

Y P O C

Robert A. Curtis, State Bar No. 203870
Kevin Gamarnik, State Bar No. 273445
FOLEY, BEZEK, BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 962-9495
Facsimile: (805) 962-0722
Email: rcurtis@foleybezek.com
kgamarnik@foleybezek.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 31 2018

BY BRENDA MATSUMURA, DEPUTY

Robert K. Shelquist, #21310X [*Pro Hac Vice to be filed*]

LOCKRIDGE GRINDAL NAUEN P.J.L.P.

100 South Washington Avenue, Suite 2200

Minneapolis, Minnesota 55401

Telephone: (612) 339-6900

Facsimile: (612) 339-0981

Email: rkshelquist@locklaw.com

Attorneys for Intervenors Jill Brunelle, Heather Dewitt

Donald Puckett, Patrick Kavanagh, Susan Balmer

Christie Kautsky, and Theresa Cordero

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ARMIN AMIRI, individually, and on behalf of all others similarly situated,

Case No. CIVDS 1606479

(Assigned to Hon. Bryan Foster, S22)

MY PILLOW, INC., a Minnesota corporation,
and DOES 1 through 10, inclusive

Defendants

**DECLARATION OF ROBERT A.
CURTIS IN SUPPORT OF
INTERVENOR PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT**

JILL BRUNELLE, individually, and on behalf of all others similarly situated; HEATHER DEWITT, individually, and on behalf of all others similarly situated; DONALD PUCKETT, individually, and on behalf of all others similarly situated; PATRICK KAVANAGH, individually, and on behalf of all others similarly situated; THERESA CORDERO, individually, and on behalf of all others similarly situated, CHRISTIE KAUTSKY, individually, and on behalf of all

1 others similarly situated, and
2 SUSAN BALMER individually, and on behalf
3 of all others similarly situated,

4 Intervenors,

5 v.

6 MY PILLOW, INC., a Minnesota corporation,

7 Defendant

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DECLARATION OF ROBERT A. CURTIS

I, ROBERT A. CURTIS, do hereby state and declare:

1. I am a Partner in the law firm of Foley Bezek Behle & Curtis, LLP (“FBB&C”), one of the law firms representing Plaintiffs in this action. I submit this declaration in support of Intervenor Plaintiffs’ Motion for Preliminary Approval.

2. I am a member in good standing of the California State Bar, and I have never been the subject of any type of disciplinary proceeding. I am admitted to practice before all the state courts in California, the United States District Courts for the Central, Northern, Eastern, and Southern Districts of California, the Western District of Michigan, and the Ninth Circuit Court of Appeals. I have personal knowledge of the facts set forth in this Declaration, and for those matters set forth on information and belief, I believe those to be true. If called upon to testify, I could and would testify to the same in a court of law.

3. I graduated from the University of California at Los Angeles with a B.S. in 1996, and received my law degree from Pepperdine University School of Law in 1999. Upon graduating from law school, I was hired full time at Foley Bezek & Komoroske, LLP (the predecessor name of my current firm) and became a partner in January 2003. I was admitted to the California Bar in 1999. Over the past seventeen years, the primary focus of my practice has been complex business litigation and class actions. I have tried numerous cases to verdict in many forums including the Superior Court of California, the Superior Court of Arizona and in the United States District Court. Recently, I was the lead trial attorney for the plaintiff and obtained a \$38.9 million jury verdict in a 7-week lender liability trial in Los Angeles Superior Court against East West Bank. The East West Bank verdict was the 12th largest verdict in California and the 54th largest verdict in the entire United States for 2014.

4. I, in conjunction with other partners at the firm, have litigated cases that have resulted in over \$350 million in settlements and verdicts against some of the largest companies and biggest law firms in the country. During the past fourteen years, my partners and I collectively have been involved in the representation of plaintiffs in more than 25 different class action cases and have been certified to act as Class Counsel in the Superior Court of the State of California, in

1 the Superior Court of the State of New Jersey and in the federal district courts of various
2 jurisdictions throughout the country. During that time, I have had significant involvement with
3 and have served as lead or co-lead counsel in a number of major class actions which were settled
4 in a manner that resulted in substantial, material benefits for various classes of wronged
5 individuals. Included below are some of my firm's larger settlements:

6 (a) *Demmick v. Cellco Partnership*, District of New Jersey, Case No. 06-2163
7 (JLL), a \$64.2 million settlement;

8 (b) *Lozano v. AT&T Wireless Services, Inc., et al.*, U.S. District Court, Central
9 District of California, Case No. CV02-90-AHS(AJWx), which resulted in a potential recovery for
10 the class of more than \$42 million in cash benefits;

11 (c) *Stern v. AT&T Mobility Corporation, et al.*, U.S. District Court, Central
12 District of California, Case No. CV05-08842-CAS(Ctx), which resulted in a potential recovery
13 for the class of more than \$38 million in cash benefits;

14 (d) *Rolnik/Godoy v. AT&T Wireless*, New Jersey Superior Court, Essex
15 County, Case No. L-180-04, which resulted in benefits to the class of more than \$49 million;

16 (e) *Roark v. GTE California*, California Superior Court, Santa Barbara County,
17 Case No. 01035862, which settled for \$20 million; and

18 (f) *In Re: Structured Settlement Litigation*, Los Angeles Superior Court,
19 Master Case No. BC244111, co-lead counsel in case which resulted in a settlement of over \$100
20 million.

21 5. Other class action litigation matters on which I worked extensively on and which
22 were certified as class actions are: *Coldiron v. Bank of America*, Los Angeles Superior Court,
23 Case No. BC 121154; *Kirksey v. Chicago Title Ins. Co.*, Los Angeles Superior Court, Case No.
24 BC. 106189; *Young v. Western Cities Mortgage Corp.*, Los Angeles Superior Court, Case No. BC
25 121782; *Baron v. Great Western*, Los Angeles Superior Court, Case No. BC121153; *Blinkinsop v.*
26 *Vegas Grand*, U.S. District Court for the District of Nevada, Case No. CV-S-05-0714-BES-RJJ;
27 *Scott v. Vegas Icon*, U.S. District Court for the District of Nevada, Case No. 2:06-cv-00082;
28 *Fletcher v. Brown & Brown, et al.*, Santa Barbara Superior Court Case No. 01131631; *Vinson v.*

1 *Idearc Media*, Riverside Superior Court Case No. INC055768, *Internal Revenue Service §1031*
2 *Tax Deferred Exchange Litigation*, District Court of Nevada Case No. 2:07cv1394; *Denison v.*
3 *The Salvation Army*, Superior Court of California Case No. BC368827; *Behar International*
4 *Counsel v. T-Mobile*, California Superior Court, San Diego County, Case No. GIC 820372 and
5 *Kearney v. Equilon Enterprises, LLC*, District Court of Oregon, Case No. 3:14-cv-00254-HZ.

6 Also, in the United States District Court for the District of New Jersey, my firm
7 was appointed by the Court as Lead Class Counsel in the Multi-District Litigation (MDL) matter
8 entitled *In Re: Verizon Wireless Data Charges Litigation*, Case No. 3:09 cv 04592 FLW TJB.
9 The settlement of that MDL proceeding encompassed thirty-one cases filed in multiple
10 jurisdictions throughout the country that were transferred to the District of New Jersey for
11 coordinated pretrial proceedings. The case settled and over \$55 million in benefits were provided
12 to the class. The MDL at its core was a consumer class action for violations of federal and state
13 consumer protection laws. In approving the settlement, Judge Wolfson specifically noted “it was
14 the vigorous efforts of the Foley firm that led to the proposed settlement.” Judge Wolfson stated
15 that “lead counsel negotiated a sizeable settlement within a reasonable amount of time since the
16 start of the litigation. Because of those timely efforts, the class will benefit more,” and that
17 FBB&C was “skilled and experienced in litigating these types of class action cases.” Transcript
18 from Final Approval Hearing in *In re: Verizon Data Charges Litigation*, Case No. 10-1749
19 (SLW) dated March 1, 2012.

20 7. In addition to working on the plaintiffs’ side of class action litigation, my firm also
21 has served as lead counsel for the defense in many class actions, including: (a) *Doe v. Darkside*
22 *Productions, Inc.*, San Francisco Superior Court, Case No. CGC-05-439667; (b) *Bauer v.*
23 *Darkside Productions, Inc.*, San Francisco Superior Court, Case No. CGC-05-443247; (c) *In re:*
24 *Weekend Warrior Trailer Cases*, Orange County Superior Court, Case No. JCCP 4455; (d)
25 *Anderson v. EFX Performance, Inc.*, Orange County Superior Court, Case No 30-2011-
26 00442192-CU-MT-CXC; and (e) *Lopez v. Islay Investments*, Santa Barbara Superior Court, Case
27 No. 15CV02255.

28 8. My firm, FBB&C -- in conjunction with Rick Klingbeil P.C. and Brady Mertz P.C.

1 -- is the lead firm in a coordinated effort to prosecute this national class action. FBB&C, Klingbeil
2 and Mertz filed the first My Pillow BOGO class action in Oregon in October 2016 (the "*Brunelle*
3 case"). After doing research and determining that Minnesota's Consumer Protection Statute
4 provided an opportunity to allege a national class against My Pillow—because My Pillow was a
5 Minnesota corporation—FBB&C in conjunction with Klingbeil, Mertz and the Lockridge Grindal
6 Nauen P.L.L.P. firm out of Minnesota, filed a national BOGO class action case against My Pillow
7 in January 2017 (the "*Puckett* case").

8 9. At approximately the same time as Plaintiffs filed the Minnesota complaint, the
9 Better Business Bureau of Minnesota lowered My Pillow's ranking from a grade of "A" to an "F"
10 citing the deceptive nature of My Pillow's BOGO offer. This made national news and from that
11 news I learned for the first time that My Pillow had been sued in this Court over statements that its
12 pillow had improved health benefits (the "*Amiri* case") and that case had tentatively settled. When
13 an attorney from my office pulled the docket of the instant matter they discovered that the *Amiri*
14 case was preliminarily approved, the objection deadline had passed, and that there was an
15 upcoming hearing for final approval.

16 10. Plaintiffs also learned that even though BOGO issues were not pleaded in the *Amiri*
17 case, the release being granted by the class in *Amiri* was broad enough to cover Plaintiffs' BOGO
18 lawsuit. Thus, Plaintiffs made a motion to the *Amiri* Court for leave to file a belated objection and
19 then filed an objection based on the breadth of the release.

20 11. As a result of Plaintiffs' objection, at the final approval hearing this Court denied
21 final approval without prejudice stating:

22 23 "I intend to deny final approval of the settlement and the related motion given that
24 the issues raised in the objection, it's not sufficiently demonstrated that the release
25 is fair, adequate, or reasonable to extend the claims in connection with -- you're
26 trying to settle out things that were not part of the original Complaint....[The Buy
one get one free] seems to be totally different than what -- it's not encompassed in
the lawsuit that was filed that you're settling in this matter, and yet you're asking
for that to be released, and there's no notice given."

27 Attached as Exhibit "B" to this Declaration is a true and correct copy of the transcript from the
28 January 30, 2017 Hearing.

1 12. After this Court's ruling, My Pillow and the Amiri counsel tried to settle around
2 Plaintiffs and the BOGO claims being asserted in the *Brunelle* and *Puckett* actions again. *Amiri*
3 tried to amend the *Amiri* complaint to add a new class representative and to specifically plead
4 BOGO claims in the *Amiri* Complaint and to change the notice to specifically reference that the
5 release was covering BOGO claims.

6 13. Because no new consideration was being given for the BOGO claimants as a result
7 of this new attempt to settle this matter FBB&C objected again.

8 14. At a newly-set final approval hearing, this Court again agreed with Plaintiffs and
9 denied final approval without prejudice a second time citing inadequate compensation to the
10 BOGO class members. Attached as Exhibit "C" to this Declaration is a true and correct copy Judge
11 Foster's Ruling On Matter Taken Under Submission dated April 28, 2017.

12 15. While all this was occurring, an additional BOGO case was filed in Montana.
13 Therefore, I personally reached out to Montana counsel and negotiated a deal where the Montana
14 and Florida Plaintiffs and their counsel joined Plaintiffs' team in the prosecution of this national
15 class action. My Pillow then filed comprehensive Motions to Dismiss in Oregon, Minnesota and
16 Montana and a Motion to Stay in Minnesota.

17 16. FBB&C filed a motion to appoint lead counsel in Minnesota and lengthy opposition
18 briefs in all three jurisdictions. In addition, I attended, argued and won their opposition to the
19 motion to stay at a contested hearing in the District Court in Minnesota. Shortly thereafter,
20 Plaintiffs and My Pillow agreed to mediate.

21 17. Settlement negotiations spanned approximately four months. During that time the
22 parties exchanged informal settlement discovery including document productions and calculations
23 of class size. During this pre-mediation discovery, it was determined that My Pillow sold over
24 1,700,000 BOGO offers. The parties also exchanged lengthy legal briefs wherein both sides
25 discussed their respective views on the status of the law on damages as a result of these BOGO
26 claims in attempts to inform each other as to the strength and weakness of their respective legal
27 positions.

28 18. Plaintiffs' counsel thoroughly investigated and evaluated the strengths and

1 weaknesses of this case before reaching the settlement. Plaintiffs' counsel's factual investigation
2 included:

3 (a) Extensive research regarding Plaintiffs' counsel's evaluation of the
4 perspective merits and weaknesses of the case;

5 (b) Preparation of a class action complaint and a draft motion for summary
6 judgment;

7 (c) Analysis of potential class-wide damages;

8 (d) Review of marketing history;

9 (e) Extensive legal research and evaluation of the applicable law with respect to
10 the claims asserted in the operative complaint and the potential defenses thereto;

11 (f) Fully briefed oppositions to three Motions to Dismiss covering the law of
12 six separate states;

13 (g) Fully briefed two objections to the original *Amiri* Settlement; and

14 (h) Exchanged and analyzed informal discovery including document
15 productions and calculations of class size.

16 19. Ultimately, the parties participated in a formal mediation on August 18, 2017 with
17 the Honorable Peter Lichtman (ret.). Judge Lichtman supervised numerous contentious back and
18 forth negotiations and finally resolved the matter when both sides agreed to his "Mediator's
19 Compromise." The mediation was at all times arms-length. During and before the mediation
20 Plaintiffs' counsel weighed the strengths and weaknesses of the case, examined all of the issues
21 including the risks and expenses of further litigation, our chances at class certification, potential
22 difficulties at proving liability and at prevailing on a damage model that properly fit the
23 circumstances of this case. We also considered the time value of the present settlement, and the
24 refund that will be provided to members of the Class in agreeing to the proposed settlement.

25 20. The result of the negotiations is a fair compromise and is described in the
26 Settlement Agreement and Release ("Settlement Agreement") which is attached to this Declaration
27 as Exhibit "A."

28 21. Based on my experience and knowledge of this case, I fully endorse the proposed

1 settlement. Although I believe the case against Defendant is strong, such confidence must be
2 tempered by the fact that the settlement is extremely beneficial (providing a significant immediate
3 return) and that there were significant risks of less or no recovery, particularly in a complex case
4 such as this one. I am convinced that this settlement is in the best interests of the Class based on
5 the negotiations and the detailed knowledge of the issues presented herein.

6 22. This Settlement was granted preliminarily approved by this Court on September 25,
7 2017. Attached as hereto as Exhibit "D" is a true and correct copy of the Order Granting
8 Preliminary Approval Of Settlement.

9 23. After Preliminary Approval, email notices were sent to 2,540,962 potential class
10 members and postcard notices were sent to 539,517 potential class members. If each of those
11 individuals claims the \$12 available to them, the potential value of the settlement exceeds
12 \$30,000,000. The value is even greater when considering that shipping and handling is included.

13 24. This case has been very time consuming and expensive for the parties, having been
14 pursued over a period of almost two years. Over that period of time, Class Counsel has spent
15 collectively more than 1600 hours litigating this matter.

16 25. As of the filing of this Motion, only eight (8) class members have "objected" and
17 only 888 have opted out of the Settlement Class. This amount to less than 0.000004% of the total
18 class. The objections of Scott Darren Lindemuth, John J. Kokosky, Bronwyn C. Hertz, Pamela
19 Lorence, Patricia J. Archer, Minnie Potter, and Joseph O'Malley are attached here as Exhibits "E",
20 "F", "G", "H", "I", "J" and "K" respectively.

21 26. On January 29, 2018 (the evening before this Declaration was scheduled to be
22 filed), I received by mail an eighth objection from a Phillip Stamm represented by a New York law
23 firm who allegedly has a BOGO-related case filed in New York. Due to the press of time to
24 complete this Motion and get it on file, Class counsel has not fully reviewed and researched this
25 20-page objection. A true and correct copy of this "objection" is attached hereto as Exhibit "L."

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of United States of America and the
2 State of California that the foregoing is true and correct, and that this declaration was executed on
3 the 30th day of January 2018 at the County of Santa Barbara County, California.

4
5 By 
6 ROBERT A. CURTIS

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 ARMIN AMIRI, individually, and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 v.
15 MY PILLOW, INC., a Minnesota corporation,
and, DOES 1 through 10, inclusive

16 Defendants.

CASE NO. CIVDS1606479

**SECOND AMENDED SETTLEMENT
AGREEMENT AND RELEASE**

17
18
19
20
21
22
23
24
25
26
27

1 This Second Amended Settlement Agreement and Release (the “Agreement”) is made and
2 entered into by and between the following parties: Plaintiffs Armin Amiri, Donald Puckett, Patrick
3 Kavanaugh, Theresa Cordero, Jill Brunelle, Heather DeWitt, Christie Kautsky, and Susan Balmer,
4 individually and on behalf of the Settlement Class (collectively, “Plaintiffs” and/or “Class
5 Representatives”), and Defendant My Pillow, Inc. (“Defendant”) and their respective counsel of
6 record.

7 **I. DEFINITIONS**

8 As used in this Agreement and all related documents, the following terms have the
9 following meanings:

10 A. “Action” means the civil action entitled *Armin Amiri, et al., individually and on
11 behalf of all others similarly situated v. My Pillow, Inc., et al.* which was filed in the Superior
12 Court for the State of California, County of San Bernardino, on April 26, 2016, Case No.
13 CIVDS1606479.

14 B. “Authorized Claimant” means any Settlement Class Member who timely submits a
15 valid Claim Form.

16 C. “Non-Direct Purchaser Claims Deadline” means December 26, 2016.

17 D. “Direct Purchaser Claims Deadline” means the date set by the Court for the last date
18 on which Direct Purchaser Claim Forms may be submitted or postmarked.

19 E. “Non-Direct Purchaser Claim Form” means the Court-approved form attached as
20 Exhibit A.

21 F. “Direct Purchaser Claim Form” means the form Direct Purchaser Settlement Class
22 Members must submit to participate in the refund provisions of the settlement under this
23 Agreement substantially in the form attached as Exhibit B.

24 G. “Non-Direct Purchaser Class Counsel” means Clarkson Law Firm, P.C.

25 H. “Direct Purchaser Class Counsel” means Foley Bezek Behle & Curtis, LLP,
26 Lockridge Grindal Nauen, P.L.L.P., Rick Klingbeil, P.C., and Brady Mertz, P.C.

1 I. “Non-Direct Purchaser Class Period” means April 26, 2012 through October 13,
2 2016.

3 J. “Direct Purchaser Class Period” means April 26, 2012 through the entry of the
4 Preliminary Approval Order relating to this Agreement.

5 K. “Complaint” means the Complaint filed on April 26, 2016 in the Superior Court for
6 the State of California, County of San Bernardino.

7 L. “Court” means the Superior Court for the State of California, County of San
8 Bernardino.

9 M. “Competent and Reliable Scientific Evidence” means tests, analyses, research, or
10 studies that have been conducted by a qualified person in an objective manner and are generally
11 accepted in the profession to yield accurate and reliable results.

12 N. “Covered Products” means the products bearing the labeled brand name My Pillow
13 that are marketed and/or distributed by Defendant, including all sizes.

14 O. “Non-Direct Purchaser Email Notice” means the Court-approved notice attached
15 as Exhibit C.

16 P. “Direct Purchaser Email Notice” means the proposed notice to be provided to
17 Direct Purchaser Settlement Class Members under this Agreement substantially in the form
18 attached as Exhibit D.

19 Q. “Effective Date” means (a) if no objection is raised to this Settlement at the Final
20 Approval Hearing, the date on which the Final Approval Order and Judgment is entered; or (b) if
21 any objections are raised to the proposed settlement at the Final Approval Hearing, the latest of (i)
22 the expiration date of the time for the filing or notice of any appeal from the Final Approval Order
23 and Judgment, (ii) the date of final affirmance of any appeal of the Final Approval Order and
24 Judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of review of the
25 Final Approval Order and Judgment and, if the writ is granted, the date of final affirmance of the
26 Final Approval Order and Judgment following review pursuant to that grant; or (iv) the date of

27
28

1 final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of
2 any proceeding on *certiorari* to review the final approval order and judgment.

3 R. “Final Approval Hearing” means the hearing scheduled to take place after the
4 expiration of both the Non-Direct Purchaser Claim Deadline and the Direct Purchaser Claims
5 Deadline at which the Court shall, among other things: (a) determine whether to grant final
6 approval to this Agreement; (b) consider any timely objections to this Settlement and all responses
7 thereto; and (c) rule on any applications for attorneys’ fees, costs, and/or incentive awards.

8 S. “Final Approval Order and Judgment” means the order, substantially in the form of
9 Exhibit K attached hereto, in which the Court grants final approval of this Agreement and
10 authorizes the entry of a final judgment.

11 T. “Non-Direct Purchaser Long Form Notice” means the Court-approved notice
12 attached as Exhibit G.

13 U. “Direct Purchaser Long Form Notice” means the proposed notice to be made
14 available to Direct Purchaser Settlement Class Members under this Agreement substantially in the
15 form attached as Exhibit H.

16 V. “Non-Direct Purchaser Objection/Exclusion Deadline” means December 26, 2016.

17 W. “Direct Purchaser Objection/Exclusion Deadline” means the date set by the Court
18 for the submission of objections or requests for exclusion from the Direct Purchaser Settlement
19 Class.

20 X. “Parties” means Class Representatives and Defendant.

21 Y. “Person” means any individual, proprietorship, corporation, partnership,
22 association, trustee, unincorporated association, or any other type of legal entity, except a
23 governmental entity.

24 Z. “Preliminary Approval” means the date the Court preliminarily approves the
25 settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

26 AA. “Preliminary Approval Order” means the order, substantially in the form of Exhibit
27 J attached to this Agreement, in which the Court grants its preliminary approval to the Agreement,

1 conditionally certifies the Settlement Class, approves and authorizes notice to the Settlement
2 Class, appoints the Settlement Administrator, and sets a Final Approval Hearing.

3 BB. “Non-Direct Purchaser Publication Notice” means the Court-approved notice
4 attached as Exhibit I.

5 CC. “Released Parties” means Defendant and all other Persons.

6 DD. “Request for Exclusion” means a valid request for exclusion from a Settlement Class
7 Member.

8 EE. “Settled Claims” means any and all claims, demands, actions, and causes of action of
9 any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or
10 consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising
11 under common law, regulatory law, statutory law, or otherwise, including but not limited to unjust
12 enrichment, theft by deception, fraud, breach of warranty express or implied, violation of California
13 Civil Code 1750 et seq., violation of California Business and Professions Code Sections 17200 et
14 seq. and 17500 et seq., and any related or similar state consumer protection statutes, claims for
15 restitution, disgorgement of profits, injunctive and declaratory relief, arising during the Class Period,
16 and arising out of or relating to the advertising, packaging, labeling, marketing, promotion, sale or
17 distribution of the Covered Products, including but not limited to health claims, buy one get one free
18 (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos,
19 and including all claims which were alleged or which could have been alleged by Plaintiffs, Non-
20 Direct Settlement Class Counsel, Direct Purchaser Settlement Class Counsel, the Settlement Class
21 and/or any Settlement Class Member against the Released Parties in the Action, or any other legal
22 action, whether those claims are asserted individually or on a class-wide basis (the “Released
23 Claims”). However, this definition expressly excludes claims for personal injury.

