notice, Published Notice, and Direct Notice, attached hereto as Exhibits A through D; (iii) the Court's refusal to grant final approval of this Agreement in any material respect; (iv) the Court's refusal to enter the Final Judgment in this Action in any material respect; (v) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (vi) the date upon which an Alternative Judgment, as defined in Paragraph 1.10 of this Agreement is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. If more than two hundred (200) Class Members request to be excluded from the Settlement Class, Defendant shall have the right to terminate this Settlement Agreement by providing a Termination Notice to the Plaintiff within twenty (20) days of being notified that more than two hundred (200) Class Members requested to be excluded. The party who terminates this Settlement Agreement shall be obligated to pay all Settlement Administration Expenses accrued prior to the date of issuance of the Termination Notice.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Claim Form, Official Notice, and Published Notice for dissemination in accordance with the Notice Plan, substantially in the form of Exhibits A through D hereto.

7.2 At the time of the submission of this Settlement Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given,

the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

7.3 After Notice is given, the Parties shall request and obtain from the Court a Final Judgment. The Final Judgment will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Settlement Agreement, including Exhibits A through D thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, Releasing Parties, and their heirs, executors and administrators, successors and assigns;

(c) find that the Notice and the Notice Plan implemented pursuant to the Settlement Agreement: (i) constitute the best practicable notice under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately

represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including Exhibits A through D to this Agreement) as: (i) shall be consistent in all material respects with the Final Judgment; or (ii) do not limit the rights of Settlement Class Members;

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(j) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.

8.1 At least fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will seek an award of attorneys' fees and costs and an incentive award for Plaintiff in

recognition of their efforts in prosecuting this case and achieving a meaningful benefit for the Class. Subject to Court approval, Class Counsel will request an incentive award for Plaintiff in the amount of \$2,000. The award of attorneys' fees for Class Counsel and the incentive award for Plaintiff shall be paid from the Settlement Fund.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 If some or all of the conditions of the Effective Date specified in Paragraph 1.10 are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 9.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to Plaintiff and Defendant. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, any attorneys' fees requested by Class Counsel shall not prevent the Agreement from becoming effective.

9.2 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 1.10, 6.1, or 9.1 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties agree to discuss and conduct, in good faith, confirmatory discovery as

appropriate to determine: (i) the approximate number of units of the Product that Defendant believes it sold to its distributors, retailers, and resellers, collectively; and (ii) Defendant's approximate revenue generated from those sales.

10.2 The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant in bad faith or without a reasonable basis.

10.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.5 Whether or not the Effective Date occurs or this Settlement Agreement is

terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against Defendant, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them, as an admission, concession or evidence of, the infirmity or strength of any claims raised in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be

necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(e) is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(f) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.7 The waiver by one party of any breach of this Agreement by any other party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.8 Exhibits A through D to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.9 This Agreement and its Exhibits set forth the entire agreement and understanding

of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own costs.

10.11 Plaintiff represents and warrants that it has not assigned any claim or right or interest therein as against the Released Parties to any other Person or party and that it is fully entitled to release the same.

10.12 Each counsel or other Person executing this Settlement Agreement, Exhibits A through D, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.13 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement all exchange original signed counterparts. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.14 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.15 The Court shall retain jurisdiction with respect to implementation and

enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

10.17 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: 09/28/2015

LESLIE HEDGES, individually and as the Class Representative



By _____
Leslie Hedges

Dated: _____

EARTH, INC.

By _____

Title _____

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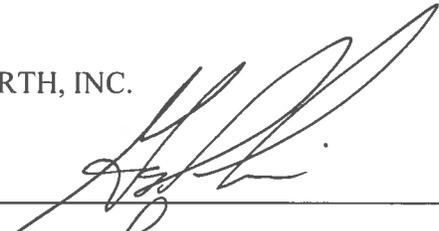
Dated: _____

LESLIE HEDGES, individually and as the Class Representative

By _____
Leslie Hedges

Dated: 9-29-15

EARTH, INC.

By  _____
Title PRESIDENT