24 FF. “Settlement Administrator” means Digital Settlement Group.

25 GG. “Settlement Class” means the following two subclasses: (1) all Persons who
26 purchased Covered Products in the United States, its territories, or at any United States military
27 facility or exchange directly from Defendant (the “Direct Purchaser Class”) and (2) all persons

1 who purchased Covered Products in the United States, its territories, or at any United States
2 military facility or exchange from a source other than Defendant (the “Non-Direct Purchaser
3 Class”). Excluded from the Settlement Class are all persons who validly opt out of the Settlement
4 Class in a timely manner, counsel of record (and their respective law firms) for the Parties,
5 Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of
6 their respective employees, officers, and directors; the presiding judge in any of the Actions; any
7 natural person or entity that entered into a release with Defendant prior to the Effective Date
8 concerning any Covered Products.

9 HH. “Settlement Class Member” means any member of the Settlement Class.

10 II. “Direct Purchaser Class Member” means any member of the Direct Purchaser
11 Class.

12 JJ. “Non-Direct Purchaser Class Member” means any member of the Non-Direct
13 Purchaser Class.

14 KK. “Valid Claim” means a claim for reimbursement timely submitted by a Settlement
15 Class Member that satisfies all the criteria to qualify for reimbursement established by the Parties’
16 Counsel and the Settlement Administrator.

17 **II. LITIGATION BACKGROUND**

18 A. Plaintiffs have alleged that Defendant made false and misleading statements in its
19 labeling and advertising of the Covered Products, including that they paid more for the Covered
20 Products as a result of those alleged statements. Plaintiffs have asserted claims on behalf of
21 themselves and for others similarly situated in the United States based on fraud, violation of Minn.
22 Stat. § 325F.69, subdivision 1, the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.67, the
23 Minnesota False Statement in Advertising Act, Minn. Stat. § 325D.44, subdivision 1, the
24 Minnesota Uniform Deceptive Trade Practices Act, ORS §646.608(j), (p), (s) and (u), OAR 137-
25 020-0015(2)(a)(B)-(D), ORS §646.608(sss), ORS §646.644, RCW 19.86.020, Cal. Bus. & Prof.
26 Code §§ 17200 *et seq.* and 17500 *et seq.* and consumer protection statutes of other states.

27

28

1 B. Defendant denies any liability or wrongdoing of any kind associated with the
2 claims alleged in the Action, and further contends that, for any purpose other than settlement, the
3 claims alleged in the Action are not appropriate for class treatment.

4 C. The Parties have, in advance of settlement, engaged in extensive arms-length
5 negotiations and an informal exchange of documents and other information pertaining to
6 Plaintiffs' claims. The Parties also mediated the case with the Honorable Peter D. Lichtman
7 (Ret.). The Parties have had a full and fair opportunity to evaluate the strengths and weaknesses
8 of their respective positions.

9 D. Based on the current state of the law, the expense, burden, and time necessary to
10 prosecute the Action through trial and possible appeals, the risks and uncertainty of further
11 prosecution of the Action considering the defenses at issue, the sharply contested legal and factual
12 issues involved, and the relative benefits to be conferred upon Plaintiffs and Settlement Class
13 Members pursuant to this Agreement, Non-Direct Purchaser Class Counsel and Direct Purchaser
14 Class Counsel have concluded that a settlement with Defendant on the terms set forth herein is
15 fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known
16 facts and circumstances.

17 E. Defendant and Defendant's counsel recognize the expense and length of continued
18 proceedings necessary to continue the Action through trial and through possible appeals.
19 Defendant also recognizes that the expense and time spent pursuing the Action has detracted and
20 will further detract from resources that may be used to run Defendant's business. Defendant
21 denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action
22 and believes that it has valid defenses to Plaintiffs' claims.

23 F. Based on the foregoing, which the Parties expressly incorporate as material terms
24 of the Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise,
25 and discharge all disputes and claims arising from or related to the Products and the Action which
26 exist between Plaintiffs and the Settlement Class on the one hand, and Defendant, on the other
27 hand. Therefore, it is the intention of the Parties that this Agreement shall constitute a full, final

1 and complete settlement and release, which release includes in its effect all of Defendant's present
2 and former parent companies, subsidiaries and affiliates, as well as the shareholders, officers,
3 directors, employees, agents, servants, registered representatives, attorneys, insurers, successors
4 and assigns of such persons or entities with respect to any and all claims which were alleged, or
5 could have been alleged, by Plaintiffs on their own behalf or on behalf of the Settlement Class in
6 the Action.

7 **III. TERMS OF SETTLEMENT**

8 In consideration of the mutual covenants and promises set forth herein, and subject to
9 Court approval, the Parties agree as follows:

10 A. Certification of Class: For settlement purposes only, and without any finding or
11 admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this
12 Agreement, the Parties consent to and agree to the establishment and conditional certification of
13 the Settlement Class, including the Direct Purchaser and the Non-Direct Purchaser subclasses.

14 B. Certification is Conditional: This certification is conditional on the Court's
15 preliminary and final approval of this Agreement. In the event the Court does not approve all
16 terms of the Agreement, then the certification shall be void and this Agreement and all orders
17 entered in connection therewith, including but not limited to any order conditionally certifying the
18 Class, shall become null and void and shall be of no further force and effect and shall not be used
19 or referred to for any purposes whatsoever in the Action or in any other case or controversy. And,
20 in such an event, this Agreement and all negotiations and proceedings related thereto shall be
21 deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to
22 their respective positions as of the date of this Agreement, and Defendant shall not be deemed to
23 have waived any opposition or defenses it has to any aspect of the claims asserted herein or to
24 whether those claims are amenable to class-based treatment.

25 C. Intervention is Conditional: The parties agree to stipulate to the Complaint in
26 Intervention being filed by Plaintiffs Donald Puckett, Patrick Kavanaugh, Theresa Cordero, Jill
27 Brunelle, Heather DeWitt, Christie Kautsky, and Susan Balmer ("Intervenor Plaintiffs"). That

1 Intervention is conditional on the Court's preliminary and final approval of this Agreement. In the
2 event the Court does not approve all terms of the Agreement, then the Complaint in Intervention
3 shall be dismissed, without prejudice, by the Intervenor Plaintiffs and shall be void. In such event,
4 the Intervenor Plaintiffs shall return to their respective District Court for further litigation and the
5 stipulation to the Complaint in Intervention shall be of no further force and effect and shall not be
6 used or referred to for any purposes whatsoever in the Action or in any other case or controversy.

7 D. Releases: Upon the Effective Date, and except as to such rights or claims as may
8 be created by this Agreement, Plaintiffs and the Settlement Class (together, the "Releasing
9 Parties") shall fully release and discharge the Released Parties from the Released Claims.

10 E. Compensation to the Settlement Class: In consideration of a full, complete, and
11 final settlement of the Action, entry of the Final Approval Order, and the Releases in Section VII
12 below, and subject to the Court's approval, the Parties agree to the following individual benefits:

13 1. Individual Benefits: Settlement Class members who submit a valid and
14 timely Claim Form with sufficient proof will be eligible to receive compensation in the form of
15 cash refunds as follows:

16 2. The monetary relief for Non-Direct Purchaser Settlement Class Members
17 remains exactly the same as under the Amended Settlement Agreement And Release executed in
18 August 2016 and the Order Granting Preliminary Approval Of Settlement dated October 12, 2016.
19 Specifically, Non-Direct Purchaser Settlement Class Members who substantiated their claims
20 through a submission of an Affidavit attesting to their purchase of the Covered Products under
21 penalty of perjury, together with additional information requested by the Settlement Administrator
22 on the Claim Form, shall be entitled to a total of \$5 per household. All claims must have been
23 submitted using the Claim Form, which may have been submitted by mail or online.

24 Notwithstanding the foregoing sentence, Non-Direct Purchaser Settlement Class Members who
25 submitted an Affidavit under penalty of perjury attesting that he or she simultaneously purchased
26 three or more Covered Products during his or her initial purchase of any Covered Products
27 together with additional information requested by the Settlement Administrator on the Claim

1 Form, shall be entitled to an additional payment of up to \$5. However, if more than 5,000 Non-
2 Direct Purchaser Settlement Class Members seek and qualify for this supplemental payment, each
3 such Non-Direct Purchaser Settlement Class Member shall receive an additional payment equal to
4 his or her pro rata share of \$25,000, which is the cap on such payments.

5 3. For those Direct Purchaser Settlement Class Members who submit a valid
6 Direct Purchaser Claim Form prior to the Direct Purchaser Claims Deadline (and/or a valid Non-
7 Direct Purchaser Claim Form prior to the Non-Direct Purchaser Claims Deadline) shall be entitled
8 to one of the following three cash payments, whichever is greater: (a) \$6 for those who purchased
9 one or more Covered Products directly from Defendant; (b) \$6 per pillow (maximum \$12 total) for
10 those who acquired two Covered Products pursuant to a Buy One Get One Free (“BOGO”) offer
11 as part of their initial purchase from Defendant; and (c) \$6 per pillow (maximum \$24 total) for
12 those who acquired four or more Covered Products pursuant to a BOGO offer as part of their
13 initial purchase from Defendant.

14 4. Direct Purchaser Settlement Class Members who submitted a valid Non-
15 Direct Purchaser Claim Form during the Non-Direct Purchaser Claims Period shall receive the \$5
16 they are entitled to under Section 2 above and shall automatically receive the applicable payment
17 under Section 3 above based on the purchase(s) they made that qualified them for inclusion in the
18 Direct Purchaser Settlement Class.

19 F. Changes to Advertising & Marketing: Within 60 days after the full execution of
20 the initial settlement agreement, Defendant removed health claims and testimonials that include
21 health claims from its website and other marketing materials, unless it had Competent and
22 Reliable Scientific Evidence for such claims. In addition, upon the execution of this Agreement,
23 Defendant agrees that it will not advertise a single size of a Covered Product with a BOGO offer
24 in a trade area for more than six (6) months during any twelve (12) month period.

25 G. Incentive Awards for Class Representatives: Non-Direct Purchaser Class Counsel
26 and Direct Purchaser Class Counsel agree that they will apply to the Court for incentive awards to
27 the Class Representatives in amounts not to exceed \$2,500 each, for their participation as the Class

1 Representatives, for taking on the risks of litigation, and for settlement of their individual claims
2 as Class Members in this Action. Defendants agree not to oppose Class Representatives' motion
3 for incentive awards, provided the requested incentive awards do not exceed the amount set forth
4 herein. Class Representatives and Class Counsel agree not to move for incentive awards
5 exceeding the amount set forth herein. Defendant shall pay the lesser of \$2,500 or the incentive
6 award authorized by the Court to each Settlement Class Representative within ten (10) calendar
7 days of the Effective Date.

8 H. Attorneys' Fees and Costs:

9 1. Non-Direct Purchaser Class Counsel agrees that it will apply to the Court,
10 no later than 21 days before the Final Approval Hearing, for an award of attorneys' fees not to
11 exceed \$100,000.00 plus costs and expenses not to exceed \$5,000.00.

12 2. Direct Purchaser Class Counsel agrees that it will apply to the Court not
13 later than 21 days before the Final Approval Hearing, for an award of attorneys' fees, costs, and
14 expenses not to exceed \$2,000,000.

15 3. Defendant agrees not to oppose such motions for attorneys' fees and costs,
16 provided the requested attorneys' fees and costs do not exceed the amounts set forth above.
17 Plaintiffs and Class Counsel agree not to move for attorneys' fees and costs exceeding the
18 amounts set forth above.

19 4. Defendant shall pay the lesser of the amounts set forth above or the amount
20 of fees, costs and expenses awarded by the Court to Class Counsel within five (5) calendar days of
21 the entry of a Final Approval Order, provided that Class Counsel agree to repay such amount in
22 the event the Final Approval Order and Judgment does not become final.

23 5. If the Final Approval Order and Judgment is reversed, vacated, modified
24 and/or remanded for further proceedings or otherwise disposed of in any manner other than one
25 resulting in an affirmance of the Final Approval Order (other than on the issue of attorneys' fees
26 and expenses), or if this Agreement is terminated according to its terms, then Class Counsel shall,

27

28

1 within five (5) calendar days of such events, repay to Defendant the full amount of any award of
2 attorney's fees and costs paid by Defendant to Class Counsel pursuant to this Agreement.

3 6. If the award of attorneys' fees or costs to counsel is reduced after entry of
4 the Final Approval Order and Judgment, Class Counsel shall repay to Defendant the difference
5 between the amount paid by Defendant to Class Counsel and the amount of the final reduced
6 award no later than five (5) days following entry of the order or opinion reducing the award.

I. Termination:

8 1. Defendant shall have the right to terminate this Agreement if, prior to the
9 date of the Final Approval Order and Judgment, the total number of Persons that have submitted
10 timely and valid Requests for Exclusion from the Settlement Class exceeds one thousand (1,000).

11 If Defendant elects to terminate this Agreement under this paragraph, Defendant must provide
12 written notice to the other Parties' counsel on or before the date of the Final Approval Order and
13 Judgment. Such written notice shall be provided by hand delivery or mail to the Parties' counsel.

14 2. If this Agreement is terminated pursuant to its terms, then: (i) this
15 Agreement shall be rendered null and void; (ii) this Agreement and all negotiations and
16 proceedings relating hereto shall be of no force or effect, and without prejudice to the rights of the
17 Parties; and (iii) all Parties shall be deemed to have reverted to their respective status in the Action
18 as of the date and time immediately preceding the execution of this Agreement and, except as
19 otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all
20 respects as if this Agreement and any related orders had never been executed, entered into, or
21 filed, except that the Parties shall not seek to recover from one another any costs incurred in
22 connection with this Settlement.

IV. ADMINISTRATION OF SETTLEMENT

24 A. The Settlement Administrator's duties to administer the settlement include: (1)
25 preparing and publishing class notice; (2) establishing and maintaining a website for notification
26 and Claim Form distribution; (3) establishing a telephone number and responding to inquiries and
27 requests for Claim Forms and assistance from Settlement Class Members; (4) distributing Claim

1 Forms; (5) receiving and independently reviewing the Claim Forms submitted by Settlement Class
2 Members for the purpose of verifying any amounts due to Authorized Claimants; (6) receiving and
3 serving upon Class Counsel and Defendant's counsel any written objections or opt-out statements;
4 (7) reporting, in summary or narrative form, to Class Counsel, Defendant's Counsel, and the
5 Court, regarding the completion of its tasks identified within this Agreement; and (8) carrying out
6 other related tasks in accordance with the terms of this Agreement, including printing and sending
7 the settlement checks to Settlement Class Members.

8 B. Defendant shall pay the Settlement Administrator's reasonable costs and fees
9 associated with administering this Agreement, and all costs associated with the notice to
10 Settlement Class Members. Defendant shall pay the Settlement Administrator's costs and fees as
11 they come due upon submission of an appropriate invoice at the end of each month.

12 C. All disputes relating to the Settlement Administrator's ability and need to perform
13 its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
14 the terms and conditions of this Agreement, until all payments and obligations contemplated by
15 the Agreement have been fully carried out.

16 **V. NOTICE TO THE NON-DIRECT PURCHASER SETTLEMENT CLASS**

17 A. Class Notice: Pursuant to the Court's Preliminary Approval Order, Defendant
18 provided the Settlement Class with notice of the settlement by the following methods:

19 1. Internet Notice:

20 a. Settlement Website: No later than twenty (20) calendar days
21 following entry of the Preliminary Approval Order, the Settlement Administrator created a website
22 dedicated to this settlement displaying the Long Form Notice and downloadable Claim Forms,
23 until the Claims Deadline. Defendant posted a link to the settlement website on Covered
24 Products' website (www.pillowsettlement.com) no later than thirty (30) days following entry of
25 the Preliminary Approval Order, which it maintained until the Claims Deadline for the initial
26 settlement.

27

28

7 2. Publication: The Settlement Administrator or Defendant caused to be
8 published the Non-Direct Purchaser Publication Notice once in the following publications, not
9 later than sixty (60) calendar days after entry of the Preliminary Approval Order: *The New York*
10 *Times* and *Wall Street Journal*. The Publication Notice was sized for a one-quarter page ad in
11 each publication.

12 3. Toll-Free Telephone Support: The Settlement Administrator established a
13 toll-free support system to provide Class Members with (a) general information about the
14 litigation; (b) frequently asked questions and answers; and (c) the ability to request a Long Form
15 Notice or Claim Form.

16 4. Email Notice: The Settlement Administrator caused the Email Notice to be
17 emailed to all Settlement Class Members for whom Defendant has email information and sent the
18 additional notice (Exhibit E) to Members who submitted inquiries.

19 B. Declaration of Compliance: Within fourteen (14) calendar days of the Claims
20 Deadline, the Settlement Administrator provided the Parties with a declaration attesting to
21 completion of the notice process set forth in this section.

22 VI. NOTICE TO THE DIRECT PURCHASER SETTLEMENT CLASS

23 A. Class Notice: Subject to Court approval, Defendant shall provide the Direct
24 Purchaser Settlement Class with notice of the settlement by the following methods:

25 1. Internet Notice:

26 a. Settlement Website: No later than twenty (20) calendar days
27 following entry of the Preliminary Approval Order, the Settlement Administrator shall create a

1 website dedicated to this settlement displaying the Direct Purchaser Long Form Notice and
2 downloadable Direct Purchaser Claim Forms, until the Direct Purchaser Claims Deadline.
3 Defendant shall post a link to the settlement website on Covered Products' website
4 (www.pillowsettlement.com) no later than thirty (30) days following entry of the Preliminary
5 Approval Order, which it shall maintain until the Direct Purchaser Claims Deadline.

6 2. Toll-Free Telephone Support: The Settlement Administrator shall establish
7 a toll-free support system to provide Class Members with: (a) general information about the
8 litigation; (b) frequently asked questions and answers; and (c) the ability to request a Direct
9 Purchaser Long Form Notice or Direct Purchaser Claim Form.

10 3. Email Notice: The Settlement Administrator will cause the Direct Purchaser
11 Email Notice to be emailed to all Direct Purchaser Settlement Class Members for whom
12 Defendant has email information.

13 4. Mail Notice: The Claims Administrator shall send the Mail Notice (Exhibit
14 F) to Direct Purchaser Settlement Class members who Defendant does not have an email address
15 for or whose Email Notice "bounces back" as undeliverable (after running a national change of
16 address update on each mailing address).

17 B. Declaration of Compliance: Within fourteen (14) calendar days of the Direct
18 Purchaser Claims Deadline, the Settlement Administrator shall provide the Parties with a
19 declaration attesting to completion of the notice process set forth in this section.

20 **VII. CLAIMS PROCESS/CLAIMS ADMINISTRATION**

21 A. Claim Form: Settlement Class Members may obtain a Claim Form from the
22 Settlement Administrator by calling the toll free number or by visiting the website identified in the
23 Email Notice, Long Form Notice, and Publication Notice. Each Claim Form will include
24 instructions and the date the form must be returned in order for the claim to be considered eligible
25 under the settlement.

26 B. Submission of Claim Form: All Non-Direct Purchaser Claim Forms shall be
27 signed under penalty of perjury and sent directly to the Settlement Administrator at the address
28

1 indicated on the Claim Form. All Non-Direct Purchaser Claim Forms seeking refunds shall be
2 accompanied by a return of the Covered Products, original retail receipts, and/or a Claim Form
3 signed under penalty of perjury. All Direct Purchaser Claim Forms shall be submitted online or
4 by mail and shall be under penalty of perjury. The Settlement Administrator shall review the
5 Claim Forms and make any calculations of payments to be distributed to the Settlement Class
6 Members.

7 C. Validity of Submitted Claims: Non-Direct Purchaser Class Counsel, Direct
8 Purchaser Class Counsel, and Defendant may, but need not, seek permission from the Court to
9 consider late-filed Claim Forms that are received prior to the distribution of settlement funds to the
10 Settlement Class. Any Settlement Class Members who fail to submit valid and timely Claim
11 Forms shall be bound by all terms of the settlement and any judgment entered in this Action, and
12 will be barred from receiving any monetary relief under this Agreement.

13 D. Distribution of Refund Checks to Authorized Claimants: Upon completion of its
14 calculation of payments, and within fourteen (14) calendar days following each Claims Deadline,
15 the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report
16 listing the amount of all refunds to be made to each Settlement Class Member.

17 E. Issuance of Settlement Proceeds: The Settlement Administrator is responsible for
18 issuing the refunds to Authorized Claimants. Refunds for Non-Direct Purchasers will be mailed
19 by the Settlement Administrator within twenty-one (21) calendar days of the Effective Date. By
20 the same deadline, the Settlement Administrator shall email a notice to each Direct Purchaser
21 claimant entitled to two (2) or four (4) \$6 payments that he or she has 30 days to elect to receive,
22 instead of a cash payment, one (1) free My Pillow GoAnywhere Pillow (for claimants entitled to
23 two (2) \$6 payments or two (2) free My Pillow GoAnywhere Pillows (for claimants entitled to
24 four (4) \$6 payments. Participating Claimants who choose the cash payment option (or who do
25 not respond to the opportunity to select the GoAnywhere Pillow(s) in lieu of cash) shall receive a
26 cash payment. A declaration of payment and pillow distributions will be filed with the Court and
27 provided to the Parties within ten (10) calendar days of mailing the settlement benefits.

VIII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT

3 A. Objections: Only Settlement Class Members, on their own behalf and not on
4 behalf of any class, may object to the Settlement. Those who wish to object to the Settlement
5 must do so in writing. Written objections must (1) state the basis of the objection and all required
6 information from the Long Form Notice, (2) be mailed to the Settlement Administrator, Class
7 Counsel, and Defendant's counsel, and (3) be filed with the Court by the applicable
8 Objection/Exclusion Deadline. Although Settlement Class Members do not need to attend the
9 Final Approval Hearing in order to object, no Settlement Class Member shall be entitled to be
10 heard at the Final Approval Hearing (whether individually or through separate counsel) unless
11 written notice of the Settlement Class Member's intention to appear at the Final Approval
12 Hearing, and copies of any written objections or briefs, have been timely filed with the Court and
13 served on counsel for the Parties and the Settlement Administrator on or before the applicable
14 Objection/Exclusion Deadline.

15 1. Timeliness of Objections: The date of filing as stamped by the Court shall
16 be the exclusive means used to determine whether an objection and/or notice of intention to appear
17 has been timely submitted. In the event that the postmark is illegible, the objection and/or notice
18 to appear shall be deemed untimely unless it is received by the Settlement Administrator within
19 two (2) calendar days of the applicable Objection/Exclusion Deadline. Settlement Class Members
20 who fail to timely file and serve a written objection in the manner specified above shall be deemed
21 to have waived any objections and shall be foreclosed from making any objection (whether by
22 appeal or otherwise) to the Settlement.

23 2. Right to Respond to Objections: Class Counsel and Defendant shall have
24 the right to respond to any objection prior to the Fairness Hearing. Class Counsel and/or
25 Defendant may, at least two (2) business days (or such other number of days as the Court shall
26 specify) before the Final Approval Hearing, file any responses to any written objections submitted
27 to the Court by Settlement Class Members in accordance with this Agreement.

1 B. Procedure for Requesting Exclusion: Settlement Class Members who wish to opt
2 out of this Settlement must submit a written statement before the applicable Objection/Exclusion
3 Deadline. Requests for Exclusion that do not include all required information and/or that are not
4 submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark
5 on the mailing envelope shall be the exclusive means used to determine whether a Settlement
6 Class Member's Request for Exclusion has been timely submitted. In the event that the postmark
7 is illegible, the Request for Exclusion shall be deemed untimely unless it is received by the
8 Settlement Administrator within two (2) calendar days of the applicable Objection/Exclusion
9 Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this
10 procedure will not be entitled to any relief, will not be bound by the Settlement, and will not have
11 any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a
12 valid and timely request for exclusion on or before the applicable Objection/Exclusion Deadline
13 shall be bound by all terms of the Settlement and any final judgment entered in this litigation if the
14 Settlement is approved by the Court, regardless of whether they ineffectively or untimely
15 requested exclusion from the Settlement.

16 C. Notice of Objections and/or Requests for Exclusion: The Settlement Administrator
17 shall on a daily basis (1) date stamp all original Requests for Exclusion and objection statements it
18 receives; and (2) serve copies of same on Class Counsel and Defendant's counsel no later than
19 seven (7) calendar days after the deadline for submission of the documents. The Settlement
20 Administrator shall inform Class Counsel and Defendants' counsel of any such documents
21 received that were untimely submitted.

22 D. No Solicitation of Settlement Objections or Exclusions: The Parties agree to use
23 their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or
24 their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the
25 Settlement or request exclusion from participating as a Settlement Class Member, or encourage
26 any Settlement Class Member to appeal from the final judgment.

27 | IX. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL

1 The Parties shall promptly submit this Agreement to the Court in support of Plaintiffs' Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Agreement, Plaintiffs shall apply to the Court for the entry of a Preliminary Approval Order substantially in the following form, as more particularly set forth on Exhibit J;

6 A. Scheduling a Final Approval Hearing, no earlier than thirty (30) days after the Direct Purchaser Claims Deadline, on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the members of the class;

9 B. Approving as to form and content the Direct Purchaser Email Notice and the Direct Purchaser Long Form Notice;

11 C. Approving as to form and content the proposed Direct Purchaser Claim Form and instructions;

13 D. Preliminarily approving the Settlement;

14 E. Preliminarily and conditionally certifying the Settlement Class, including the two subclasses, for settlement purposes;

16 F. Preliminarily approving the Settlement Administrator and the administration of the settlement in accordance with the procedures set forth in this Agreement;

18 G. Staying all proceedings in the Action, and enjoining the prosecution of any other individual or class claims;

20 H. Providing that, in the event the Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to the respective positions as of the date of this Agreement.

1 In the event the Court does not enter the Preliminary Approval order described herein, or decides
2 to do so only with material modifications, then this entire Agreement shall become null and void,
3 unless the Parties hereto agree in writing to proceed with this Agreement as modified.

4 **X. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

5 Class Counsel will submit a proposed Final Order and Judgment at the Final Approval
6 Hearing in the form set forth as Exhibit K, which shall:

7 A. Approve the settlement, adjudging the terms thereof to be fair, reasonable and
8 adequate, and directing consummation of its terms and provisions;

9 B. Approve Class Counsels' applications for the requested award of attorneys' fees
10 and costs and the Class Representatives' applications for incentive awards (The Non-Direct
11 Purchaser Class Counsel and the Direct Purchaser Class Counsel shall submit separate briefs in
12 support of their respective awards of attorneys' fees); and

13 C. Permanently bar Plaintiffs and Settlement Class Members from prosecuting against
14 Defendant, and other Released Parties from any and all Released Claims.

15 **XI. PARTIES' AUTHORITY**

16 The signatories represent that they are fully authorized to enter into this Agreement and
17 bind the Parties to its terms and conditions.

18 **XII. MUTUAL FULL COOPERATION**

19 A. The Parties agree to cooperate fully with each other to accomplish the terms of this
20 Agreement, including but not limited to, execution of such documents and the taking of such other
21 action as may reasonably be necessary to implement the terms of this Agreement. The Parties to
22 this Agreement shall use their best efforts, including all efforts contemplated by this Agreement
23 and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate
24 this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the
25 assistance and cooperation of Defendant and its counsel, shall take all necessary steps to secure the
26 Court's final approval of this Agreement.

27

28

1 B. Defendant agrees that it will not attempt to discourage Settlement Class Members
2 from filing claims.

3 **XIII. NO ADMISSION**

4 This Agreement is not to be construed or deemed as an admission of liability, culpability,
5 negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims
6 asserted in the Action. Each of the Parties has entered into this Agreement with the intention to
7 avoid further disputes and litigation with the attendant inconvenience and expenses. This
8 Agreement is a settlement document and shall, pursuant to Cal. Evid. Code §§ 1151 and 1152 be
9 inadmissible in evidence in any proceeding in order to establish liability. The preceding sentence
10 shall not apply to an action or proceeding to approve or enforce this Agreement.

11 **XIV. ENFORCEMENT ACTIONS**

12 The Court shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce,
13 interpret and implement this Agreement, including any alleged violations of the Agreement, and
14 the terms of any order entered pursuant to this Agreement.

15 **XV. NOTICES**

16 Unless otherwise specifically provided, all notices, demands or other communications in
17 connection with this Agreement shall be in writing and shall be deemed to have been given as of
18 the third business day after mailing by United States registered or certified mail, return receipt
19 requested, addressed as follows:

Non-Direct Purchaser Class	Direct Purchaser Class	For Defendant
Ryan Clarkson Clarkson Law Firm, P.C. 9255 Sunset Blvd., Suite 804 Los Angeles, CA 90069	Robert Curtis Foley Bezek Behle & Curtis, LLP 15 West Carrillo Street Santa Barbara, CA 93101	Jeff Richardson Mitchell, Silberberg & Knupp LLP 11377 West Olympic Boulevard Los Angeles, CA 90064

24 **XVI. CONSTRUCTION**

25 The Parties agree that the terms and conditions of this Agreement are the result of arm's
26 length negotiations between the Parties and that this Agreement shall not be construed in favor of
27

28

1 or against any Party by reason of the extent to which any Party or his or its counsel participated in
2 the drafting of this Agreement.

3 | XVII. MATERIAL TERMS; CAPTIONS

4 Each term of this Agreement is a material term of the Agreement not merely a recital, and
5 reflects not only the intent and objectives of the parties but also the consideration to be exchanged
6 by the Parties hereunder. Paragraph titles or captions are inserted as a matter of convenience and
7 for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any
8 of its provisions.

9 | XVIII. INTEGRATION CLAUSE

10 This Agreement contains the entire agreement between the Parties relating to the
11 settlement, and all prior or contemporaneous agreements, understandings, representations, and
12 statements, whether oral or written, and whether by a party or such party's legal counsel, are
13 extinguished.

14 | XIX. NON-EVIDENTIARY USE

15 Neither this Agreement nor any of its terms shall be offered or received into evidence in
16 the Action, or in any other action or proceeding; provided, however, that nothing contained in this
17 section “non-evidentiary use” shall prevent this agreement from being used, offered, or received in
18 any proceeding to enforce, construe, or finalize this Agreement.

19 XX. NO COLLATERAL ATTACK

20 This Agreement shall not be subject to collateral attack by any Settlement Class Member
21 or any recipient of the notices to the Settlement Class after the final judgment. Such prohibited
22 collateral attacks shall include claims made after the Final Approval Hearing that a Settlement
23 Class Member's settlement amount was improperly calculated or adjusted.

24 | XXI. AMENDMENTS

25 The terms and provisions of this Agreement may be amended only by a written agreement,
26 which is both (1) signed by the Parties who have executed this Agreement and (2) approved by the
27 Court.

1 **XXII. GOVERNING LAW**

2 This Agreement shall be governed by, construed under, and interpreted and the rights of
3 the Parties determined in accordance with, the laws of the State of California, irrespective of the
4 State of California's choice of law principles.

5 **XXIII. BINDING ON ASSIGNS**

6 This Agreement shall be binding upon and inure to the benefit of the Parties and their
7 respective heirs, trustees, executors, administrators, successors, and assigns.

8 **XXIV. CLASS COUNSEL SIGNATORIES**

9 It is agreed that because the Settlement Class appears to be so numerous, it is impossible or
10 impractical to have each member of the class execute this Agreement. The notice plan set forth
11 herein will advise Settlement Class Members of all material terms of this Agreement, including
12 the binding nature of the releases and such shall have the same force and effect as if this
13 Agreement were executed by each Settlement Class Member.

14 **XXV. COUNTERPARTS**

15 This Agreement may be executed in counterparts, and when each party has signed and
16 delivered at least one such counterpart, each counterpart shall be deemed an original, and, when
17 taken together with other signed counterparts, shall constitute one Agreement, which shall be
18 binding upon and effective as to all Parties and the Settlement Class.

19
20 **IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the dates
21 indicated below:

22
23 **NON-DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS**
24 **COUNSEL:**

25 DATED: August 31, 2017

ARMIN AMIRI



26
27 Individually and on behalf of the Non-
28 Direct Purchaser Settlement Class

1 DATED: August 31, 2017

CLARKSON LAW FIRM, P.C.

3 By: Ryan Clarkson

4 Attorneys for the Plaintiff and the Non-
5 Direct Purchaser Settlement Class

6 **DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS
7 COUNSEL:**

8 DATED: August __, 2017

DONALD PUCKETT

10 Individually and on behalf of the Direct
11 Purchaser Settlement Class

12 DATED: August __, 2017

PATRICK KAVANAUGH

15 Individually and on behalf of the Direct
16 Purchaser Settlement Class

17 DATED: August __, 2017

THERESA CORDERO

19 Individually and on behalf of the Direct
20 Purchaser Settlement Class

21 DATED: August __, 2017

JILL BRUNELLE

23 Individually and on behalf of the Direct
24 Purchaser Settlement Class

25 DATED: August __, 2017

HEATHER DEWITT

27 Individually and on behalf of the Direct
28 Purchaser Settlement Class

1 DATED: August __, 2017

CLARKSON LAW FIRM, P.C.

2

3

4

5

6 **DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS**

7 **COUNSEL:**

8 DATED: August 21, 2017

DONALD PUCKETT

9

10

11

12

13 DATED: August __, 2017

PATRICK KAVANAUGH

14

15

16

17 DATED: August __, 2017

THERESA CORDERO

18

19

20

21 DATED: August __, 2017

JILL BRUNELLE

22

23

24

25 DATED: August __, 2017

HEATHER DEWITT

26

27

28

By: Ryan Clarkson
Attorneys for the Plaintiff and the Non-
Direct Purchaser Settlement Class



Individually and on behalf of the Direct
Purchaser Settlement Class

Individually and on behalf of the Direct
Purchaser Settlement Class

Individually and on behalf of the Direct
Purchaser Settlement Class

Individually and on behalf of the Direct
Purchaser Settlement Class

Individually and on behalf of the Direct
Purchaser Settlement Class

Individually and on behalf of the Direct
Purchaser Settlement Class

1 DATED: August __, 2017

CLARKSON LAW FIRM, P.C.

2

3

By: Ryan Clarkson

4

Attorneys for the Plaintiff and the Non-
Direct Purchaser Settlement Class

5

6 DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS

7 COUNSEL:

8 DATED: August __, 2017

DONALD PUCKETT

9

10

11

Individually and on behalf of the Direct
Purchaser Settlement Class

12

13

DATED: August __, 2017

KAVANAUGH
PATRICK KAVANAUGH *(Signature)*

14

15

16

Individually and on behalf of the Direct
Purchaser Settlement Class

17

DATED: August __, 2017

THERESA CORDERO

18

19

20

Individually and on behalf of the Direct
Purchaser Settlement Class

21

DATED: August __, 2017

JILL BRUNELLE

22

23

24

Individually and on behalf of the Direct
Purchaser Settlement Class

25

DATED: August __, 2017

HEATHER DEWITT

26

27

28

Individually and on behalf of the Direct
Purchaser Settlement Class

1 DATED: August __, 2017

CLARKSON LAW FIRM, P.C.

3 By: Ryan Clarkson
4 Attorneys for the Plaintiff and the Non-
5 Direct Purchaser Settlement Class

6 **DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS**
7 **COUNSEL:**

8 DATED: August __, 2017

DONALD PUCKETT

10 Individually and on behalf of the Direct
11 Purchaser Settlement Class

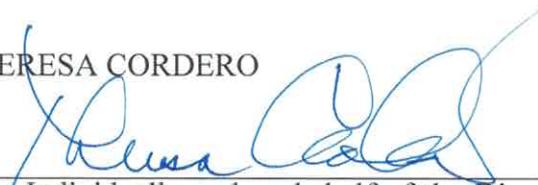
12 DATED: August __, 2017

PATRICK KAVANAUGH

14 Individually and on behalf of the Direct
15 Purchaser Settlement Class

16 DATED: August 30 2017

THERESA CORDERO



19 Individually and on behalf of the Direct
20 Purchaser Settlement Class

21 DATED: August __, 2017

JILL BRUNELLE

23 Individually and on behalf of the Direct
24 Purchaser Settlement Class

25 DATED: August __, 2017

HEATHER DEWITT

27 Individually and on behalf of the Direct
28 Purchaser Settlement Class

1 DATED: August __, 2017

CLARKSON LAW FIRM, P.C.

2

3

By: Ryan Clarkson

4

Attorneys for the Plaintiff and the Non-
Direct Purchaser Settlement Class

5

6 DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS

7 COUNSEL:

8 DATED: August __, 2017

DONALD PUCKETT

9

10

Individually and on behalf of the Direct
Purchaser Settlement Class

11

12

13

DATED: August __, 2017

PATRICK KAVANAUGH

14

15

Individually and on behalf of the Direct
Purchaser Settlement Class

16

17

DATED: August __, 2017

THERESA CORDERO

18

19

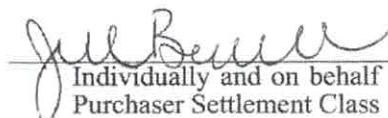
Individually and on behalf of the Direct
Purchaser Settlement Class

20

21

DATED: August 30, 2017

JILL BRUNELLE


Individually and on behalf of the Direct
Purchaser Settlement Class

22

23

24

25

DATED: August __, 2017

HEATHER DEWITT

26

27

28

Individually and on behalf of the Direct
Purchaser Settlement Class

1 DATED: August ___, 2017

CLARKSON LAW FIRM, P.C.

2

3

By: Ryan Clarkson
Attorneys for the Plaintiff and the Non-
Direct Purchaser Settlement Class

4

5 **DIRECT PURCHASER CLASS REPRESENTATIVE AND SETTLEMENT CLASS**

6

7 **COUNSEL:**

8

DATED: August ___, 2017

DONALD PUCKETT

9

10

Individually and on behalf of the Direct
Purchaser Settlement Class

11

12

13

DATED: August ___, 2017

PATRICK KAVANAUGH

14

15

Individually and on behalf of the Direct
Purchaser Settlement Class

16

17

DATED: August ___, 2017

THERESA CORDERO

18

19

Individually and on behalf of the Direct
Purchaser Settlement Class

20

21

DATED: August ___, 2017

JILL BRUNELLE

22

23

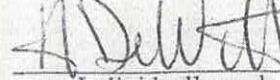
Individually and on behalf of the Direct
Purchaser Settlement Class

24

25

DATED: August 31, 2017

HEATHER DEWITT



Individually and on behalf of the Direct
Purchaser Settlement Class

26

27

28

1 DATED: August 31 2017

CHRISTIE KAUTSKY

3 *Christie Kautsky*
4 Individually and on behalf of the Direct
Purchaser Settlement Class

5 DATED: August __, 2017

SUSAN BALMER

7 Individually and on behalf of the Direct
8 Purchaser Settlement Class

10 DATED: August __, 2017

FOLEY BEZEK BEHLE & CURTIS, LLP

11 LOCKRIDGE GRINDAL NAUEN, P.L.L.P.

12 RICK KLINGBEIL, P.C.

13 BRADY MERTZ, P.C.

15 By: Robert Curtis
16 Attorneys for the Plaintiff and the Direct
Purchaser Settlement Class

17
18 DEFENDANT:

19 DATED: August __, 2017

MY PILLOW, INC.

21 APPROVED AS TO FORM:

23 DATED: August __, 2017

MITCHELL, SILBERBERG & KNUPP LLP

25 By: Jeffrey L. Richardson
26 Attorneys for Defendant My Pillow, Inc.

1 DATED: August __, 2017

2
3
4 CHRISTIE KAUTSKY

5
6 Individually and on behalf of the Direct
7 Purchaser Settlement Class

8 DATED: August 31, 2017

9
10 SUSAN BALMER

11 

12 Individually and on behalf of the Direct
13 Purchaser Settlement Class

14 DATED: August 31, 2017

15 FOLEY BEZEK BEHLE & CURTIS, LLP

16 LOCKRIDGE GRINDAL NAUEN, P.L.L.P.

17 RICK KLINGBEIL, P.C.

18 BRADY MERTZ, P.C.

19 

20 By: Robert Curtis
21 Attorneys for the Plaintiff and the Direct
22 Purchaser Settlement Class

23 **DEFENDANT:**

24 DATED: August __, 2017

25 MY PILLOW, INC.

26 By: _____

27 **APPROVED AS TO FORM:**

28 DATED: August __, 2017

MITCHELL, SILBERBERG & KNUPP LLP

29 By: Jeffrey L. Richardson
30 Attorneys for Defendant My Pillow, Inc.

1 DATED: August __, 2017

2
3
4 CHRISTIE KAUTSKY

5
6
7
8 Individually and on behalf of the Direct
9 Purchaser Settlement Class

10 DATED: August __, 2017

11
12 SUSAN BALMER

13
14
15 Individually and on behalf of the Direct
16 Purchaser Settlement Class

17 DATED: August __, 2017

18 FOLEY BEZEK BEHLE & CURTIS, LLP

19 LOCKRIDGE GRINDAL NAUEN, P.L.L.P.

20 RICK KLINGBEIL, P.C.

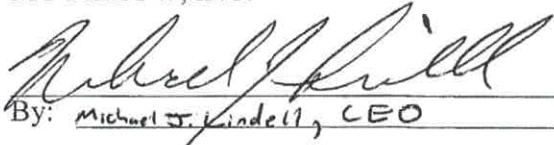
21 BRADY MERTZ, P.C.

22 By: Robert Curtis
23 Attorneys for the Plaintiff and the Direct
24 Purchaser Settlement Class

25
26
27
28 **DEFENDANT:**

19 DATED: August 30, 2017

20 MY PILLOW, INC.
21
22

23 
24 By: Michael J. Lindell, CEO

25
26
27
28 **APPROVED AS TO FORM:**

23 DATED: August __, 2017

24 MITCHELL, SILBERBERG & KNUPP LLP

25
26 By: Jeffrey L. Richardson
27 Attorneys for Defendant My Pillow, Inc.

1 DATED: August __, 2017

CHRISTIE KAUTSKY

2

3

Individually and on behalf of the Direct
Purchaser Settlement Class

4

5 DATED: August __, 2017

SUSAN BALMER

6

7

Individually and on behalf of the Direct
Purchaser Settlement Class

8

9

10 DATED: August __, 2017

FOLEY BEZEK BEHLE & CURTIS, LLP

11

LOCKRIDGE GRINDAL NAUEN, P.L.L.P.

12

RICK KLINGBEIL, P.C.

13

BRADY MERTZ, P.C.

14

15

By: Robert Curtis
Attorneys for the Plaintiff and the Direct
Purchaser Settlement Class

16

17

DEFENDANT:

18

DATED: August __, 2017

MY PILLOW, INC.

19

20

By: _____

21

APPROVED AS TO FORM:

22

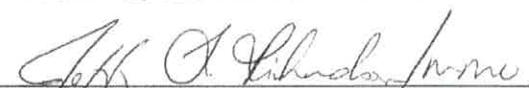
23

DATED: August 31, 2017

MITCHELL, SILBERBERG & KNUPP LLP

24

25


By: Jeffrey L. Richardson
Attorneys for Defendant My Pillow, Inc.

26

27

28

EXHIBIT A

FOR THE COUNTY OF SAN BERNARDINO
Amiri v. My Pillow — Case No. CIVDS1606479

CLAIM FORM

Subject to the terms of the Settlement Agreement, and pending final approval by the Court, to request a settlement payment, please complete this form and return it by **December 26, 2016**.

CONTACT INFORMATION

(Please type or print the following information): Fill in the following blanks with complete information.

Name:

First Name

MI

Last Name

Address:

Address 1

Address 2

City _____ State _____ Zip Code _____ Zip4 (optional) _____

Daytime Telephone (_____) - _____

Evening Telephone (_____) - _____

Email Address: _____ @ _____ . _____

CLAIM INFORMATION

To request a \$5 refund, please return your My Pillow product, provide the original purchase receipt, or sign this Claim Form under penalty of perjury. If you purchased three or more My Pillow products during your initial purchase and you write "Three+" on your original purchase receipt that you return with your Claim Form, you may be eligible to receive an additional benefit of up to \$5, depending on the number of people who submit a Claim Form. There is a maximum of one Claim Form per household.

CERTIFICATION

I swear under penalty of perjury of the laws of the United States that I purchased _____ My Pillow products between April 26, 2012 and October 13, 2016 and that all the information on this form is true and correct to the best of my knowledge.



Signature _____

Date _____

Instructions

Complete the Contact and Claim information above.

Sign and date the Claim Form

Submit this completed and signed Claim Form to:

My Pillow Settlement
P.O. Box 1561
West Palm Beach, FL 33402
1-877-595-9314

REVIEW AND DETERMINATION OF CLAIMS: The Claims Administrator will review all claim forms that are postmarked on or before December 26, 2016. Claim forms that are not timely submitted will be rejected. Invalid claim forms and illegible claim forms may be rejected. The Claims Administrator is entitled to confirm information supplied in claim forms to determine eligibility. Visit to www.mypillowsettlement.com for further information on the Settlement.

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

Armin Amiri, et al. v. My Pillow, Inc., et al. – Case No. CIVDS1606479

DIRECT PURCHASER CLAIM FORM

Subject to the terms of the Settlement Agreement, and pending final approval by the Court, to request a settlement payment, please complete this form and return it by _____, 2017.

CONTACT INFORMATION

(Please type or print the following information): Fill in the following blanks with complete information.

Name: _____
First Name _____ MI _____ Last Name _____

Address: _____
Address 1 _____

Address 2 _____

City _____ **State** _____ **Zipcode** _____ **Zip4 (optional)** _____

Daytime Telephone (_____) - _____ Evening Telephone (_____) - _____

Email Address: _____ @ _____ .

CLAIM INFORMATION

To request a benefit under this Settlement, please complete and sign this Claim Form under penalty of perjury.

CERTIFICATION

I swear under penalty of perjury of the laws of the United States that I purchased one or more My Pillow products between April 26, 2012 and _____, 2017 and that all the information on this form is true and correct to the best of my knowledge.

Signature

Date

INSTRUCTIONS

- Complete the Claim Form.
- Sign and date the Claim Form.
- Submit this completed and signed Claim Form to:

My Pillow Settlement
[address]

REVIEW AND DETERMINATION OF CLAIMS: The Claims Administrator will review all claim forms that are postmarked on or before _____, 2017. Claim forms that are not timely submitted will be rejected. Invalid claim forms and illegible claim forms may be rejected. The Claims Administrator is entitled to confirm information supplied in claim forms to determine eligibility. Visit to www.tbd.com for further information on the Settlement.

EXHIBIT C

To view this message in your browser, [click here](#)

This is not an advertisement. This is a court approved public notice sent to anyone who may have purchased one or more products bearing the brand name My Pillow between April 26, 2012 and October 13, 2016.

Your rights may be affected by a proposed settlement in a class action lawsuit pending in San Bernardino Superior Court, Case No. CIVDS1606479.

The court has tentatively approved a proposed settlement in a class action lawsuit that challenges the marketing, packaging, and sales of My Pillow products. The defendant denies that any of these allegations are true or that members of the settlement class are entitled to any damages. The Court has not yet ruled, one way or the other, on the merits of the claims.

If you want to be excluded from the settlement, you must send a letter to the My Pillow Settlement Claims Administrator at P.O. Box 1561, West Palm Beach, FL 33402 postmarked on or before December 26, 2016. The last day to file and serve with the Court listed below any comments in support of or in opposition to the settlement is also December 26, 2016.

If you want to make objections, you must comply with the procedure set forth in the long form notice. To obtain a copy of the long form notice, or to obtain more information regarding the settlement, you may log on to the website or complete the form instructions listed in the image below. You can also send a letter with your request to the My Pillow Settlement Claims Administrator at P.O. Box 1561, West Palm Beach, FL 33402. Please include your Full Name, Address, City, State, Zip, Email and Phone.

Class counsel will seek an award of up to \$100,000 in attorneys' fees and up to \$5,000 in costs. This notice is a summary only. To be eligible for the potential benefits under the settlement, you must submit a claim to the My Pillow Settlement Claims Administrator, P.O. Box 1561, West Palm Beach, FL 33402, by no later than December 26, 2016. A hearing to consider the fairness of the settlement will be held on January 30, 2017, at 8:30 a.m. in Courtroom S22 at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, California, 92415.

Please do not contact the Court for information.

Important Settlement information in the image below.

ATTENTION: CLASS ACTION SETTLEMENT	
TO: ALL PERSONS WHO PURCHASED ONE OR MORE PRODUCTS BEARING THE BRAND NAME MY PILLOW BETWEEN APRIL 26, 2012 AND OCTOBER 13, 2016	
Your rights may be affected by a proposed settlement in a class action lawsuit pending in San Bernardino Superior Court, Case No. CIVDS1606479.	
The Court has tentatively approved a proposed settlement in a class action lawsuit that challenges the marketing, packaging, and sale of My Pillow products. The defendant denies that any of these allegations are true or that members of the settlement class are entitled to any damages. The Court has not yet ruled, one way or the other, on the merits of the claims.	
<p>If you want to be excluded from the settlement, you must send a letter to the Claims Administrator at P.O. Box 1561, West Palm Beach, FL 33402 postmarked on or before December 26, 2016. The last day to file and serve with the Court listed below any comments in support of or in opposition to the settlement is also December 26, 2016. If you want to make objections, you must comply with the procedure set forth in the long form notice. To obtain a copy of the long form notice, or to obtain more information regarding the settlement, you may log on to www.mypillowsettlement.com, or submit the request for information form (see instructions in the box to the right). Class counsel will seek an award of up to \$100,000 in attorneys' fees and up to \$5,000 in costs. This notice is a summary only. To be eligible for the potential benefits under the settlement, you must submit a claim to the Claims Administrator, P.O. Box 1561, West Palm Beach, FL 33402, by no later than December 26, 2016. A hearing to consider the fairness of the settlement will be held on January 30, 2017, at 8:30 a.m. in Courtroom S22 at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, California, 92415. Please do not contact the Court for information.</p>	<p>REQUEST FOR INFORMATION (This is <u>not</u> an Opt-Out Request)</p> <p><input type="checkbox"/> I would like to have more detailed information about the proposed settlement and a claim form mailed to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>City: _____</p> <p>State, Zip: _____</p> <p>Telephone Number: _____</p> <p>MAIL THIS REQUEST TO: Claims Administrator P. O. Box 1561 West Palm Beach, FL 33402</p>

Sincerely,

My Pillow Settlement Claims Administrator

To unsubscribe click [here](#)

EXHIBIT D

LEGAL NOTICE

If you purchased one or more products bearing the labeled brand name My Pillow directly from MyPillow, Inc. between April 26, 2012 and _____, 2017, you could get payment from a class action settlement.

A settlement has been proposed in a class action regarding the advertising, packaging, and sale of My Pillow products, including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos. The claims are strongly disputed and the parties have reached an agreement to avoid the time and expense of litigation. The San Bernardino Superior Court authorized this notice and will decide whether to approve the settlement.

WHAT DOES THE SETTLEMENT PROVIDE? If approved, the proposed settlement will provide for monetary benefits to settlement class members, notice/administration costs, class representative payments, non-monetary benefits, and fees and costs for the lawyers who represented the settlement class.

HOW DO YOU ASK FOR A MONETARY SETTLEMENT BENEFIT? To qualify for a monetary benefit under the settlement, visit www.tbd.com for directions on how to submit a claim form or you can obtain a claim form by calling 1-XXX-XXX-XXXX. The deadline is Month 00, 0000.

WHAT ARE YOUR OTHER OPTIONS? You may exclude yourself from the settlement or object to it by sending a letter to the Claims Administrator at [address] by Month 00, 0000. The settlement and judgment, whether favorable or not, will bind you if you do not request exclusion. If you do not request exclusion, you may, if you desire, enter an appearance through counsel. If you do object, you may still file a claim. The more detailed notice available at www.tbd.com explains these options in more detail.

The Court will hold a hearing in this case (*Armin Amiri, et al. v. My Pillow, Inc.*, Case No. CIVDS1606479) on _____, to consider whether to approve the settlement and the request for attorney' fees and costs by settlement class counsel. You may ask to appear at the hearing, but you do not have to. For more information, visit www.tbd.com.

The San Bernardino Superior Court has ordered this email to be sent. If you wish to UNSUBSCRIBE from future email messages from the Settlement Administrator with regard to this

Settlement, please click on this link.

EXHIBIT E

Thank you for your mail in inquiry regarding the My Pillow Settlement.

Below are links to learn more information about the My Pillow settlement and to submit a claim online. We've also included frequently asked questions. If you should have any additional questions, please contact us below.

My Pillow Settlement Website: <https://www.mypillowsettlement.com/Index.dtm>

Online Claim Form - <https://www.mypillowsettlement.com/ClaimForm.dtm>

Thank you,

My Pillow Settlement Administrator

P.O. Box 1561

West Palm Beach, FL 33402

[1-877-595-9314](tel:18775959314)

info@mypillowsettlement.com

Frequently Asked Questions

1. Why did I get this notice? If you purchased one or more products bearing the labeled brand name My Pillow between April 26, 2012 and October 13, 2016, you have a right to know about a proposed settlement of a class action lawsuit and your options. The San Bernardino County Superior Court of the State of California has preliminarily approved the proposed settlement.

If the Court grants final approval to the settlement, and after any appeals are resolved, an administrator appointed by the Court will distribute the benefits under the settlement. The settlement website will provide updates regarding the progress of the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The case is known as Armin Amiri v. My Pillow, Inc., Case No. CIVDS1606479. The person who sued is called the Plaintiff, and the company he sued is called the Defendant.

2. What is this lawsuit about? This lawsuit is about whether the marketing, packaging, and sale of the My Pillow products was appropriate. The parties reached an agreement to avoid the time and expense associated with further litigation.

3. Why is this a class action? In a class action, one or more people, called Class Representatives (in this case Armin Amiri) sue on behalf of people who have similar claims. All of these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. A judge in the San Bernardino County Superior Court in California is overseeing this class action.

4. Why is there a settlement? The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the time and expense of going to trial. The Class Representative and his attorneys think the settlement is best for everyone because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

5. How do I know if I am part of the settlement? The Court previously decided that everyone who fits the following description is a Class Member: All people who purchased one or more products bearing the labeled brand name My Pillow between April 26, 2012 and October 13, 2016.

6. What does the settlement provide? If approved, the proposed settlement will provide for notice/administration costs, a class representative payment, cash benefits to class members who submit a claim, and fees and costs for the lawyers who represented the settlement class. More specifically:

* A Court-appointed administrator will receive compensation to implement a class notice program and to assist in the processing of claims submitted by Settlement Class members.

* Settlement Class members who submit a timely and complete claim form will receive \$5. Settlement Class members who purchased three or more My Pillow products during their initial purchase of My Pillow products can submit their original purchase receipt showing the purchase of three or more My Pillow products and seek an additional payment of up to \$5, based on the number of such Settlement Class Members who submit a claim form.

* Subject to Court approval, the Class Representative (Armin Amiri) may receive a service payment of up to \$2,500 for his time and effort acting as a class representative and for his willingness to bring this litigation on behalf of other consumers.

7. How can I get a payment? To qualify for a payment under the settlement, you must submit a claim form. You can obtain a claim form on the Internet at www.mypillowsettlement.com. Read the instructions carefully and submit the claim form no later than December 26, 2016.

8. When will I receive my payment? The Court will hold a hearing on January 30, 2017, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take up to a year or more. The settlement website will keep you informed of the progress of the settlement. Please be patient.

9. What am I giving up if I stay in the Settlement Class? Unless you exclude yourself, you will remain a member of the Settlement Class. This means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant (see question no. 11 below) or anyone else about the legal issues in this case. If you stay in the Settlement Class, all of the Court's orders will apply to you and legally bind you. The entirety of the release as set forth in the settlement agreement is as follows: "Settled Claims" means and refers to any and all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, including but not limited to unjust enrichment, theft by deception, fraud, breach of warranty express or implied, violation of California Civil Code 1750 et seq., violation of California Business and Professions Code Sections 17200 et seq. and 17500 et seq., and any related or similar state consumer protection statutes, claims for restitution, disgorgement of profits, injunctive and declaratory relief, arising out of or relating to the advertising, packaging, labeling, marketing, promotion, sale or distribution of

the Covered Products, including all claims which were alleged or which could have been alleged by Plaintiff, Class Counsel, the Settlement Class and/or any Settlement Class Member against the Released Parties in the Action, or any other legal action, whether those claims are asserted individually or on a class-wide basis (the "Released Claims").

10. How do I exclude myself from the settlement? To exclude yourself from the settlement, you must submit a letter by mail saying that you want to be excluded from the Settlement Class in Armin Amiri v. My Pillow, Inc. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked no later than December 26, 2016, to: My Pillow Settlement P.O. Box 1561 West Palm Beach, FL 33402

You cannot exclude yourself by phone or by e-mail. If you mail an exclusion request by the deadline, you will not be able to request a settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendant in the future.

11. If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later? No. Unless you exclude yourself, you give up the right to sue the Defendant or anyone else for the claims resolved by this settlement.

You must exclude yourself from the Settlement Class to participate in any litigation against the Defendant or anyone else regarding the claims resolved by this settlement. Remember, the exclusion deadline is December 26, 2016.

12. If I exclude myself, can I get the benefits from this settlement? No. If you exclude yourself, do not send in a claim form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit.

13. Do I have a lawyer in this case? The Clarkson Law Firm, P.C. represents you and other Settlement Class members. The lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid? Class Counsel will ask the Court for an award of attorneys' fees up to \$100,000 and reimbursement of costs and expenses of up to \$5,000. The Court may award less than this amount.

15. How do I tell the Court that I do not like the settlement? If you are a Settlement Class member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. (If you object, you can still participate in the settlement – and receive money if it is approved – notwithstanding your objection.) To object, you must submit a letter saying that you object to the My Pillow Settlement. The objection must include the following: (i) the name of this action; (ii) the objecting Settlement Class member's full name, address, telephone number, and signature (an attorney's signature is not sufficient); (iii) a statement that the objector is a Settlement Class member and an explanation of the basis upon which the objector claims to be a Settlement Class member; (iv) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection, (vi) a statement confirming whether the objector or any counsel representing the objector intends to personally appear and/or testify at the final approval hearing; and, (vii) a list of any persons who may be called to testify at the final approval hearing in support of the objection. To be timely, objections must be filed with the Court and mailed to the Settlement Administrator, Class Counsel, and Defendant's counsel by no later than December 26, 2016. All addresses are provided in this notice.

16. What is the difference between objecting and excluding? Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, you still can submit a claim form.

17. When and where will the Court decide whether to approve the settlement? The Court will hold a Fairness Hearing at 8:30 a.m. on January 30, 2017, in Department S22 at the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California, 92415. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Settlement Class Counsel and the Class Representative. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing? No. Settlement Class Counsel will answer any questions from the Court regarding the settlement. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the hearing? You may ask the Court for permission for you or your lawyer to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in Armin Amiri v. My Pillow, Inc." Be sure to include your name, address, telephone number, and your signature. If your lawyer intends to speak at the fairness hearing, your letter must also include the name, address, and telephone number of your lawyer. Your Notice of Intention to Appear must be mailed to the Claims Administrator and Settlement Class Counsel and postmarked no later than December 26, 2016 to: MyPillow Settlement - P.O. Box 1561 - West Palm Beach, FL 33402

CLARKSON LAW FIRM, P.C.- The Pershing Square Building - 448 S. Hill St., Suite 701 - Los Angeles, CA 90013
You cannot speak at the Fairness Hearing if you excluded yourself.

20. What happens if I do nothing at all? If you do nothing, you will not get any money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case for any of the released claims above.

21. Are there more details about the settlement? This notice summarizes the proposed settlement. More details are in the [Settlement Agreement](#). You can get a copy of the [Settlement Agreement](#) from the settlement website or by writing to the Claims Administrator at: My Pillow Settlement - P.O. Box 1561 - West Palm Beach, FL 33402

22. How do I get more information? You can visit the settlement website at www.mypillowsettlement.com, where you will find answers to common questions about the settlement, a claim form, plus other information. You may also call 1-877-595-9314 or contact Settlement Class Counsel at Clarkson Law Firm, P.C., 448 S. Hill Street, Suite 701, Los Angeles, California 90013.

FOR THE COUNTY OF SAN BERNARDINO
Amiri v. My Pillow — Case No. CIVDS1606479

CLAIM FORM

Subject to the terms of the Settlement Agreement, and pending final approval by the Court, to request a settlement payment, please complete this form and return it by **December 26, 2016**.

CONTACT INFORMATION

(Please type or print the following information): Fill in the following blanks with complete information.

Name: _____

First Name

MI

Last Name

Address:

Address 1

Address 2

City

State

Zip Code

Zip4 (optional)

Daytime Telephone (_____) _____ - _____

Evening Telephone (_____) _____ - _____

Email Address: _____ @ _____ . _____

CLAIM INFORMATION

To request a \$5 refund, please return your My Pillow product, provide the original purchase receipt, or sign this Claim Form under penalty of perjury. If you purchased three or more My Pillow products during your initial purchase and you write "Three+" on your original purchase receipt that you return with your Claim Form, you may be eligible to receive an additional benefit of up to \$5, depending on the number of people who submit a Claim Form. There is a maximum of one Claim Form per household.

CERTIFICATION

I swear under penalty of perjury of the laws of the United States that I purchased _____ My Pillow products between April 26, 2012 and October 13, 2016 and that all the information on this form is true and correct to the best of my knowledge.

Signature

Date

Instructions

Complete the Contact and Claim information above.

Sign and date the Claim Form

Submit this completed and signed Claim Form to:

My Pillow Settlement
P.O. Box 1561
West Palm Beach, FL
33402 1-877-595-9314

REVIEW AND DETERMINATION OF CLAIMS: The Claims Administrator will review all claim forms that are postmarked on or before December 26, 2016. Claim forms that are not timely submitted will be rejected. Invalid claim forms and illegible claim forms may be rejected. The Claims Administrator is entitled to confirm information supplied in claim forms to determine eligibility. Visit to www.mypillowsettlement.com for further information on the Settlement.

EXHIBIT F

LEGAL NOTICE

If you purchased one or more products bearing the labeled brand name My Pillow directly from My Pillow, Inc. between April 26, 2012 and _____, 2017, you could get payment from a class action settlement.

A settlement has been proposed in a class action regarding the advertising, packaging, and sale of My Pillow products, including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos. The claims are strongly disputed and the parties have reached an agreement to avoid the time and expense of litigation. The San Bernardino Superior Court authorized this notice and will decide whether to approve the settlement.

WHAT DOES THE SETTLEMENT PROVIDE? If approved, the proposed settlement will provide for monetary benefits to settlement class members, notice/administration costs, class representative payments, non-monetary benefits, and fees and costs for the lawyers who represented the settlement class.

HOW DO YOU ASK FOR A MONETARY SETTLEMENT BENEFIT? To qualify for a monetary benefit under the settlement, visit www.tbd.com for directions on how to submit a claim form or you can obtain a claim form by calling 1-XXX-XXX-XXXX. The deadline is Month 00, 0000.

WHAT ARE YOUR OTHER OPTIONS? You may exclude yourself from the settlement or object to it by sending a letter to the Claims Administrator at [address] by Month 00, 0000. The settlement and judgment, whether favorable or not, will bind you if you do not request exclusion. If you do not request exclusion, you may, if you desire, enter an appearance through counsel. If you do object, you may still file a claim. The more detailed notice available at www.tbd.com explains these options in more detail.

The Court will hold a hearing in this case (*Armin Amiri, et al. v. My Pillow, Inc.*, Case No. CIVDS1606479) on _____, to consider whether to approve the settlement and the request for attorney' fees and costs by settlement class counsel. You may ask to appear at the hearing, but you do not have to. For more information, visit www.tbd.com.
9223756.1

EXHIBIT G

SAN BERNARDINO COUNTY SUPERIOR COURT FOR THE STATE OF CALIFORNIA

If you purchased one or more products bearing the labeled brand name My Pillow between April 26, 2012 and October 13, 2016, you could get payment from a class action settlement

A court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit regarding My Pillow products.
- In the lawsuit, plaintiffs raised questions regarding defendant's advertising, packaging, and sale of My Pillow products. The parties reached an agreement in order to avoid the time and expense associated with litigation.
- The claims are strongly disputed. The Court has not ruled, one way or the other, on plaintiff's claims.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to receive a payment.
EXCLUDE YOURSELF	Receive no payment. This is the only option that allows you to ever be part of any other lawsuit against the defendant or anyone else about the legal claims in this case.
OBJECT	Write to the Court about why you do not like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Receive no payment. Give up rights.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.
- Any questions? Read on and visit www.mypillowsettlement.com.

WHAT THIS NOTICE CONTAINS

Basic Information.....	3
1. Why should I read this notice?.....	3
2. What is this lawsuit about?	3
3. Why is this a class action?	3

QUESTIONS? VISIT WWW.MYPILLOWSETTLEMENT.COM

4.	Why is there a settlement? .....	.3
Who is in the Settlement	.....	.3
5.	How do I know if I am part of the settlement? .....	.3
The Settlement Benefits – What You Get	.....	.4
6.	What does the settlement provide? .....	.4
How You Get Benefits – Submitting a Claim Form	.....	.4
7.	How can I get a payment?.....	.4
8.	When will I receive my payment? .....	.4
9.	What am I giving up if I stay in the Settlement Class?.....	.4
Excluding Yourself From The Settlement	.....	.5
10.	How do I exclude myself from the settlement? .....	.5
11.	If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?.....	.5
12.	If I exclude myself, can I get benefits from this settlement? .....	.5
The Lawyers Representing You	.....	.5
13.	Do I have a lawyer in this case?.....	.5
14.	How will the lawyers be paid? .....	.6
Objecting To The Settlement	.....	.6
15.	How do I tell the Court that I do not like the settlement? .....	.6
16.	What is the difference between objecting and excluding? .....	.6
The Court's Fairness Hearing	.....	.6
17.	When and where will the Court decide whether to approve the settlement? .....	.7
18.	Do I have to come to the hearing? .....	.7
19.	May I speak at the hearing? .....	.7
If You Do Nothing	.....	.7
20.	What happens if I do nothing at all? .....	.7
Getting More Information	.....	.7
21.	Are there more details about the settlement? .....	.7
22.	How do I get more information? .....	.8

BASIC INFORMATION

1. Why should I read this notice?

If you purchased one or more products bearing the labeled brand name My Pillow between April 26, 2012 and October 13, 2016, you have a right to know about a proposed settlement of a class action lawsuit and your options. The San Bernardino County Superior Court of the State of California has preliminarily approved the proposed settlement.

If the Court grants final approval to the settlement, and after any appeals are resolved, an administrator appointed by the Court will distribute the benefits under the settlement. The settlement website will provide updates regarding the progress of the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The case is known as *Armin Amiri v. My Pillow, Inc.*, Case No. CIVDS1606479. The person who sued is called the Plaintiff, and the company he sued is called the Defendant.

2. What is this lawsuit about?

This lawsuit is about whether the marketing, packaging, and sale of the My Pillow products was appropriate. The parties reached an agreement to avoid the time and expense associated with further litigation.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case Armin Amiri) sue on behalf of people who have similar claims. All of these people are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. A judge in the San Bernardino County Superior Court in California is overseeing this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the time and expense of going to trial. The Class Representative and his attorneys think the settlement is best for everyone because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?

The Court previously decided that everyone who fits the following description is a Class Member:

All people who purchased one or more products bearing the labeled brand name My Pillow between April 26, 2012 and October 13, 2016.

THE SETTLEMENT BENEFITS - WHAT YOU GET

QUESTIONS? VISIT WWW.MYPILLOWSETTLEMENT.COM

6. What does the settlement provide?

If approved, the proposed settlement will provide for notice/administration costs, a class representative payment, cash benefits to class members who submit a claim, and fees and costs for the lawyers who represented the settlement class. More specifically:

- A Court-appointed administrator will receive compensation to implement a class notice program and to assist in the processing of claims submitted by Settlement Class members.
- Settlement Class members who submit a timely and complete claim form will receive \$5. Settlement Class members who purchased three or more My Pillow products during their initial purchase of My Pillow products can submit their original purchase receipt showing the purchase of three or more My Pillow products and seek an additional payment of up to \$5, based on the number of such Settlement Class Members who submit a claim form.
- Subject to Court approval, the Class Representative (Armin Amiri) may receive a service payment of up to \$2,500 for his time and effort acting as a class representative and for his willingness to bring this litigation on behalf of other consumers.

How You GET BENEFITS – SUBMITTING A CLAIM FORM

7. How can I get a payment?

To qualify for a payment under the settlement, you must submit a claim form. You can obtain a claim form on the Internet at www.mypillowsettlement.com. Read the instructions carefully and submit the claim form no later than **December 26, 2016**.

8. When will I receive my payment?

The Court will hold a hearing on **January 30, 2017**, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take up to a year or more. The settlement website will keep you informed of the progress of the settlement. Please be patient.

9. What am I giving up if I stay in the Settlement Class?

Unless you exclude yourself, you will remain a member of the Settlement Class. This means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant (see question no. 11 below) or anyone else about the legal issues in this case. If you stay in the Settlement Class, all of the Court's orders will apply to you and legally bind you. The entirety of the release as set forth in the settlement agreement is as follows: "Settled Claims" means and refers to any and all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, including but not limited to unjust enrichment, theft by deception, fraud, breach of warranty express or implied, violation of California Civil Code 1750 et seq., violation of California Business and Professions Code Sections 17200 et seq. and 17500 et seq., and any related or similar state consumer protection statutes, claims for restitution, disgorgement of profits, injunctive and declaratory relief, arising out of or relating to the advertising, packaging, labeling, marketing, promotion, sale or distribution of the Covered Products, including all claims which were alleged or which could have been alleged by Plaintiff, Class Counsel, the Settlement Class and/or any Settlement Class Member against the Released Parties in the Action, or any other legal action, whether those claims are asserted individually or on a class-wide basis (the "Released Claims").

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want any benefits from this settlement, but you want keep the right to sue or continue to sue the Defendant or anyone else, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself – or is sometimes referred to as opting out of the Settlement Class. Defendant may withdraw from and terminate the Settlement if a certain number of putative Settlement Class members exclude themselves.

10. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a letter by mail saying that you want to be excluded from the Settlement Class in *Armin Amiri v. My Pillow, Inc.* Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked no later than **December 26, 2016**, to:

My Pillow Settlement
P.O. Box 1561
West Palm Beach, FL 33402

You cannot exclude yourself by phone or by e-mail. If you mail an exclusion request by the deadline, you will not be able to request a settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendant in the future.

11. If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the Defendant or anyone else for the claims resolved by this settlement.

You must exclude yourself from the Settlement Class to participate in any litigation against the Defendant or anyone else regarding the claims resolved by this settlement. Remember, the exclusion deadline is **December 26, 2016**.

12. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, do not send in a claim form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Clarkson Law Firm, P.C. represents you and other Settlement Class members. The lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees up to \$100,000 and reimbursement of costs and expenses of up to \$5,000. The Court may award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I do not like the settlement?

If you are a Settlement Class member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. (If you object, you can still participate in the settlement – and receive money if it is approved – notwithstanding your objection.)

To object, you must submit a letter saying that you object to the My Pillow Settlement. The objection must include the following: (i) the name of this action; (ii) the objecting Settlement Class member's full name, address, telephone number, and signature (an attorney's signature is not sufficient); (iii) a statement that the objector is a Settlement Class member and an explanation of the basis upon which the objector claims to be a Settlement Class member; (iv) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection, (vi) a statement confirming whether the objector or any counsel representing the objector intends to personally appear and/or testify at the final approval hearing; and, (vii) a list of any persons who may be called to testify at the final approval hearing in support of the objection. To be timely, objections must be filed with the Court and mailed to the Settlement Administrator, Class Counsel, and Defendant's counsel by no later than **December 26, 2016**. All addresses are provided in this notice.

16. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, you still can submit a claim form.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at **8:30 a.m. on January 30, 2017**, in Department S22 at the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California, 92415. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Settlement Class Counsel and the Class Representative. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions from the Court regarding the settlement. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the hearing?

You may ask the Court for permission for you or your lawyer to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *Armin Amiri v. My Pillow, Inc.*” Be sure to include your name, address, telephone number, and your signature. If your lawyer intends to speak at the fairness hearing, your letter must also include the name, address, and telephone number of your lawyer. Your Notice of Intention to Appear must be mailed to the Claims Administrator and Settlement Class Counsel and postmarked no later than **December 26, 2016** to:

My Pillow Settlement
P.O. Box 1561
West Palm Beach, FL 33402

CLARKSON LAW FIRM, P.C.
The Pershing Square Building
448 S. Hill St., Suite 701
Los Angeles, CA 90013

You cannot speak at the Fairness Hearing if you excluded yourself.

IF You Do NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will not get any money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case for any of the released claims above.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement from the settlement website or by writing to the Claims Administrator at:

My Pillow Settlement

QUESTIONS? VISIT WWW.MYPILLOWSETTLEMENT.COM

P.O. Box 1561
West Palm Beach, FL 33402

22. How do I get more information?

You can visit the settlement website at www.mypillowsettlement.com, where you will find answers to common questions about the settlement, a claim form, plus other information. You may also call 1-877-595-9314 or contact Settlement Class Counsel at Clarkson Law Firm, P.C., 448 S. Hill Street, Suite 701, Los Angeles, California 90013.

The Honorable Bryan Foster, San Bernardino County Superior Court

EXHIBIT H

SAN BERNARDINO COUNTY SUPERIOR COURT FOR THE STATE OF CALIFORNIA

DIRECT PURCHASER NOTICE

If you purchased one or more products bearing the labeled brand name My Pillow directly from My Pillow, Inc. between April 26, 2012 and _____, 2017, you could get payment from a class action settlement.

This is a supplemental notice. Please read it carefully even if you have already read and/or responded to a prior notice regarding this action.

A court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit regarding My Pillow products.
- In the lawsuit, plaintiffs raised questions regarding defendant's advertising, packaging, and sale of My Pillow products, including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos. The parties reached an agreement in order to avoid the time and expense associated with litigation.
- The claims are strongly disputed. The Court has not ruled, one way or the other, on plaintiffs' claims.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.
- If you have already submitted a claim or request for exclusion, you do not have to resubmit a claim or exclusion request.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to receive a monetary payment.
EXCLUDE YOURSELF	Receive no payment as part of this lawsuit. This is the only option that allows you to ever be part of any other lawsuit about the advertising, marketing, packaging, and sale of the My Pillow products (including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos), or the other lawsuits against My Pillow referenced in part 2 below.
OBJECT	Write to the Court about why you do not like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Receive no payment. Give up rights.

QUESTIONS? VISIT WWW.TBD.COM

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.
- Any questions? Read on and visit www.tbd.com.

WHAT THIS NOTICE CONTAINS

Basic Information	3
1. Why should I read this notice?	3
2. What is this lawsuit about?	3
3. Why is this a class action?	3
4. Why is there a settlement?	3
Who is in the Settlement	3
5. How do I know if I am part of the settlement?	3
The Settlement Benefits – What You Get	4
6. What does the settlement provide?	4
How You Get Benefits – Submitting a Claim Form	4
7. How can I get a payment?	4
8. When will I receive my payment?	4
9. What am I giving up if I stay in the Settlement Class?	4
Excluding Yourself From The Settlement	5
10. How do I exclude myself from the settlement?	5
11. If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?	5
12. If I exclude myself, can I get benefits from this settlement?	5
The Lawyers Representing You	5
13. Do I have a lawyer in this case?	5
14. How will the lawyers be paid?	6
Objecting To The Settlement	6
15. How do I tell the Court that I do not like the settlement?	6
16. What is the difference between objecting and excluding?	6
The Court's Fairness Hearing	7
17. When and where will the Court decide whether to approve the settlement?	7
18. Do I have to come to the hearing?	7

QUESTIONS? VISIT WWW.TBD.COM

19.	May I speak at the hearing?	7
If You Do Nothing.....		7
20.	What happens if I do nothing at all?	7
Getting More Information		8
21.	Are there more details about the settlement?	8
22.	How do I get more information?.....	8

BASIC INFORMATION

1. Why should I read this notice?

If you purchased one or more products bearing the labeled brand name My Pillow directly from My Pillow, Inc. between April 26, 2012 and _____, 2017, you have a right to know about a proposed settlement of a class action lawsuit and your options. The San Bernardino County Superior Court of the State of California has preliminarily approved the proposed settlement.

If the Court grants final approval to the settlement, and after any appeals are resolved, an administrator appointed by the Court will distribute the benefits under the settlement. The settlement website will provide updates regarding the progress of the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The case is known as *Armin Amiri, et al. v. My Pillow, Inc.*, Case No. CIVDS1606479. The people who sued are called the Plaintiffs, and the company they sued is called the Defendant.

This is a supplemental notice authorized by the Court. Please read it carefully even if you have already read and/or responded to a prior notice regarding this action.

2. What is this lawsuit about?

This lawsuit is about whether the marketing, packaging, and sale of the My Pillow products, including but not limited to Defendant's use of health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos, was appropriate. The parties reached an agreement to avoid the time and expense associated with further litigation.

After this lawsuit was filed, additional lawsuits were filed against Defendant relating to Defendant's "buy one, get one free" marketing and related sales claims for the My Pillow products. Some of those lawsuits were filed by Direct Purchaser Class Counsel and include the following:

Brunelle, et al. v. My Pillow, Inc., Case No. 16-cv-02007-YY (D. Or.)(Filed: October 18, 2016)

Puckett, et al. v. My Pillow, Inc., Case No. 17-cv-00029-MJD-BRT (D. Minn.)(Filed: January 4, 2017)

Kautsky v. My Pillow, Inc., Case No. 17-cv-00006-SPW-TJC (D. Mont.)(Filed: January 11, 2017)

Some of the lawsuits were filed by different lawyers and include the following:

Marlowe v. My Pillow, Inc., Case No. 17CV000141, (Ohio Com. Pleas)(Filed: January 27, 2017)

Stamm v. My Pillow, Inc., Case No. 17-cv-02769-PGG (N.Y.S.D.)(Removed: April 17, 2017)

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case, Armin Amiri, Donald Puckett, Patrick Kavanaugh, Theresa Cordero, Jill Brunelle, Heather DeWitt, Christie Kautsky, and Susan Balmer) sue on behalf of people who have similar claims. All of these people are a Class or Class Members. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class. A judge in the San Bernardino County Superior Court in California is overseeing this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the time and expense of going to trial. The Class Representatives and their attorneys think the settlement is best for everyone because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?

The Court previously decided that everyone who fits either or both of the following descriptions is a Class Member:

Non-Direct Purchaser Subclass

All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from a source other than My Pillow, Inc. during the time period April 26, 2012 to October 13, 2016.

The term “Covered Product” means the products bearing the labeled brand name My Pillow that are marketed and/or distributed by Defendant, including all sizes.

Direct Purchaser Subclass

All persons who purchased Covered Products in the United States and its territories or at any United States military facility or exchange directly from Defendant My Pillow, Inc. during the time period April 26, 2012 through _____, 2017.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

If approved, the proposed settlement will provide for monetary benefits, notice/administration costs, class representative payments, non-monetary benefits to class members, and fees and costs for the lawyers who represented the settlement class. More specifically:

- A Court-appointed administrator will receive compensation to implement a class notice program and to assist in the processing of claims submitted by Settlement Class members.
- Direct Purchaser Settlement Class members who submit a timely and complete claim form will be entitled to receive one of the following three cash payments, whichever is higher: (a) \$6 for those who purchased one or more Covered Products directly from My Pillow, Inc.; (b) \$6 per pillow (maximum of two pillows) for those who acquired two Covered Products pursuant to a buy one get one free (BOGO) offer; and (c) \$6 per pillow (maximum of four pillows) for those who acquired four or more Covered Products pursuant to a BOGO offer as part of their initial purchase from My Pillow, Inc. Direct Purchaser Class members who submitted a timely and complete claim form for the initial settlement will receive an additional \$5 benefit.
- Once all potential cash payments are determined, the Claims Administrator will send an email to Direct Purchaser Settlement Class members who qualify for payments under (b) or (c) above with an offer for such members to trade their cash payment for one or two GoAnywhere Pillows, depending on the amount of the potential cash payment.
- Subject to Court approval, the Class Representatives may receive a service payment of up to \$2,500 each, for their time and effort acting as a class representatives and for their willingness to bring this litigation on behalf of other consumers. The service payments do not affect or reduce the cash benefits for Settlement Class members who submit a timely and complete claim.

HOW YOU GET BENEFITS – SUBMITTING A CLAIM FORM

7. How can I get a payment?

To qualify for a payment under the settlement, you must submit a claim form. You can obtain a claim form on the Internet at www.tbd.com or you can obtain a claim form by calling 1-xxx-xxx-xxxx. Read the instructions carefully and submit the claim form no later than _____, 2017.

If you already submitted a claim form in response to a prior notice, you do not have to resubmit a claim form. However, if, after reviewing this supplemental notice, you no longer want to submit a claim and want to exclude yourself, you must submit a request for exclusion described in section 10 below.

8. When will I receive my payment?

The Court will hold a hearing on _____, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take up to a year or more. The settlement website will keep you informed of the progress of the settlement. Please be patient.

9. What am I giving up if I stay in the Settlement Class?

If you stay in the Settlement Class and the Court approves the settlement, you will release claims relating to the advertising, packaging, labeling, marketing, promotion, sale or distribution of the Covered Products, including but not limited to, claims arising from Defendant's use of health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos.

The full definition of Settled Claims is set forth in the Settlement Agreement and provides as follows: any and all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, including but not limited to unjust enrichment, theft by deception, fraud, breach of warranty express or implied, violation of California Civil Code 1750 et seq., violation of California Business and Professions Code Sections 17200 et seq. and 17500 et seq., and any related or similar state consumer protection statutes, claims for restitution, disgorgement of profits, injunctive and declaratory relief, arising out of or relating to the advertising, packaging, labeling, marketing, promotion, sale or distribution of the Covered Products, including all claims which were alleged or which could have been alleged by Plaintiff, Class Counsel, the Settlement Class and/or any Settlement Class Member against the Released Parties in the Action, or any other legal action, whether those claims are asserted individually or on a class-wide basis, including, but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos (the "Released Claims"). However, this definition expressly excludes claims for personal injury.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want any benefits from this settlement, but you want keep the right to sue or continue to sue the Defendant or anyone else, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself – or is sometimes referred to as opting out of the Settlement Class. Defendant may withdraw from and terminate the Settlement if a certain number of putative Settlement Class members exclude themselves.

10. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a letter by mail saying that you want to be excluded from the Settlement Class in *Armin Amiri v. My Pillow, Inc.* Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked no later than _____, 2017, to:

My Pillow Settlement
[Add Administrator Address]

You cannot exclude yourself by phone or by e-mail. If you mail an exclusion request by the deadline, you will not be able to request a settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendant in the future.

If you already submitted a request for exclusion in response to a prior notice about this settlement, you do not need to resubmit your request.

11. If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the Defendant or anyone else for the claims resolved by this settlement (see question no. 9 above).

You must exclude yourself from the Settlement Class to participate in any litigation against the Defendant or anyone else regarding the claims resolved by this settlement. Remember, the exclusion deadline is _____, 2017.

If you already submitted a request for exclusion in response to a prior notice about this settlement, you do not need to resubmit your request.

12. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, do not send in a claim form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Direct Purchaser Settlement Class is represented by Foley Bezek Behle & Curtis, LLP and Lockridge Grindal Nauen, P.L.L.P.

The Non-Direct Purchaser Settlement Class is represented by Clarkson Law Firm, P.C.

The lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

The Direct Purchaser Class Counsel will ask the Court for an award of attorneys' fees, costs, and expenses of up to \$2,000,000.

The Non-Direct Purchaser Class Counsel will ask the Court for an award of attorneys' fees of up to \$100,000 and reimbursement of costs and expenses of up to \$5,000.

The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I do not like the settlement?

If you are a Settlement Class member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. (If you object, you can still participate in the settlement – and receive money if it is approved – notwithstanding your objection.)

To object, you must submit a letter saying that you object to the My Pillow Settlement. The objection must include the following: (i) the name of this action; (ii) the objecting Settlement Class member's full name, address, telephone number, and signature (an attorney's signature is not sufficient); (iii) a statement that the objector is a Settlement Class member and an explanation of the basis upon which the objector claims to be a Settlement Class member; (iv) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection, (vi) a statement confirming whether the objector or any counsel representing the objector intends to personally appear and/or testify at the final approval hearing; and, (vii) a list of any persons who may be called to testify at the final approval hearing in support of the objection. To be timely, objections must be filed with the Court and mailed to the Settlement Administrator, Class Counsel, and Defendant's counsel by no later than _____, 2017. All addresses are provided in this notice.

16. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, you still can submit a claim form.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at _____ a.m. on _____, in Department S22 at the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California, 92415. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Settlement Class Counsel and the Class Representatives. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions from the Court regarding the settlement. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the hearing?

You may ask the Court for permission for you or your lawyer to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Armin Amiri v. My Pillow, Inc.*" Be sure to include your name, address, telephone number, and your signature. If your lawyer intends to speak at the fairness hearing, your letter must also include the name, address, and telephone

number of your lawyer. Your Notice of Intention to Appear must be mailed to the Claims Administrator and postmarked no later than _____, 2017 to:

My Pillow Settlement
[Add]

You cannot speak at the Fairness Hearing if you excluded yourself.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will not get any money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case for any of the released claims above.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement, which is available on the settlement website and by writing to the Claims Administrator at:

My Pillow Settlement
[Add]

22. How do I get more information?

You can visit the settlement website at www.tbd.com, where you will find answers to common questions about the settlement, a claim form, plus other information. You may also call 1-800-XXX-XXXX or contact Direct Purchaser Settlement Class Counsel at Foley Bezek Behle & Curtis, LLP, 15 W. Carrillo Street, Santa Barbara, CA 93101, (805) 962-9495.

_____, 2017

The Honorable Bryan Foster, San Bernardino County Superior Court

EXHIBIT I

ATTENTION: CLASS ACTION SETTLEMENT

TO: ALL PERSONS WHO PURCHASED ONE OR MORE PRODUCTS BEARING THE BRAND NAME MY PILLOW BETWEEN APRIL 26, 2012 AND OCTOBER 13, 2016

Your rights may be affected by a proposed settlement in a class action lawsuit pending in San Bernardino Superior Court, Case No. CIVDS1606479.

The Court has tentatively approved a proposed settlement in a class action lawsuit that challenges the marketing, packaging, and sale of My Pillow products. The defendant denies that any of these allegations are true or that members of the settlement class are entitled to any damages. The Court has not yet ruled, one way or the other, on the merits of the claims.

If you want to be excluded from the settlement, you must send a letter to the Claims Administrator at P.O. Box 1561, West Palm Beach, FL 33402 postmarked on or before December 26, 2016. The last day to file and serve with the Court listed below any comments in support of or in opposition to the settlement is also December 26, 2016. If you want to make objections, you must comply with the procedure set forth in the long form notice. To obtain a copy of the long form notice, or to obtain more information regarding the settlement, you may log on to wwwmypillowsettlement.com, or submit the request for information form (see instructions in the box to the right). Class counsel will seek an award of up to \$100,000 in attorneys' fees and up to \$5,000 in costs. This notice is a summary only. To be eligible for the potential benefits under the settlement, you must submit a claim to the Claims Administrator, P.O. Box 1561, West Palm Beach, FL 33402, by no later than December 26, 2016. A hearing to consider the fairness of the settlement will be held on January 30, 2017, at 8:30 a.m. in Courtroom S22 at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, California, 92415. Please do not contact the Court for information.

REQUEST FOR INFORMATION

(This is not an Opt-Out Request)

I would like to have more detailed information about the proposed settlement and a claim form mailed to:

Name: _____

Address: _____

City: _____

State, Zip: _____

Telephone Number: _____

MAIL THIS REQUEST TO:

Claims Administrator
P.O. Box 1561
West Palm Beach, FL 33402

EXHIBIT J

1 Robert A. Curtis, State Bar No. 203870
2 Kevin Gamarnik, State Bar No. 273445
3 **FOLEY, BEZEK, BEHLE & CURTIS, LLP**
4 15 West Carrillo Street
5 Santa Barbara, CA 93101
6 Telephone: (805) 962-9495
7 Facsimile: (805) 962-0722
8 Email: rcurtis@foleybezek.com
9 kgamarnik@foleybezek.com

7 Robert K. Shelquist, #21310X [*Pro Hac Vice to be filed*]
8 **LOCKRIDGE GRINDAL NAUEN P.L.L.P.**
9 100 South Washington Avenue, Suite 2200
10 Minneapolis, Minnesota 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
Email: rkshelquist@locklaw.com

11 Attorneys for Intervenors Jill Brunelle, Heather Dewitt,
12 Donald Puckett, Patrick Kavanagh, Susan Balmer,
Christie Kautsky, and Theresa Cordero

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN BERNARDINO

18 ARMIN AMIRI, individually, and on behalf of
all others similarly situated

CASE NO. CIVDS1606479

(Assigned to Hon. Bryan Foster, S22)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT**

20 Plaintiff,
21 v.
22 MY PILLOW, INC., a Minnesota corporation,
and, DOES 1 through 10, inclusive

23 | Defendants.

1 WHEREAS, Plaintiffs Armin Amiri, Donald Puckett, Patrick Kavanaugh, Theresa
2 Cordero, Jill Brunelle, Heather De Witt, Christie Kautsky, and Susan Balmer (“Plaintiffs”), and
3 My Pillow, Inc. (“Defendant”) (collectively, the “Parties”) have reached a proposed settlement
4 and compromise of the disputes between them in the above actions (the “Second Amended
5 Settlement Agreement” or “Settlement”);

6 AND NOW, the Court, having read and considered the Second Amended Settlement
7 Agreement and accompanying documents and the motion for preliminary approval of the
8 settlement, and the Parties having consented to the entry of this order, and all capitalized terms
9 used herein having the meaning defined in the Settlement Agreement, IT IS HEREBY
10 ORDERED AS FOLLOWS:

11 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
12 Settlement.

13 2. Subject to further consideration by the Court at the time of the Final Approval
14 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
15 Settlement Class, as falling within the range of possible final approval, and as meriting
16 submission to the Settlement Class for its consideration.

17 3. For purposes of the Settlement only, the Court certifies the Settlement Class to
18 include the following subclasses: (1) all Persons who purchased Covered Products in the United
19 States, its territories, or at any United States military facility or exchange directly from
20 Defendant (the “Direct Purchaser Class”); and (2) all persons who purchased Covered Products
21 in the United States, its territories, or at any United States military facility or exchange from a
22 source other than Defendant (the “Non-Direct Purchaser Class”). Excluded from the Settlement
23 Class are all persons who validly opt out of the Settlement Class in a timely manner, counsel of
24 record (and their respective law firms) for the Parties, Defendant and any of its parents, affiliates,
25 subsidiaries, independent service providers and all of their respective employees, officers, and
26 directors; the presiding judge in any of the Actions; any natural person or entity that entered into
27 a release with Defendant prior to the Effective Date concerning any Covered Products.

28

1 4. The Court preliminary finds, solely for purposes of considering this Settlement,
2 that the requirements of Cal. Code Civ. Proc. § 382 appear to be satisfied, including
3 requirements for the existence of an ascertainable class, a community interest, and manageability
4 of the Settlement Class, that common issues of law and fact predominate, and that a settlement
5 class is superior to alternative means of resolving the claims and disputes at issue in this action.

6 5. The Court orders that each Plaintiff is appointed as a Representative Plaintiff.
7 The Court also orders that Foley Bezek Behle & Curtis, LLP and Lockridge Grindal Nauen,
8 P.L.L.P. are appointed as Direct Purchaser Class Counsel and Ryan J. Clarkson and Shireen M.
9 Clarkson at Clarkson Law Firm, P.C. are appointed Non-Direct Purchaser Class Counsel. The
10 Court preliminarily finds that the Representative Plaintiffs and Class Counsel fairly and
11 adequately represent and protect the interests of their respective absent Settlement Class
12 Members in accordance with Cal. Code Civ. Proc. § 382.

13 6. A Final Approval Hearing shall be held before this Court at 8:30 a.m. on January
14 ___, 2018, in Department S22 of the San Bernardino Superior Court, to address: (a) whether the
15 proposed Settlement should be finally approved as fair, reasonable and adequate, and whether
16 the Final Approval Order and Judgment should be entered; and (b) whether Class Counsels'
17 applications for attorneys' fees, costs, expenses and service awards should be approved.
18 Consideration of any applications for an award of attorneys' fees, costs, expenses and service
19 awards shall be separate from consideration of whether or not the proposed Settlement should be
20 approved, and from each other. The Court will not decide the amount of any service awards or
21 Class Counsels' attorneys' fees until the Final Approval Hearing.

22 7. With the exception of such proceedings as are necessary to implement, effectuate,
23 and grant final approval to the terms of the Settlement, all proceedings are stayed in this Action
24 and all Settlement Class Members are enjoined from commencing or continuing any action or
25 proceeding in any court or tribunal asserting any claims encompassed by the Settlement, unless
26 the Settlement Class Member timely files a valid Request for Exclusion as defined in the
27 Settlement.

1 8. The Court approves, as to form and content, the notices and claim form
2 substantially in the form attached to the Settlement.

3 9. The Court finds that the Parties' plan for providing notice to the Settlement Class
4 (the "Notice Plan") described in the Settlement constitutes the best notice practicable under the
5 circumstances and constitutes due and sufficient notice to the Settlement Class, the terms of the
6 Settlement, and the Final Approval Hearing, and complies fully with the requirements of the
7 California Rules of Court, the California Code of Civil Procedure, the California Civil Code, the
8 Constitution of the State of California, the United States Constitution, and any other applicable
9 law.

10 10. The Court further finds that the Notice Plan adequately informs members of the
11 Settlement Class of their right to exclude themselves from the Settlement Class so as not to be
12 bound by the terms of the Settlement. Any member of the Class who desires to be excluded
13 from the Settlement Class, and therefore not bound by the terms of the Settlement, must submit a
14 timely and valid written Request for Exclusion pursuant to the instructions set forth in the
15 Notice.

16 11. The Court appoints Digital Settlement Group, LLC as the Claims Administrator.

17 12. Any member of the Class who elects to be excluded shall not be entitled to
18 receive any of the benefits of the Settlement, shall not be bound by the release of any claims
19 pursuant to the Settlement, and shall not be entitled to object to the Settlement or appear at the
20 Final Approval Hearing. The names of all Persons timely submitting valid Requests for
21 Exclusion shall be provided to the Court.

22 13. Service of all papers on counsel for the Parties shall be made as follows: Robert
23 Curtis, Foley Bezek Behle & Curtis, LLC, 15 West Carrillo Street, Santa Barbara, CA 93101,
24 Ryan J. Clarkson, Clarkson Law Firm, P.C., The Pershing Square Building, 448 S. Hill Street,
25 Suite 701, Los Angeles, California 90013, and Jeff Richardson, Mitchell Silberberg & Knupp,
26 LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064. Only Settlement Class

27
28

1 Members who have submitted valid and timely written objections to the Settlement, together
2 with supporting papers, shall be entitled to be heard at the Final Approval Hearing.

3 14. Any Settlement Class Member who does not make a valid and timely written
4 objection (as set forth in the Settlement) shall be deemed to have waived such objection and
5 forever shall be foreclosed from making any objection to the fairness or adequacy of the
6 proposed Settlement, the payment of attorneys' fees and costs, service awards or the Final
7 Approval Order and Judgment.

8 15. Any Settlement Class Member who does not submit a valid and timely Opt Out
9 shall not be excluded from the Settlement Class.

10 16. Any settlement Class Member who is not excluded from the Settlement Class
11 shall be deemed to have released the Settled Claims.

12 17. The Claims Administrator shall post the Settlement on the Settlement Website.

13 18. In the event that the proposed Settlement is not approved by the Court, or in the
14 event that the Settlement becomes null and void pursuant to its terms, this Order and all orders
15 entered in connection therewith shall become null and void, shall be of no further force and
16 effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in
17 any other case or controversy; in such event the Settlement and all negotiations and proceedings
18 directly related thereto shall be deemed to be without prejudice to the rights of any and all of the
19 Parties, who shall be restored to their respective positions as of the date and time immediately
20 preceding the execution of the Settlement.

21 19. The Court may, for good cause, extend any of the deadlines set forth in this Order
22 without further notice to the Settlement Class Members. The Final Approval Hearing may, from
23 time to time and without further notice to the Settlement Class, be continued by order of the
24 Court.

25 20. The Final Approval Hearing may be adjourned or continued without further
26 notice to the Class.

1 **IT IS SO ORDERED.**

2

3 Dated: _____

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

_____ Honorable Bryan Foster

EXHIBIT K

Robert A. Curtis, State Bar No. 203870
Kevin Gamarnik, State Bar No. 273445
FOLEY, BEZEK, BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 962-9495
Facsimile: (805) 962-0722
Email: rcurtis@foleybezek.com
kgamarnik@foleybezek.com

Robert K. Shelquist, #21310X [*Pro Hac Vice to be filed*]

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

100 South Washington Avenue, Suite 2200

Minneapolis, Minnesota 55401

Telephone: (612) 339-6900

Facsimile: (612) 339-0981

Email: rkshelquist@locklaw

Attorneys for Intervenors Jill Brunelle, Heather Dewitt, Donald Puckett, Patrick Kavanagh, Susan Balmer, Christie Kautsky, and Theresa Cordero

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ARMIN AMIRI, individually, and on behalf of
all others similarly situated

CASE NO. CIVDS1606479

(Assigned to Hon. Bryan Foster, S22)

CLASS ACTION

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Plaintiff,

V.

MY PILLOW, INC., a Minnesota corporation,
and, DOES 1 through 10, inclusive

Defendants.

1 WHEREAS, on September 25, 2017, the Court entered an Order Granting Preliminary
2 Approval of Settlement (“Preliminary Approval Order”), preliminarily approving the proposed
3 settlement of this Action pursuant to the terms of the Second Amended Settlement Agreement
4 (the “Settlement”) and approving the proposed notice to the Settlement Class.

5 WHEREAS, on _____, this Court conducted a final approval hearing. Upon
6 the pending motions for final approval, this Court, having, heard the presentations of counsel,
7 having reviewed all of the submissions presented with respect to the proposed settlement, having
8 carefully considered the requirements for class certification, having determined that the
9 settlement is fair, adequate, and reasonable, having considered the applications of Class Counsel
10 for awards of attorneys' fees and expense reimbursements and incentive awards, and having
11 reviewed the materials in support thereof, now finds and orders as follows:

FINDINGS

13 1. The capitalized terms used in this Final Approval Order and Judgment all have
14 the same meaning as defined in the Agreement except as may otherwise be ordered.

15 2. The Court has jurisdiction over the subject matter of this Action and over all
16 claims raised therein and all Parties thereto, including the Settlement Class.

17 3. The Notices, as evidenced by the declaration submitted by the Court-appointed
18 Claims Administrator, provided a neutral, informative, and clear summary explanation of the
19 Settlement, including a description of the Settlement Class, the settlement process, the settlement
20 amount, the relief the settlement will provide, and the rights of members to object to the
21 settlement, opt out, or submit a claim, and informed members that Settlement Class Counsel
22 would seek awards of attorneys' fees and costs and incentive awards from the settlement
23 proceeds.

24 4. The notice program set forth in the Settlement and implemented by the Claims
25 Administrator provided the “best practicable” notice to the Settlement Class, constitutes value,
26 due, and sufficient notice, and meets the requirement for notice of a class action settlement.

27 5. The settlement, as set forth in the Settlement, is in all respects fair, reasonable,
28 adequate and in the best interests of the Settlement Class as a whole, and it is approved. The

1 Settlement is the product of arms'-length, serious, informed, non-collusive, and non-
2 overreaching negotiations. The Parties shall effectuate the Settlement according to its terms.
3 The Settlement and every term and provision thereof shall be deemed incorporated herein as if
4 explicitly set forth and shall have the full force of an Order of this Court.

5 6. The Court has carefully considered the elements required for class certification,
6 and finds, solely for purposes of considering this settlement, that the requirements of Cal. Code
7 Civ. Proc. § 382 are satisfied, including requirements for the existence of an ascertainable class,
8 a community of interest, and manageability of a settlement class, that common issues of law and
9 fact predominate, and that a settlement class is superior to alternative means of resolving the
10 claims and disputes at issue in this action.

11 7. The settling Defendant opposed, and continues to oppose, the Settlement Class
12 members' claims and the class treatment of the members' claims for litigation purposes.
13 Nothing herein or in the Settlement purports to extinguish or waive the right to continue to
14 oppose the merits of these or other claims or class treatment of these or other claims in this or
15 any other case.

ORDER

17 **GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED, ADJUDGED,**
18 **AND DECREED THAT:**

19 1. This Court hereby grants final approval to the Settlement, which is expressly
20 incorporated by this reference and which shall have the full force and effect of an order of this
21 Court, and hereby directs that the Settlement be consummated in accordance with its terms and
22 conditions.

23 2. The Settlement Class is certified for settlement purposes and means and includes
24 the following subclasses: (1) all Persons who purchased Covered Products in the United States,
25 its territories, or at any United States military facility or exchange directly from Defendant (the
26 “Direct Purchaser Class”); and (2) all persons who purchased Covered Products in the United
27 States, its territories, or at any United States military facility or exchange from a source other

1 than Defendant (the “Non-Direct Purchaser Class”). Excluded from the Settlement Class are all
2 persons who validly opt out of the Settlement Class in a timely manner, counsel of record (and
3 their respective law firms) for the Parties, Defendant and any of its parents, affiliates,
4 subsidiaries, independent service providers and all of their respective employees, officers, and
5 directors; the presiding judge in any of the Actions; any natural person or entity that entered into
6 a release with Defendant prior to the Effective Date concerning any Covered Products.

7 3. The persons listed on Exhibit 1 hereto submitted requests to exclude themselves
8 and are hereby excluded from the Settlement Class: (“Opt Outs”). The Opt Outs are not entitled
9 to receive any benefits under the Settlement and are not bound by this Judgment or the
10 Settlement Agreement.

11 4. The Settlement and this Judgment release and absolutely and forever discharge
12 the Defendant and the other Discharged Parties of and from any and all Released Claims as set
13 forth in the Settlement. All members of the Settlement Class are barred and permanently
14 enjoined from prosecuting claims against Defendant or any of the Discharged Parties that are
15 settled and/or released pursuant to and/or under the Settlement.

16 5. No member of the Settlement Class or any Releasing Party shall have any claim
17 against Settlement Class Counsel, Defendant, Defendant’s counsel, or the Discharged Parties
18 with respect to the processing of Claim Forms or class benefit determinations or distributions.

19 6. The Court, in the interests of justice, and there being no just reason for delay,
20 expressly directs the Clerk of this Court to enter this Order as a Judgment, and hereby decrees,
21 that, upon entry, it be deemed as a final judgment with respect to all claims by all members of
22 the Settlement Class against Defendant in this Action and the other Discharged Parties, in
23 accordance with the terms of the Settlement.

24 7. In the event that the Settlement is terminated, pursuant to its terms or otherwise,
25 this Judgment shall be vacated nunc pro tunc.

26 8. This Judgment, the Settlement, the settlement which it reflects, and any and all
27 acts, statements, documents, or proceedings relating to the settlement are not, and shall not be

1 construed as, or used as an admission by or against Defendant or any Discharged Parties of any
2 fault, wrongdoing, or liability on their part, or of the validity of any Released Claim or of the
3 existence or amount of damages.

4 9. Solely for purposes of implementing this settlement, Foley Bezek Behle & Curtis,
5 LLP and Lockridge Grindal Nauen, P.L.L.P. are appointed as Direct Purchaser Class Counsel
6 and Ryan J. Clarkson and Shireen M. Clarkson at Clarkson Law Firm, P.C. are appointed Non-
7 Direct Purchaser Class Counsel. Upon hearing and review of the motion for awards of
8 Settlement Class Counsel fees and costs, the respective hourly rates of Settlement Class Counsel
9 are found to be reasonable, and this Court approves an award of \$2,000,000 in fees and costs for
10 Direct Purchaser Class Counsel and 100,000 for attorneys' fees and \$5,000 for costs for Non-
11 Direct Purchaser Class Counsel. These awards shall constitute the full and total compensation
12 for Settlement Class Counsel for all attorneys' fees and costs incurred in connection with all
13 claims asserted in this Action.

14 10. Solely for purposes of implementing this settlement, Plaintiff Amiri is approved
15 as Non-Direct Purchaser Settlement Class Representative and Plaintiffs Donald Puckett, Patrick
16 Kavanaugh, Theresa Cordero, Jill Brunelle, Heather De Witt, Christie Kautsky, and Susan
17 Balmer are approved as Direct Purchaser Class Representatives, and this Court approves an
18 incentive award of \$2,500 from the settlement proceeds for each of the above representatives.

19 11. Without affecting the finality of the Judgment hereby entered, this Court retains
20 exclusive and continuing jurisdiction over this action and the parties, including all members of
21 the Settlement Class, for purposes of supervising, administering, implementing, enforcing,
22 construing, and interpreting the Settlement, the administrative process thereunder, and this
23 Judgment.

IT IS SO ORDERED.

25 | Dated:

Honorable Bryan Foster

EXHIBIT B

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SAN BERNARDINO

3 DEPARTMENT S-22

HONORABLE BRYAN F. FOSTER, JUDGE

4 ARMIN AMIRI,

)

)

5 Plaintiff,

)

) Case No.

6 vs.

) CIVDS 1606479

)

7 MY PILLOW,

)

)

8 Defendant.

)

)

9

10 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

11 MONDAY, JANUARY 30, 2017

12 San Bernardino, California

13

14 APPEARANCES:

15 FOR THE PLAINTIFF: RYAN J. CLARKSON
16 SHALINI DORGRA
Attorneys at Law

17 FOR THE DEFENDANT: JEFF RICHARD
18 Attorney at Law

19 FOR OBJECTORS: KEVIN D. GAMARNIK
20 Attorney at Law

21

22

23

24

25 Reported by:

LINDA F. BALDWIN, RPR, RMR, RDR
Official Reporter, CSR-12453

1 SAN BERNARDINO, CALIFORNIA; MONDAY, JANUARY 30, 2017
2 DEPARTMENT S-22 HONORABLE BRYAN F. FOSTER, JUDGE
3 MORNING SESSION

4 APPEARANCES:

5 RYAN J. CLARKSON and SHALINI DORGRA,
6 Attorneys at Law, appearing on behalf of the
7 Plaintiff;
8 JEFF RICHARD,
9 Attorney at Law, appearing on behalf of the
10 Defendant;
11 KEVIN D. GAMARNIK,
12 Attorney at Law, appearing on behalf of the
13 Objectors.
14 (LINDA F. BALDWIN, RPR, RMR, RDR
15 Official Reporter, CSR-12453)

16 -00-

17 P R O C E E D I N G S

18 THE COURT: Amiri versus My Pillow.

19 MR. CLARKSON: Good morning, Your Honor. Ryan
20 Clarkson appearing on behalf of the Plaintiff and the
21 Plaintiff class.

22 MS. DORGRA: Good morning, Your Honor. Shalini
23 Dorgra on behalf of the Plaintiff.

24 MR. RICHARD: Good morning, Your Honor. Jeff
25 Richard for Defendant.

26 MR. GAMARNIK: Good morning, Your Honor. Kevin

1 Gamarnik on behalf of objectors.

2 THE COURT: That everybody? Tentative on this is
3 to grant the motion to extend the deadline to file an
4 objection to proposed class settlement. In light of the
08:34:59 5 notice issues, good cause exists to extend the deadline.

6 Also to sustain the objectors' objection with
7 respect to the overbroad nature of the release in light of
8 the claims being raised by the Plaintiff's Complaint.

9 I intend to deny final approval of the settlement
08:35:18 10 and the related motion given that the issues raised in the
11 objection, it's not sufficiently demonstrated that the
12 release is fair, adequate, or reasonable to extend the
13 claims in connection with -- you're trying to settle out
14 things that were not part of the original Complaint. I
08:35:49 15 mean, that's -- the concern here is that there was an
16 objection raised to the -- what is that? I don't have that
17 written down here, BOGO. I can't remember what that --

18 MR. GAMARNIK: Buy one get one free.

19 THE COURT: Yeah, get one free. That was it.
08:36:12 20 That seems to be totally different than what -- it's not
21 encompassed in the lawsuit that was filed that you're
22 settling in this matter, and yet you're asking for that to
23 be released, and there's no notice given. There seems to be
24 a lack of notice given to consumers that if they didn't opt
08:36:32 25 in to this, that they would lose those claims. And I think
26 that those claims are separate and distinct from the claims

1 that are involved in this litigation.

2 MR. CLARKSON: Well, Your Honor, as a preliminary
3 matter, the BOGO or buy one get one free claims were
4 considered in the settlement discussions. They were
08:36:52 5 considered in terms of how to shape this lawsuit.

6 We're not really dealing with distinct claims.

7 We're dealing with two different theories of the case, but
8 both theories are theories as to how to shape a lawsuit
9 based on advertising, marketing, and sales practices.

08:37:14 10 THE COURT: Well, I understand that, but the
11 original Complaint dealt with falsely advertising and saying
12 that it didn't perform as it was supposed to perform and it
13 didn't do what it was supposed to do.

14 The buy one get one free had nothing to do with
08:37:32 15 the performance aspect of the product. They have to do with
16 the fact that they weren't actually doing that. They were
17 raising the price in order to buy one get one free when you
18 have to end up paying essentially what you'd have to pay for
19 two of them. And that's a little different concept than
08:37:52 20 what you're talking about in terms of quality.

21 MR. CLARKSON: Well, I think, Your Honor, that
22 when looking at how to shape a false advertising case like
23 this, you can go based on sometimes multiple theories,
24 right?

08:38:04 25 In this case we had health claims that were being
26 made that this product could even help assist with snoring,

1 fibromyalgia, etcetera, very aggressive claims.

2 THE COURT: I've seen the commercial.

3 MR. CLARKSON: Yes. You've seen the commercial.

4 Quite frankly, from Plaintiff's perspective and from our
08:38:21 5 perspective after investigating claims, the buy one get one
6 free theory was a weak ancillary theory and just didn't make
7 sense to focus on that as the predominant focus of the
8 lawsuit.

9 THE COURT: Well, I agree with that, but the
08:38:39 10 problem you have with it is that when notice of the
11 litigation goes out to the consumer, if they don't opt in
12 they have no way of knowing that -- if they have a buy one
13 get one free claim, that that is encompassed in this and
14 that if they don't appear they're going to run into problems
08:38:59 15 or that they have a right to file a claim separate from
16 that.

17 MR. RICHARD: Can I address just that issue, Your
18 Honor?

19 THE COURT: Sure.

08:39:04 20 MR. CLARKSON: And Mr. Clarkson may not be
21 finished with his overall comments, but it seems to me that
22 your comments are more in line with a situation where the
23 class notice goes out and says, hey, this is about health
24 issues; this is about logos on a screen, and settlement, you
08:39:24 25 know, at the hearing. We say, wait a minute; we want to
26 make it broader.

1 We came to Your Honor at the preliminary approval
2 hearing with the Complaint being what it was, and we
3 presented Your Honor with a settlement that wasn't limited
4 to the health issues. It said marketing, packaging, and
08:39:44 5 sale. And, in fact, the notice of the class didn't say this
6 case is about health claims. The notice of the class very
7 clearly said it's about marketing, packaging, and sale.

8 And so the class members, when they got their
9 notice, they knew this was about marketing, packaging, and
08:39:58 10 sale which clearly includes the BOGO.

11 So I think the class was very much on notice.
12 There were a number of the claimants who mentioned the BOGO
13 in their correspondence with the administrator. They knew
14 what this was about.

08:40:13 15 So I don't think this is a stretching beyond the
16 notice. The notice drew, I think, a fair circle around the
17 claims that were being settled, and the class knew that.

18 THE COURT: I'm not convinced that it did. I
19 think that the buy one get one free aspect of it is a
08:40:29 20 different quality than what the original notice was talking
21 about.

22 They talk about general advertising in reference
23 to the manner in which the product performed, not in terms
24 of how it was sold or -- what was that -- if you want to
08:40:48 25 resubmit this and carve out the BOGO claims, then I think
26 that it's a fair settlement.

1 MR. CLARKSON: Your Honor, may I address a little
2 different issue and attack this from a little bit of a
3 different angle? And that is to me it appears that this
4 discussion of whether there should be a carveout is really
08:41:10 5 not -- maybe not an issue for this Court, and maybe it's
6 premature. Maybe it's an issue that should be raised, you
7 know, to the extent that the Defendant raises this
8 settlement and release as a shield in the cases that were
9 just recently filed in October, six months after the
08:41:31 10 settlement agreement was consummated in Oregon and the other
11 jurisdiction. It seems like the judges in that case could
12 look and evaluate and say does this release encompass the
13 claims in this particular case.

14 THE COURT: Oh, I think the release does encompass
08:41:46 15 that. That's the problem. That's the difficulty. I think
16 that the release -- my review of the release is that if I
17 approve this, it basically cuts off the objectors' claims in
18 this matter.

19 And I don't believe that they were given fair
08:42:00 20 notice, nor is the original lawsuit contained in that.
21 That's where I see the problem with that.

22 And I understand your position on it is that,
23 well, you know, it can be decided later on; but that -- I'm
24 just muddying the waters by doing that. I think you have to
08:42:20 25 clear up that issue right now.

26 It either has to be that, you know, you resend

1 notice out to the consumer that they -- this is including,
2 you know, this is inclusive of the BOGO claims and that
3 those claims are subject to this settlement and that if they
4 want to opt in to the agreement, they can, or they can opt
08:42:48 5 out and bring their own action. But I think that that's
6 where the problem comes in.

7 I think it's more of a notice problem than it is
8 a -- you know, I don't have any information as to how many
9 potential claimants there are in this regard, but I think
08:43:06 10 you have to go through a whole process again to bring them
11 in.

12 MR. CLARKSON: Well, to your point, if the same
13 people will be -- would be notified, if the Court were to
14 ask us to regive notice, the same exact people would be
08:43:23 15 notified.

16 So we had 1.3 million people notified via email,
17 so I think -- is the Court then stating that it believes
18 that the notice should be re-effected to those individuals
19 and with greater specificity as to this particular theory?
08:43:41 20 Or could the Court give -- maybe give us a little more
21 guidance on that particular issue.

22 MR. GAMARNIK: Your Honor, I'd like to speak to
23 this issue as well.

24 MR. RICHARD: Your Honor, I just briefly spoke
08:43:51 25 with my client, and they are okay with Your Honor's
26 recommendation to re-notice it I think to address Your

1 Honor's points.

2 MR. GAMARNIK: Your Honor, if I may, this lawsuit,
3 the immediate action was about the health claims that were
4 raised. They had nothing to do with the buy one get one
08:44:05 5 free.

6 The case law is pretty clear that the settlement
7 must be limited to the factual predicate of the claims
8 pleaded.

9 If it were a situation where any sort of false
08:44:17 10 advertising claim could be released even though one is not
11 based on the factual predicate, that would be a situation
12 where almost every corporation would want to get sued in
13 class action. They would just settle out the claims for
14 cheap and be released of any and all claims that occurred --

08:44:33 15 THE COURT: Well, that prevents them from amending
16 their Complaint to encompass this portion of it.

17 MR. GAMARNIK: If they were to amend the
18 Complaint, they would still then have to be able to show
19 that the settlement is fair and reasonable. That's a whole
08:44:45 20 entire process they have to go through.

21 THE COURT: I agree with that.

22 MR. GAMARNIK: And I think -- I don't think that
23 they'd be able to amend the Complaint at this juncture given
24 that now there has been a buy one get one free class action
08:44:56 25 brought in other jurisdictions that would predate that type
26 of cause of action. This case has nothing to do with the

1 buy one get one free case.

2 MR. RICHARD: Your Honor, one of the responses to
3 that is -- and I think it's a misstatement they make in
4 their papers, the objectors, they claim -- first they
08:45:13 5 assume, but then they sort of adopt it as a fact, that the
6 Plaintiff in this case didn't buy it on a BOGO. He did buy
7 it on a BOGO, so he would have standing to file that Amended
8 Complaint and give the -- so certainly they can object back
9 here if they wish and say it's fair or not fair, but I think
08:45:32 10 they don't have the right to stop that process.

11 THE COURT: I tend to agree. So I'm going to deny
12 without prejudice. You can take whatever steps you feel are
13 necessary to get -- to meet the objections that are set
14 forth.

08:45:47 15 MR. RICHARD: Okay.

16 THE COURT: Okay.

17 MR. CLARKSON: Thank you, Your Honor.

18 THE COURT: Notice waived?

19 MR. CLARKSON: Notice waived.

08:45:51 20 MR. GAMARNIK: Yes. Notice waived.

21 MR. RICHARD: Yes.

22 THE JUDICIAL ASSISTANT: There's no future date.
23 Would you like to set. . .

24 THE COURT: Let's put it out till April 3rd. Give
08:46:04 25 you 90 days -- well, actually, set it out to April 24th.
26 Gives you 90 days to try to clarify whatever problems you

1 have.

2 THE JUDICIAL ASSISTANT: And I just want to
3 clarify with you, all the motions are denied? Three
4 different ones?

08:46:20 5 THE COURT: Yes. All denied.

6 MR. GAMARNIK: The objection is sustained, Your
7 Honor.

8 THE COURT: Objection's sustained, but the
9 motions -- motion to file approval and motion for award of
08:46:29 10 attorneys fees and motions for service award to the class
11 representatives, and those are all denied without prejudice.

12 MR. RICHARD: Thank you, Your Honor.

13 MR. CLARKSON: Thank you, Your Honor.

14 THE COURT: Okay.

15 (Proceedings in the above-entitled
16 matter were concluded at 8:46 a.m.)

17 -000-

18

19

20

21

22

23

24

25

26

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SAN BERNARDINO

3 DEPARTMENT S-22

HONORABLE BRYAN F. FOSTER, JUDGE

4 ARMIN AMIRI,

)

)

5 Plaintiff,

)

) Case No.

6 vs.

) CIVDS 1606479

7 MY PILLOW,

) REPORTER'S

) CERTIFICATE

8 Defendant.

)

)

9 STATE OF CALIFORNIA)

10) ss.

COUNTY OF SAN BERNARDINO)

12 I, LINDA F. BALDWIN, Official Reporter of the
13 Superior Court of California, County of San Bernardino, do
14 hereby certify that the foregoing pages, 1-10, to the best
15 of my knowledge and belief, comprise a full, true and
16 correct computer-aided transcript of the proceedings taken
17 in the matter of the above-entitled cause held on Monday,
18 January 30, 2017.

19 Dated this _____ day of _____, 2017.

25 LINDA F. BALDWIN, RPR, RMR, RDR
26 Official Reporter, CSR-12453

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER
247 W. 3RD ST
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1606479

FOLEY BEZEK BEHLE & CURTIS
15 WEST CARRILLO ST
SANTA BARBARA CA 93101

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

Ruling on Matter Taken Under Submission

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.
- () Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
- () A copy of this notice was given to the filing party at the counter
- () A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 04/28/17

I declare under penalty of perjury that the foregoing is true and correct. Executed on 04/28/17 at San Bernardino, CA

BY: PATRICIA VEGA

M A I L I N G C O V E R S H E E T

1 **SUPERIOR COURT**
2 **COUNTY OF SAN BERNARDINO**
3 **SAN BERNARDINO JUSTICE CENTER**
4 247 West Third Street
5 San Bernardino, California 92415

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 20 2017

BY PATRICIA VEGA
PATRICIA VEGA, DEPUTY

8
9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO JUSTICE CENTER**

11
12 ARMIN AMIRI and DANIEL HARR,
13 individually, and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 VS.

17 MY PILLOW, INC., a Minnesota
18 Corporation, and DOES 1 through 10,
19 inclusive

20 Defendants

21 Case No.: CIVDS1606479

22 **RULING ON MATTER TAKEN UNDER
23 SUBMISSION**

24 Original Hearing Date: 04/24/17

25 Motion Re: Preliminary Approval of
26 Amendment to Settlement Agreement and
27 Approval of Supplemental Class Notice

28 Hon. Bryan F Foster
 Department: S22

22 **Fairness and Reasonableness of the Settlement**

23 Plaintiffs fail to comply with Rule 3.769(c) in that they fail to attach the Settlement
24 Agreement. They do attach an *unsigned* Amendment to Amended Settlement
25 Agreement and Release. Besides the Amendment being unsigned it only notes the
26 portions amended. The actual Settlement Agreement is not provided. This preliminary
27 approval motion needs to be complete in itself. The prior preliminary approval has no

1 bearing on this preliminary approval. Plaintiffs need to establish the settlement is fair
2 and reasonable all over again. Without the Settlement Agreement and Release, the
3 Court cannot make said determination.

4
5 The monetary recover offered the class members is \$5.00 upon submission of a
6 claim, and an additional \$5.00 if can prove the class members purchased three or more
7 My Pillow products. This is essentially the same monetary agreement provided for
8 under the Complaint when Plaintiff Amiri only alleged false advertisement by My Pillow
9 associated with the health benefits of its product. Plaintiff Amiri now seeks to add a new
10 Plaintiff and a new theory of false advertisement, i.e., the BOGO promotion, but then
11 adds no additional compensation. This does not support holding the settlement to cover
12 the purported health and BOGO promotion false advertisements as fair and reasonable.
13

14
15 The proper method to calculate the restitution is irrelevant when the settlement
16 offers no form of compensation to those class members who fall within the Direct
17 Purchaser Subclass, i.e., those who purchased a pillow under the BOGO promotion.
18 The parties add a new false advertisement theory to settle without engaging in
19 renegotiating the monetary settlement amount. This is not supporting a finding of a fair
20 and reasonable settlement.

22
23 The consumers of the My Pillow likely received some value from their purchase
24 of two pillows that could offset a refund on the amount paid above a regular priced
25 pillow. The claims is under the BOGO promotion, the consumer paid \$98.98 for two
26 pillows, but one pillow, in a retail store, would have costs \$49.99, so despite the
27 advertisement being buy one get one free, the consumers actually paid full price for two
28 pillows. The objectors then seek a refund/restitution amount of \$49.99, but this does

1 not take into consideration the value received by the pillow, which could reduce that
2 amount. Yet Plaintiffs offer no evidence that the value received is equal to or greater
3 than the amount sought to recover. No additional monetary recovery is provided to
4 cover the new claims being added under the FAC.
5

6 The original settlement primarily called for an injunction by way of My Pillow
7 removing all health claims and testimonials from its website and marketing materials.
8 No injunctive relief within the Settlement Agreement, or the Amendment to the
9 Settlement Agreement contemplated in relation to the alleged improper BOGO
10 promotion. So a settlement is being entered into to do away with class members' rights
11 to claim the BOGO promotions false without them receiving anything in return.
12

13 **Conditional Settlement Class Certification**

14 Plaintiffs Amiri and Harr fails to present any evidence to support conditionally
15 certifying their two subclasses, other than their attorney noting the previous class notice
16 emailed to over 1.3 million class members which would support the classes are
17 numerous. No evidence is presented of Amiri being a member of one or both
18 subclasses, and to his adequacy. No evidence is presented of Harr being a member of
19 one or both subclasses, and to his adequacy. Additionally, per the proposed First
20 Amended Complaint, Harr is a Georgia citizen. My Pillow is based in Minnesota. Thus,
21 it is not clear Harr, an out-of-state citizen, suing an out-of-state defendant has standing
22 to bring his claim in California.
23

24 Plaintiffs seek to certify the Direct Purchasers Subclass with its class period
25 commencing 4-years prior to the initial Complaint. However, the BOGO claims will not
26

1 exist within this litigation until the proposed First Amended Complaint is filed. There is
2 no showing the BOGO claims relate back to the claims within the Complaint. The class
3 period on the Direct Purchaser Subclass could not commence until 4-years prior to the
4 filing of the proposed First Amended Complaint. Therefore, this subclass definition is
5 not properly defined.
6

7 An issue exists in relation to the All Purchaser Subclass. Although it was
8 deemed sufficient before, it seeks to include all purchasers of My Pillow covered
9 products, but not all purchasers would necessarily have bought a covered product
10 based on the purported health claim false advertisements. The definition is too broad.
11 Either the All Purchaser Subclass needs to be the Class with a subclass created (in
12 addition to the Direct Purchaser Subclass) that covers consumers who purchased My
13 Pillow's covered products due to reliance, in part, on the various health benefit
14 advertisements or the All Purchaser Subclass is redefined to note the purchasers are
15 those who bought My Pillow's product because of its health benefit advertisements.
16
17

18 By the proposed class definitions, Plaintiffs seek to certify a nationwide class.
19 Plaintiffs offer no argument or analysis of this Court having the ability to certify a
20 nationwide class, and/or California law can be applied to the other states.
21

22 **Proposed Notice,**

23 The proposed supplemental notice sufficiently contains the necessary
24 information for a class member to determine if he would like to submit a claim, opt-out,
25 or object. The proposed email to be sent also contains sufficient information on the
26 settlement and/or directing recipients with a means to obtain additional information. The
27 Plaintiffs fail to submit the proposed claim form the members will need to submit to
28

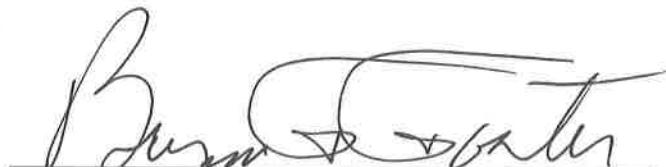
1 recover under the settlement for the Court to review and determine its adequacy.
2 Plaintiffs also indicate in providing notice if an email is returned as undelivered, a
3 postcard will be mailed. The proposed postcard is not provided for the Court's review.
4

5 In relation to the manner of notice, the parties are proposing an email, and then
6 mailing a postcard regarding the settlement to any undelivered email. This method
7 seems reasonable in relation to purchasers who directly purchased the covered product
8 from My Pillow thereby My Pillow has the consumers' email and mailing address. But
9 the parties do not address notice of the settlement to those who purchased the product
10 from a retail store versus directly from My Pillow.

12 **Ruling**
13

14 The Court denies Plaintiffs Amiri and Harr's Motion for Preliminary Approval, as
15 they fail to establish the proposed settlement is fair and reasonable; denies the request
16 for settlement class certification because they fail to submit evidence to support
17 certification, the proposed class definition are inadequately defined, and fail to address
18 the ability for a nationwide class; and denies the approval of the Settlement Notice and
19 method of notice because they fail to submit all documents associated with the notice,
20 improperly provide for previous submitted claims to remain valid, and fail to address the
21 means of giving notice to the non-direct consumer class members.
22
23

24 Dated this 26th day of April, 2017
25

26 
27 Honorable Bryan Foster
28 Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER
247 W. 3RD ST
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1606479

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

Ruling on Matter Taken Under Submission

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.
- Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
- A copy of this notice was given to the filing party at the counter
- A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 04/28/17

I declare under penalty of perjury that the foregoing is true and correct. Executed on 04/28/17 at San Bernardino, CA

BY: PATRICIA VEGA

M A I L I N G C O V E R S H E E T

Notice 'ADD1' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVDS1606479 on 4/28/17:

CLARKSON LAW FIRM
9255 SUNSET BLVD
SUITE 804
LOS ANGELES, CA 90069

FARUQI & FARUQI, LLP
10866 WILSHIRE BLVD.
SUITE 1470
LOS ANGELES, CA 90024

FOLEY BEZEK BEHLE & CURTIS
15 WEST CARRILLO ST
SANTA BARBARA, CA 93101

EDWARD E. ANGWIN LAW OFFICE
11500 W. OLYMPIC BLVD.,
SUITE 512
LOS ANGELES, CA 90064

EXHIBIT D

EXHIBIT D

COPY

1 Robert A. Curtis, State Bar No. 203870
2 Kevin Gamarnik, State Bar No. 273445
3 **FOLEY, BEZEK, BEHLE & CURTIS, LLP**
4 15 West Carrillo Street
5 Santa Barbara, CA 93101
6 Telephone: (805) 962-9495
7 Facsimile: (805) 962-0722
8 Email: rcurtis@foleybezek.com
9 kgamarnik@foleybezek.com

RECEIVED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

REC'D 2/3/2017

BY *Kathleen Vega*
PATRICIA VEGA, DEPUTY

10 Robert K. Shelquist, #21310X [*Pro Hac Vice to be filed*]
11 **LOCKRIDGE GRINDAL NAUEN P.L.L.P.**
12 100 South Washington Avenue, Suite 2200
13 Minneapolis, Minnesota 55401
14 Telephone: (612) 339-6900
15 Facsimile: (612) 339-0981
16 Email: rkshelquist@locklaw.com

17 Attorneys for Intervenors Jill Brunelle, Heather Dewitt,
18 Donald Puckett, Patrick Kavanagh, Susan Balmer,
19 Christie Kautsky, and Theresa Cordero

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN BERNARDINO

22 ARMIN AMIRI, individually, and on behalf of
23 all others similarly situated

CASE NO. CIVDS1606479

(Assigned to Hon. Bryan Foster, S22)

24 Plaintiff,
25 v.
26 MY PILLOW, INC., a Minnesota corporation,
27 and, DOES 1 through 10, inclusive
28 Defendants.

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT

1 WHEREAS, Plaintiffs Armin Amiri, Donald Puckett, Patrick Kavanaugh, Theresa
2 Cordero, Jill Brunelle, Heather De Witt, Christie Kautsky, and Susan Balmer (“Plaintiffs”), and
3 My Pillow, Inc. (“Defendant”) (collectively, the “Parties”) have reached a proposed settlement and
4 compromise of the disputes between them in the above actions (the “Second Amended Settlement
5 Agreement” or “Settlement”);

6 AND NOW, the Court, having read and considered the Second Amended Settlement
7 Agreement and accompanying documents and the motion for preliminary approval of the
8 settlement, and the Parties having consented to the entry of this order, and all capitalized terms
9 used herein having the meaning defined in the Settlement Agreement, IT IS HEREBY ORDERED
10 AS FOLLOWS:

11 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
12 Settlement.

13 2. Subject to further consideration by the Court at the time of the Final Approval
14 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
15 Settlement Class, as falling within the range of possible final approval, and as meriting submission
16 to the Settlement Class for its consideration.

17 3. For purposes of the Settlement only, the Court certifies the Settlement Class to
18 include the following subclasses: (1) all Persons who purchased Covered Products in the United
19 States, its territories, or at any United States military facility or exchange directly from Defendant
20 (the “Direct Purchaser Class”); and (2) all persons who purchased Covered Products in the United
21 States, its territories, or at any United States military facility or exchange from a source other than
22 Defendant (the “Non-Direct Purchaser Class”). Excluded from the Settlement Class are all
23 persons who validly opt out of the Settlement Class in a timely manner, counsel of record (and
24 their respective law firms) for the Parties, Defendant and any of its parents, affiliates, subsidiaries,
25 independent service providers and all of their respective employees, officers, and directors; the
26 presiding judge in any of the Actions; any natural person or entity that entered into a release with
27 Defendant prior to the Effective Date concerning any Covered Products.

28

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

9213433.1

1 4. The Court preliminary finds, solely for purposes of considering this Settlement, that
2 the requirements of Cal. Code Civ. Proc. § 382 appear to be satisfied, including requirements for
3 the existence of an ascertainable class, a community interest, and manageability of the Settlement
4 Class, that common issues of law and fact predominate, and that a settlement class is superior to
5 alternative means of resolving the claims and disputes at issue in this action.

6 5. The Court orders that each Plaintiff is appointed as a Representative Plaintiff. The
7 Court also orders that Foley Bezek Behle & Curtis, LLP and Lockridge Grindal Nauen, P.L.L.P.,
8 are appointed as Direct Purchaser Class Counsel and Ryan J. Clarkson and Shireen M. Clarkson at
9 Clarkson Law Firm, P.C. are appointed Non-Direct Purchaser Class Counsel. The Court
10 preliminarily finds that the Representative Plaintiffs and Class Counsel fairly and adequately
11 represent and protect the interests of their respective absent Settlement Class Members in
12 accordance with Cal. Code Civ. Proc. § 382.

13 6. A Final Approval Hearing shall be held before this Court at 8:30 a.m. on January 8,
14 2018 in Department S22 of the San Bernardino Superior Court, to address: (a) whether the
15 proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the
16 Final Approval Order and Judgment should be entered; and (b) whether Class Counsels'
17 applications for attorneys' fees, costs, expenses and service awards should be approved.
18 Consideration of any applications for an award of attorneys' fees, costs, expenses and service
19 awards shall be separate from consideration of whether or not the proposed Settlement should be
20 approved, and from each other. The Court will not decide the amount of any service awards or
21 Class Counsels' attorneys' fees until the Final Approval Hearing.

22 7. With the exception of such proceedings as are necessary to implement, effectuate,
23 and grant final approval to the terms of the Settlement, all proceedings are stayed in this Action
24 and all Settlement Class Members are enjoined from commencing or continuing any action or
25 proceeding in any court or tribunal asserting any claims encompassed by the Settlement, unless the
26 Settlement Class Member timely files a valid Request for Exclusion as defined in the Settlement.

27
28

1 14. Any Settlement Class Member who does not make a valid and timely written
2 objection (as set forth in the Settlement) shall be deemed to have waived such objection and
3 forever shall be foreclosed from making any objection to the fairness or adequacy of the proposed
4 Settlement, the payment of attorneys' fees and costs, service awards or the Final Approval Order
5 and Judgment.

6 15. Any Settlement Class Member who does not submit a valid and timely Opt Out
7 shall not be excluded from the Settlement Class.

8 16. Any settlement Class Member who is not excluded from the Settlement Class shall
9 be deemed to have released the Settled Claims.

10 17. The Claims Administrator shall post the Settlement on the Settlement Website.

11 18. In the event that the proposed Settlement is not approved by the Court, or in the
12 event that the Settlement becomes null and void pursuant to its terms, this Order and all orders
13 entered in connection therewith shall become null and void, shall be of no further force and effect,
14 and shall not be used or referred to for any purposes whatsoever in this civil action or in any other
15 case or controversy; in such event the Settlement and all negotiations and proceedings directly
16 related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties,
17 who shall be restored to their respective positions as of the date and time immediately preceding
18 the execution of the Settlement.

19 19. The Court may, for good cause, extend any of the deadlines set forth in this Order
20 without further notice to the Settlement Class Members. The Final Approval Hearing may, from
21 time to time and without further notice to the Settlement Class, be continued by order of the Court.

22 20. The Final Approval Hearing may be adjourned or continued without further notice
23 to the Class.

24

25 **IT IS SO ORDERED.**

26

27 **SEP 25 2017**

Dated: _____

28 **BRYAN F. FOSTER**

Honorable Bryan Foster

EXHIBIT E

EXHIBIT E

Objection to Armin Amiri, et al. v. My Pillow, Inc

CASE NO: CIVDS1606479

Superior Court of the State of California

For the County of San Bernardino

Honorable Bryan Foster, S22

NET 06/2017

WVSPS Revd LVR
beam T-74 Logs to LVR

Objector:

Scott Darren Lindemuth
1712 Manchester Place,
Escondido, Ca 92027
760-741-5131

Statement of Eligibility to Object to Settlement

I, Scott Darren Lindemuth, hereby state that I purchased two My Pillows directly from the My Pillow website during the time frame stated in the Amended Settlement and Agreement Section I Definitions, Item J; therefore, I am a member of the "Direct Purchaser Class".

 Date: 12/1/2017

Scott Darren Lindemuth

Introduction:

I believe this is a frivolous lawsuit that should be immediately dismissed. The pillows are not defective. They are the best pillows I have ever used in my 57 years. They are great. I did a quick internet search on the settlement, the law firms involved, and the plaintiffs. I believe the facts as stated in the Forbes business magazine article on June 27, 2017 "No Rest For MyPillow As It Fights 'Lawyer-Driven' Lawsuits" are true. This is just another corporate shake down.

Objection #1) The plaintiffs don't have any damages, so why are they being compensated. They receive \$2500.00 for what? Being recruited by a law firm. This is the biggest scam I ever heard of. The people who actually purchased the pillows and want to be part of this scam only get \$5.00. In this high-priced state, you cannot even buy a cup of coffee for this.

Objection #2) The \$2,000,000 dollars to the law firm Foley, Bezel, Behle & Curtis LLP is excessive and outrageous. I have read the settlement and see no justification for this amount. From their web site, they brag about shaking down corporations for hundreds of millions of dollars. Why are they settling for a quick \$2,000,000 if they had any kind of "real" case?

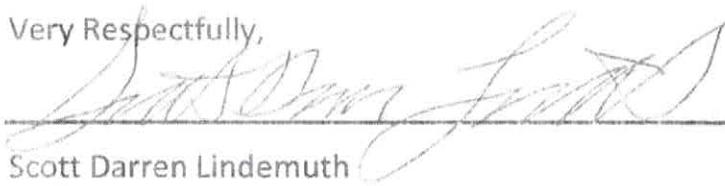
Objection #3) Similar cases were dismissed in other states. Since California has such a "unfriendly" business climate, they feel they can get away with this illegal shakedown.

Objection #4) The fact I was notified my a "unsolicited" email which was flagged as a potential phishing scam attempt. You receive an unknown email directing you to a web site which than asks for your personal information. Also, any cybersecurity expert knows that you never send a user Id and password in the same email.

In Conclusion:

Your honor, I hope you do the right thing and dismiss this case. I know the Defendants want to do what is cheaper for them, but the California justice system should be for what is right and not what is cheaper and convenient. The plaintiffs and lawyers are only looking for a quick payday on the backs of California consumers who end up paying for these frivolous lawsuits through higher prices.

Very Respectfully,



Scott Darren Lindemuth

12/11/2017

Date

Copy to:

My Pillow Settlement Digital Settlement Group, LLC
P.O. Box 1561
West Palm Beach, FL 33402

FOLEY, BEZEK, BEHLE & CURTIS LLP
15 West Carrillo Street
Santa Barbara, CA 93101

LOCKRIDGE GRINDAL NAUEN P.L.L.P
100 South Washington Ave, Suite 2200
Minneapolis, Minn. 55401

Hon. Bryan Foster, S22
Superior Court of The State of California
County of San Bernardino
172 West 3rd St, San Bernardino, CA 92415

EXHIBIT F

EXHIBIT F

1-9-18

Foley Bezek Behle & Curtis

San Bernardino County Superior Court
Department S22 (RE: My Pillow Settlement)
247 West Third Street
San Bernardino, California 92415

JAN 16 2018

Via UPS Rcvd LWP
Scan FED Logged LWP

Dear San Bernardino County Superior Court Judge:

On 1-5-18 I received my mail via the deliver from the US Post Office. Upon reviewing the mail, I read the post card regarding the My Pillow Settlement. On 1-5-18 at 1:07pm, as per the post office card notice, since I do not have the internet/e-mail/g-mail/www.com/ etc., I called the telephone number 1-877-395-8158 to obtain a claim form, as so indicated: "You can also obtain a claim form by calling 1-877-395-8158." The very telephone number that I called to get a claim form!!!!!!!!!!!!!!

After going through several pushing telephone button numbers to get a claim form, with no results of how to get a claim form, except with two of the numbers stated: "you can obtain a claim form by calling 1-877-395-8158". At that point in time I was extremely frustrated, very upset, pissed off, and not in a very good mood. I finally got to the part about leaving a message. I requested that a claim form be sent to me via "overnight UPS or FED-EX", leaving my name, address, zip code and telephone number. I admit that I was not very pleasant, but I did not use any foul language. You and get the telephone conversation from the people in charge of the telephone number 1-877-395-8158 and they recorded everything. Of course, you will be talking to a computer, NOT A REAL LIVE HUMAN BEING.

On 1-8-18 around 10:00am I went to our local public library and with some assistance from the assistant librarian, I was on the web/internet site www.PillowBogoSettlement.com. I clicked on the various items trying to get a claim form, to no avail. I then filled out the web/internet site Direct Purchaser Claim Form, and clicked on the "submit" area on the screen. The result was: "you must put in your E-Mail Address". Since I do not have E-Mail/Web-site/Internet Site/Up-mail/Down-Mail/ETC, I was again extremely frustrated, very upset, pissed off, and not in a very good mood. By good fortune, the assistant Librarian had checked on me and when I explained the problem, she showed how I could print the Direct Purchaser Claim Form and suggested that I send that by mail, hoping that it will me sufficient to receive any monies from the My Pillow Settlement.

After talking with the assistant Librarian, I tried contacting the "PEOPLE" running the E-mail address they gave on the web/internet site info@pillowbogosettlement.com and the public library's system came up with "WINDOWS CAN NOT FIND info@pillowbogosettlement.com". I tried it with the www. and without the www., with same result "WINDOWS CAN NOT FIND info@pillowbogosettlement.com". I was not really surprised by the results.

Up to this point in time I have been extremely disappointed in how complex and difficult the "PEOPLE" running both the www.PillowBogoSettlement.com web/internet site and the telephone number 1-877-395-8158. In addition, they have given only 17-days, of which 2-days are Saturday and 2-days are Sunday, because the deadline to submit a claim is January 23, 2018. It is understood that the amount of money being recovered by 99.999% of the people is very small, however, if the "PEOPLE" running both the www.PillowBogoSettlement.com web/internet site and the telephone number 1-877-395-8158 would make it very difficult for me and the other 99.999% to submit a claim form, the "PEOPLE and THE ATTORNEYS" would sure be able to get a lot more money in their pockets, even though the ATTORNEYS are getting \$2,000.000.00 and it appears to me that they want more. From were I am sitting, the money should be going to the 99.999%, like me and everyone else like me.

Enclosed is a copy of the Direct Purchaser Claim Form that was printed from my Public Library's Computer System. I trust that this meets the requirements for me to receive any monies that are the result of the My Pillow Settlement. Note that I have sent this "Regular US Post Office Mail", as it would make no sense to send it Certified or Priority Mail due to the cost taking over 50.0% of what is to be recovered.

I thank you in advance for being patient with me and letting me let you know the challenges that the "PEOPLE and THE ATTORNEYS running both the www.PillowBogoSettlement.com web/internet site and the telephone number 1-877-395-8158 have placed on me and the 99.999% of others like me to file a claim to receive a small amount of the My Pillow Settlement.

If you have any questions or wish to discuss this further, you can contact me at my home telephone number (still have a land line) at 610-253-5475. Note that my wife and I let all of our telephone calls go to the recorder: once we hear who is calling and we know who it is, we pick up the phone to answer. The reason is that we must be getting about 5-10 scam calls a day.

Sincerely,



John J. Kokosky, Jr.
2710 Liberty Street
Easton, Pa. 18045
Ph# 610-253-5475

CC: Digital Settlement Group LLC
P.O. Box 1561
West Palm Beach, FL 33402

My Pillow Settlement Administrator
P.O. Box 1561
West Palm Beach, FL 33402

Direct Purchaser Settlement Class Counsel
At Foley Bezek Behle & Curtis LLP
15 W. Carrillo Street
Santa Barbara, CA 93101

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

Armin Amiri, et al. v. My Pillow, Inc., et al. — Case No. CIVDS1606479

DIRECT PURCHASER CLAIM FORM

Subject to the terms of the Settlement Agreement, and pending final approval by the Court, to request a settlement payment, please complete this form and submit by January 23, 2018.

CLAIM INFORMATION

To request a benefit under this Settlement, please complete and submit this Claim Form under penalty of perjury.

JOHN

KOKOSKY, JR

2710 LIBERTY STREET

EASTON

Apt / Unit

PENNSYLVANIA

18045

610-253-5475

610-253-5475

ZZ@MYPILLOW.COM

NO EMAIL ADDRESS, ONLY PHONE# / US MAIL - USE LIBRARY COMPUTER

Did you purchase a My Pillow Buy One, Get One Free (BOGO) offer?

Yes

No

How many BOGO offers did you purchase?

1

CERTIFICATION

I swear under penalty of perjury of the laws of the United States that I purchased one or more My Pillow products between April 26, 2012 and September 25, 2017 and that all the information on this form is true and correct to the best of my knowledge.

SUBMIT

REVIEW AND DETERMINATION OF CLAIMS: The Claims Administrator will review all claim forms that are postmarked on or before **January 23, 2018**. Claim forms that are not timely submitted will be rejected. Invalid claim forms and illegible claim forms may be rejected. The Claims Administrator is entitled to confirm information supplied in claim forms to determine eligibility.

Page Viewed on: 01/08/2018 10:25 AM EST
Unique Page ID: a38f941d-87f4-e711-93fe-a0369f1303c6
(C5DE4878B75E95430C5E5E0FB84AECDA)

EXHIBIT G

EXHIBIT G

Bronwyn C. Hertz
4 Makatom Drive
Cranford, NJ 07016
(908)709-1098

San Bernardino County Superior Court
247 West Third Street
San Bernardino, California, 92415

Re: Armin Amiri, et al. v. My Pillow, Inc.
Case No. CIVDS1606479

January 1, 2018

Your Honor,

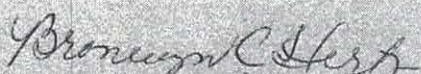
I am writing you as a member of the Settlement Class, with my objection to the above-referenced case. On August 6, 2016, I ordered two Standard/Queen sized pillows under the BuyOne GetOne offer. My order number was #343379710. I did not return my product during the free trial period and I remain 100% satisfied with my purchase.

Although I cannot appear at the hearing, I want to register my objection to this frivolous suit. I whole-heartedly believe that this case is foremost being undertaken to benefit the Class Counsel legal representatives. It appalls me that they are seeking up to \$2,000,000 in fees! This seems to be far beyond the administrative costs of this unnecessary lawsuit. In addition, I fail to understand how the Class Representatives in these suits have suffered pain or damage equaling anywhere near \$2,500 each! Were these individuals maimed or injured by the Covered products? Did MyPillow charge the individuals \$1,000 for each pillow? How did they suffer such damages?

I implore you not to approve this settlement. I believe there should exist a much higher threshold for petitioning any Court for a settlement and that this is a clear waste of the Court's time and the taxpayers' money.

Thank you for taking the time to consider my objection.

Sincerely,



Bronwyn C. Hertz

EXHIBIT H

EXHIBIT H

Pamela Dee Lorence
688 Humboldt St.
Richmond CA 94805
pamelalorence.com
510 644 3260

January 6, 2018

Dear Sirs

Concerning Armin Amiri et al v. My Pillow, Inc., Case #CIVDS1606479, I, Pamela Lorence, a Settlement Class Member, object. My unique ID is EGXQL^ACK3.

I object because my experience with My Pillow products is very positive and I believe the lawsuit against My Pillow is frivolous, with the class action lawyers behaving as vultures going after this successful company (asking \$2,000,000 for their work on this is absolutely corrupt). While the pillows are different from any I have had before, and take some time to learn to use, they do adjust to any needed shape and then maintain it, so that sleeping with them is much more comfortable than with other pillows.

I also have the "topper", which goes on top of a mattress, and it is extremely comfortable and supportive. I feel I am on a cloud and I do sleep more easily and more deeply. (My mother, Bernice Kruger, bought the topper and gave it to me. Her address when she bought the topper was 5614 Military Ct. Fairfield, CA 94533)

I do not intend to personally attend the hearing.

Sincerely

Pamela Dee Lorence

Pamela Lorence

EXHIBIT I

EXHIBIT I

Patricia Archer
860-305-2677 10675 Avila Circle, Fort Myers, FL 33913

Foley Bezek Behle & Curtis

JAN 16 2018

Via JS/PS Recd LWP
Scan PA Logged DR

January 8, 2018

My Pillow Settlement Administrator
P.O. Box 1561
West Palm Beach, FL 33402

RE: Name of Action: Armin Amiri, et al. vs My Pillow, Inc.
Case No. CIVDS 1606479
Unique ID: WBCZF8@HUF
Pin Code: ^%JZP6%HHW

Dear Administrator:

Just today, January 8, 2018, I received a post card giving Legal Notice of the My Pillow BOGO Class Action Law Suit and I am a Settlement Class member. I am not represented by counsel but I object to this settlement as I think it is frivolous. No one in the class, if truly damaged, will receive enough money to even purchase another pillow. The class action attorneys, as is typical of class action law suits, will be overly compensated for settling a suit for which My Pillow likely does not have significant negligence. It is a sorry tale that they have to settle cases such as this because the costs of defending themselves is so much greater than the costs of settling the class action. This is extortion in my opinion. The attorneys are going to class-action My Pillow, Inc. out of business.

I have been a member of many class action law suits similar to this one and have rarely received more than a few dollars in settlement, however, the attorneys representing the class received hundreds of thousands/millions. These types of law suits rarely benefit the plaintiffs. These suits do not foster an environment that encourages people to open businesses that provide jobs and benefits the economy of the United States. Therefore, I object to this settlement and ask the court to award \$1 to the Settlement Class and to all attorneys. Approval of this settlement is unfair and unreasonable to My Pillow and only benefits Plaintiff attorneys.

I purchased My Pillow several years ago and I am still happy with my purchase. I have washed the products in the washing machine several times and they are like new after dried.

Sincerely yours,

Patricia J. Archer

Patricia J. Archer

CC: Foley Bezek Behle & Curtis, LLP, 15 W Carrillo St., Santa Barbara, CA 93101

CC: My Pillow, Inc. , 343 East 82nd St., Suite 102, Chaska, Minnesota 55318

EXHIBIT J

EXHIBIT J

P.O. Box 9068
Bradenton, FL 34206
January 16, 2018

RE: Armin Amiri, et al, v. My Pillow, Inc, Case No CIVDS1606479

Claims Administrator
✓ P.O. Box 1561
West Palm Beach, FL 33402

Direct Purchaser Settlement Class Counsel
Foley Bezek Behle & Curtis, LLP
15 W. Carrillo Street
Santa Barbara, CA 93101

To Whom It May Concern:

Enclosed is a copy of the Legal Notice I received regarding this class action suit.

1. Not only do I wish to exclude myself from this class action, I wish to object to the action itself.
2. I have purchased two My Pillows directly from the company and not only do I have no complaint about pricing, advertisement and the product itself, the Customer Service provided on the telephone by Sharon was absolutely outstanding and above and beyond.

I accidentally ordered the wrong density for my husband and even though the error was mine, they replaced the pillow with a better density for my husband at no cost to me. Additionally, the whole Customer Service experience was wonderful.

The My Pillow product is wonderful in that it has changed the quality of my sleep FROM THE VERY FIRST NIGHT I USED IT.

Mike Lindell is a very good man who manufactures a superior product and is honest and straightforward about his product, plainly explaining that the customer has NOTHING TO LOSE since they offer a complete money back guarantee.

I know nothing about the purported claims of these plaintiffs, but I wish to be completely excluded from this action.

A class action lawsuit aimed at Big Tobacco or Big Pharma is or would be one thing, but I find one aimed at My Pillow, Inc. to be repugnant.

I hope this letter, mailed to the Foley firm in Santa Barbara and to the Claims Administrator in West Palm Beach will accomplish my purpose. Further, I hope the Court will be made aware of this letter.



Minnie Adele Potter

My Pillow Settlement
P.O. Box 1561
West Palm Beach, FL 33402

Return Service Requested

First Class Mail
Presorted
US Postage
PAID
Green Bay WI
Permit 460

1356 771 444757

UNIQUE ID: WXXPVZB24Z
PIN CODE: 2NQKEENVF3

MINNIE POTTER
PO BOX 9068
BRADENTON, FL 34206-9068



LEGAL NOTICE

444757

If you purchased one or more products bearing the labeled brand name My Pillow directly from My Pillow, Inc. between April 26, 2012 and September 25, 2017, you could get payment from a class action settlement.

A settlement has been proposed in a class action regarding the advertising, packaging, and sale of My Pillow products, including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos. The claims are strongly disputed and the parties have reached an agreement to avoid the time and expense of litigation. The San Bernardino Superior Court authorized this notice and will decide whether to approve the settlement.

WHAT DOES THE SETTLEMENT PROVIDE? If approved, the proposed settlement will provide for monetary benefits to settlement class members, notice/administration costs, class representative payments, non-monetary benefits, and fees and costs for the lawyers who represented the settlement class.

HOW DO YOU ASK FOR A MONETARY SETTLEMENT BENEFIT? To learn how to qualify for a monetary benefit under the settlement, visit www.PillowBogoSettlement.com. Directions on how to submit a claim with your Unique ID and Pin (provided below) can be found on the website. You can also obtain a claim form by calling 1-877-395-8158 or emailing info@PillowBogoSettlement.com. The deadline to submit a claim is January 23, 2018.

UNIQUE ID: WXXPVZB24Z
PIN CODE: 2NQKEENVF3

WHAT ARE YOUR OTHER OPTIONS? You may exclude yourself from the settlement by sending a letter to the Claims Administrator at P.O. Box 1561, West Palm Beach, Florida 33402, by January 23, 2018. The settlement and judgment, whether favorable or not, will bind you if you do not request exclusion. If you do not request exclusion, you may, if you desire, enter an appearance through counsel. You may also object by sending your objection to the Court and to the attorneys for the Plaintiff by January 23, 2018 as set forth in the more detailed notice. If you do object, you may still file a claim. The more detailed notice available at www.PillowBogoSettlement.com explains these options in greater detail.

The Court will hold a hearing in this case (Armin Amiri, et al. v. My Pillow, Inc., Case No. CIVDS1606479) on February 26, 2018 to consider whether to approve the settlement and the request for attorney fees and costs by settlement class counsel. You may ask to appear at the hearing, but you do not have to. For more information, visit www.PillowBogoSettlement.com.

If you need additional time to meet any of the deadlines in this notice, please notify the administrator in writing prior to the applicable deadline.

EXHIBIT K

EXHIBIT K

January 12, 2018

My Pillow Settlement
Attn: Court Judge or Administrator
PO Box 1561
West Palm Beach, FL 33402

To the Court:

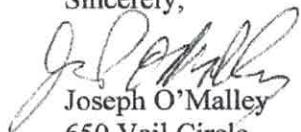
I bought pillows in the BOGO promotion . My unique ID is VMNH7K2UTP, Pin Code ^9BE@FE22R.

I signed up for the settlement, but my wife and I love the pillows that we received and we feel that we got what was advertised and we strongly object to the class action suit and feel it should be dismissed. The attorneys representing the supposed claimants should be ashamed of themselves and should be penalized for bringing such a frivolous law suit.

We have nothing to do with the company but feel these kinds of actions only exacerbate Citizens of America from making a living and following the American Dream.

We would like our comments read into the court records on this suit. Thank you.

Sincerely,



Joseph O'Malley
650 Vail Circle
Dillon, CO 80435

EXHIBIT L

EXHIBIT L

Foley Bezek Behle & Curtis

JAN 29 2018

Via USPS Recd LAW
Scan _____ Logged LAW

January 22, 2018

OBJECTION IN PART TO THE SETTLEMENT

By U.S. Mail

My Pillow Settlement
Digital Settlement Group, LLC
P.O. Box 1561
West Palm Beach, FL 33402

Foley Bezek Behle & Curtis, LLP
Robert A. Curtis, Esq.
15 W. Carrillo St.
Santa Barbara, CA 93101

Clarkson Law Firm
Ryan J. Clarkson, Esq.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069

Mitchell, Silberberg & Knupp LLP
Jeffrey L. Richardson, Esq.
11377 W. Olympic Boulevard
Los Angeles, CA 90064

Re: *Armin Amiri v. My Pillow, Inc., et al.*, Case No. CIVDS1606479
Philip Stamm v. MyPillow, Inc., Index No. 651472/17 (New York County)

Dear Sirs:

Because of the current broad release language in the Direct Purchasers Notice, I object in part to the settlement in *Armin Amiri v. My Pillow, Inc., et al.*, Case No. CIVDS1606479 (the “Amiri Action”) for all the reasons stated herein. I am apparently intended by parties to the *Amiri* Action to be a settlement class member. I purchased My Pillow pillow products on January 23, 2017. I filed my own lawsuit (listed above) as I believed I had been the victim of a “bait and switch” scam.

On March 21, 2017, I filed a putative class action in New York Supreme Court entitled *Philip M. Stamm v. My Pillow, Inc.*, Index No. 651472/17 (Supreme Court, New York County) (the “Stamm Action”) (complaint attached hereto as Exhibit A). I hereby object to the settlement

Digital Settlement Group, LLC

Robert A. Curtis, Esq.

Jeffrey L. Richardson, Esq.

Ryan J. Clarkson, Esq.

January 22, 2018

Page 2

in part because the *Stamm* Action is included in the Notice of Settlement (the “Notice”) and it should not be. The allegations in *Stamm* Action are different from the allegations of the *Amiri* Action and the other putative class actions seeking to settle their claims by inclusion in this settlement.

The Notice is overly broad, and if the settlement is approved, My Pillow, Inc. (“My Pillow”) will argue it extinguishes my claims. For the reasons discussed herein, the *Stamm* Action should be explicitly carved-out of the Notice, the Settlement and any release or order approved or issued by this Court.

SETTLEMENT PROGRESSION

Plaintiff Armin Amiri (“Amiri”), along with the other plaintiffs in the Oregon, Minnesota, Montana, and Ohio actions, entered into a second amended settlement agreement on August 31, 2017 (5 months after the *Stamm* Action had been filed). There was no mention or inclusion of the *Stamm* Action or my “bait and switch” allegations in the second amended settlement agreement. It was only when the revised long-form notice was distributed, that somehow, without any discussions with me or my counsel, that my action was now listed in the Notice, with the apparent intent of the parties here that My Pillow would use the settlement of this action to argue that the claims in my action had been released.

My Counsel attempted to meet and confer with counsel for Plaintiff Amiri (Ryan Clarkson, Esq.) and the New York My Pillow defense counsel Michael J Tricarico, Esq. to cause them to carve my action out of this settlement and out of any release or bar order; however, to date, there has been no agreement by the parties to this action to do so.

“The principal purpose of notice to the class is the protection of the integrity of the class action process” *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal. App. 4th 734, 745, 99 Cal. Rptr. 3d 436 (2009). “The notice “must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.”” *Id.* at 746. A class action settlement notice should present information neutrally, simply, and understandably. The notice should allow class members to evaluate a proposed settlement. Notice should describe the formula or plan for computing individual settlement class member recoveries. *See Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393, 113 Cal. Rptr. 3d 510 (2010) (“The aggregate amount available to all claimants was specified and the formula for determining one’s recovery was given. Nothing more specific is needed.”).

“Any attempt to include in a class settlement terms which are outside the scope of the operative complaint [here, the *Amiri* Action] should be closely scrutinized by the trial court to determine if the plaintiff genuinely contests those issues and adequately represents the class.” *See Trotsky v. Los Angeles Fed. Sav. & Loan Assn.*, 48 Cal. App. 3d 134, 148 (1975). In *Trotsky*, the court noted that although a court has the power to approve the inclusion of additional claims

Digital Settlement Group, LLC

Robert A. Curtis, Esq.

Jeffrey L. Richardson, Esq.

Ryan J. Clarkson, Esq.

January 22, 2018

Page 3

in the settlement, **broad releases should be avoided.** *Id.* (emphasis added). When a class is certified for settlement purposes, heightened attention by the court is needed to protect absentee members from unwarranted or overbroad class definitions. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620, 138 L. Ed. 2d 689 (1997).

Here, the parties are attempting to obtain a release of my claims even though my claims and allegations are different from the *Amiri* Action and the other actions listed below (the Oregon, Minnesota, Montana, and Ohio actions). My putative class action alleges a “bait and switch” scheme where My Pillow provided me with a different promo code, which only provided me a discount of approximately 33% off the purported full retail price for two (2) My Pillow pillows instead of the promised and advertised promotion that offered two pillows for the price of one. *See Stamm Action* at ¶ 16. These “bait and switch” allegations (and the damages that arise from them) are not alleged in any other the actions listed herein. For example, in the *Amiri* Action, the plaintiff alleges that My Pillow issued false and deceptive statements concerning (1) the “benefits” of using My Pillow products (*Amiri Complaint* at ¶ 1); (2) Mike Lindell’s (the CEO of My Pillow) representation that he is a “sleep expert” (*id.* at ¶ 17); (3) sponsorship or endorsement from, or affiliation with news organizations (*id.* at ¶ 18); (4) the efficacy and benefits of the My Pillow products (*id.* at ¶ 19); (5) the benefits of using its product relating to sleep related ailments; and (6) material omissions by advertising that the My Pillow product is efficacious for all consumers, in all sleep positions. *Id.* at 22. There are no allegations in the *Amiri* Action that My Pillow was engaged in a “bait and switch scheme” as alleged in the *Stamm* Action.

The Oregon Federal Action

In *Jill Brunelle v. My Pillow, Inc.*, Case No. 3:16-cv-2007 (D. Or.) (the “Oregon Action”), the plaintiff alleged that My Pillow “offers a pillow for sale and claims to include a ‘free’ pillow as part of the purchase.” *See Oregon Action* at ¶ 2. The plaintiff further alleged that the “My Pillow, Inc. BOGO^[1] Promotions are false and deceptive because My Pillow, Inc. is not providing one pillow for ‘free.’ Instead, it is inflating the regular price of the pillow being purchased as part of the promotion, resulting in the buyer purchasing two pillows at or near the combined regular prices for two pillows.” *Id.* at ¶ 3. In the Oregon Action, there are no allegations that My Pillow was engaged in a “bait and switch scheme”, which is only alleged in the *Stamm* Action.

The Minnesota Federal Action

In *Donald Puckett v. My Pillow, Inc.*, Case No.: 0:17-cv-00029 (D. Minn.) (the “Minnesota Action”), the plaintiff alleged that the “My Pillow, Inc. BOGO Promotions were false and deceptive because My Pillow, Inc. did not provide one pillow ‘free’” (Minnesota

^[1] “BOGO” means “buy one get one free.”

Digital Settlement Group, LLC

Robert A. Curtis, Esq.

Jeffrey L. Richardson, Esq.

Ryan J. Clarkson, Esq.

January 22, 2018

Page 4

Action at ¶ 5) and the “My Pillow, Inc. 50% Off Promotions were false and deceptive because My Pillow, Inc. was not providing a pillow for 50% off its regular price.” *Id.* at ¶ 7. There are no allegations in the Minnesota Action that My Pillow was engaged in a “bait and switch scheme”, which is only alleged in the *Stamm* Action.

The Montana Federal Action

In *Christie Kautsky v. My Pillow, Inc.*, Case 1:17-cv-00006-SPW-TJC (D. Mont.) (the “Montana Action”), the plaintiff alleged that My Pillow “inflated the regular price of the pillow being purchased as part of the promotion, resulting in the buyer purchasing two pillows at or near the combined regular price for two pillows.” See Montana Complaint at ¶ 9. Further, the plaintiff in the Montana Action alleged that the “My Pillow, Inc. 50% Off Promotions were false and deceptive because My Pillow, Inc. was not providing a pillow for 50% off the regular price of the pillow. Instead, it inflated the price of the pillow to approximately twice the regular price, then offered an illusory 50% discount.” *Id.* at ¶ 11. There are no allegations in the Montana Action that My Pillow was engaged in a “bait and switch scheme”, which is only alleged in the *Stamm* Action.

The Ohio Federal Action

In *Tim Marlowe v. My Pillow, Inc.*, Case: 1:17-cv-00463-CAB (D. Ohio) (the “Ohio Action”), the plaintiff alleged that “My Pillow, Inc. violated the Ohio Consumer Sales Practices Act (“CSPA”) and other Ohio laws by telling consumers they were receiving a “free” product, when they were not.” Ohio Action at ¶ 2. The plaintiff further alleged in the Ohio Action that My Pillow “offered a pillow for sale and claimed to include a “free” pillow as part of the purchase through a “buy one, get one free” or “BOGO” promotion.” *Id.* at ¶ 3.

Nowhere in the *Amiri* Action (or any of the actions listed above) do the plaintiffs allege a “bait and switch” scheme or damages caused by this scheme. In short, the release in the *Amiri* Notice will allow My Pillow to argue that my claims are barred by *res judicata* as the Notice seeks to encompass my claims, even though my action is based on different facts and claims. Here, it seems obvious that the intended effect of including my action in the Settlement Notice (but not in the second amended settlement agreement) was to attempt to foreclose my action altogether.

I respectfully request that my action be explicitly carved out of the settlement and Notice, as well as any release and bar order, so that I may proceed to further litigate my claims (and the putative class I seek to represent) in New York state court.

Digital Settlement Group, LLC

Robert A. Curtis, Esq.

Jeffrey L. Richardson, Esq.

Ryan J. Clarkson, Esq.

January 22, 2018

Page 5

In addition, my attorneys (Gainey McKenna & Egleston) presently plan to attend the final approval hearing in person.

Very truly yours,

Philip M. Stamm

cc: Clerk of the Court, San Bernardino County, Civil Division (Via Fax)

Thomas J. McKenna, Esq. (By Email)

Gregory M. Egleston, Esq. (By Email)

Encl.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

PHILIP STAMM, Individually And On Behalf of
All Others Similarly Situated,

Index No.:

Plaintiffs,
-against-

Date Purchased:

MY PILLOW, INC. a Minnesota
Corporation, a/k/a MY PILLOW DIRECT LLC

Plaintiff designates
New York County as
the place of trial

SUMMONS

Defendant.

The basis of venue is:
Plaintiff's Residence

X

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 21, 2017

Thomas J. McKenna

Thomas J. McKenna, Esq
GAINNEY MCKENNA & EGLESTON
Attorneys for Plaintiff
295 Madison Avenue, 4th Floor
New York, New York 10017
Tel: 212-983-1300

Defendant's Addresses:

343 East 82nd Street, Suite 102
Chaska, MN 55318

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

PHILIP STAMM, Individually And On Behalf : Index No.:
Of All Others Similarly Situated, :
Plaintiff, :
vs. :
MY PILLOW, INC. a Minnesota Corporation, :
a/k/a MY PILLOW DIRECT LLC :
Defendant. :

CLASS ACTION COMPLAINT

Plaintiff, individually and on behalf of the classes described below, alleges upon knowledge with respect to himself and his own acts and upon information and belief based, in part, on the investigation of counsel, as follows:

1. This proposed class action is brought by Plaintiff on behalf of himself and all other persons similarly situated (1) nationwide and (2) that are citizens of New York who suffered from My Pillow, Inc.'s ("My Pillow", the "Company" or "Defendant") "bait and switch" tactics and purchased the Company's pillow(s) from Defendant at a higher price due to Defendant's deceptive practices. This includes relief for the national class based on fraud and state subclasses based on violations of each state's consumer protection acts and other state laws.

2. Defendant My Pillow, Inc. engaged in unconscionable, unfair, and/or deceptive acts and practices related to the sale of its pillows, including but not limited to: (a) advertising a "Buy One Get One Free" (hereafter referred to as "BOGO") promotion, (b) failing and refusing

to honor the BOGO promotion, and (c) instead offering a “discount” of a lesser amount on the purchase of the same pillows.

PARTIES

3. *Plaintiff Philip Stamm* is, at all relevant times, a resident and citizen of the State of New York.

4. *Defendant My Pillow* is a Minnesota corporation with its corporate offices, call center, and manufacturing facility all located in Minnesota. Upon information and belief, the Company is also known as My Pillow Direct LLC. My Pillow manufactures pillows (and other products), advertises the sale of these pillows on television nationwide and in New York and elsewhere, and sells its pillows in New York and throughout the United States.

JURISDICTION AND VENUE

5. Diversity jurisdiction requires that (a) all adverse parties be citizens of different states and (b) the amount in controversy exceed \$75,000. 28 U.S.C. § 1332(a). Here, the parties are citizens of different states; Plaintiff is a citizen of New York, and Defendant is a citizen of Minnesota. However, the amount in controversy is below the statutory threshold. 28 U.S.C. § 1332(a). Therefore, *diversity jurisdiction does not exist over this action.*

6. Further, diversity jurisdiction does not exist under the Class Action Fairness Act of 2005 (“CAFA”) as the aggregate amount in controversy *does not exceed* \$5,000,000.

7. Venue is proper as Plaintiff is a resident of New York and Defendant advertises in New York.

FACTUAL ALLEGATIONS

8. Defendant was incorporated in July 2009 in Minnesota by its founder, Michael Lindell. Prior to its incorporation, in 2004, Mr. Lindell had developed its centerpiece product,

the "My Pillow" pillow. Upon information and belief, since 2009, the My Pillow pillow has been marketed and sold exclusively by and through Defendant.

9. Starting in 2011, Defendant began airing extended commercials ("infomercials") promoting the My Pillow for sale.

10. Upon information and belief, in 2014, Defendant began its BOGO promotion through various devices including infomercials. During these commercials or infomercials, consumers were told that if they purchased one My Pillow and used the provided "promo" code, the consumer would receive a second My Pillow for free. Upon information and belief, this BOGO promotion ran continuously through at least early January 2017.

11. Defendant's founder, Mr. Lindell, admitted in Consumerreports.org, "Should My Pillow Become Your Pillow?", last updated on November 3, 2016, that "[t]he ad for MyPillow is running 'constantly somewhere in the U.S.' every day across multiple networks, and 10 time a day on the Fox network alone".

12. On November 15, 2016, Defendant's accreditation in the Better Business Bureau ("BBB") was revoked because of its failure to adhere to the BBB Code of Advertising Standards.

13. On or about January 3, 2017, the BBB lowered Defendant's rating to an "F". The BBB made this decision after it reviewed Defendant's BOGO offer and determined that it violated the BBB Code of Advertising.

14. On January 23, 2017, after watching a My Pillow BOGO infomercial, Plaintiff attempted to place an order over the internet for two (2) standard/queen size My Pillow pillows using the provided "promo" code so that he would receive his second My Pillow for "free", and as advertised.

15. The My Pillow promo code was not accepted by Defendant's website and Plaintiff was not able to complete his order using this promo code to secure the BOGO "benefits."

16. Immediately thereafter, Plaintiff telephoned Defendant and asked a representative of Defendant to accept the BOGO promo code and complete his order. The representative of Defendant inputted a promo code known as "my539" which only provided Plaintiff a discount of approximately 33% off of the purported full retail price for two (2) My Pillow pillows instead of the promised and advertised BOGO promotion. Plaintiff was therefore improperly charged \$125.15, including shipping, handling, and tax. *See Exhibit A*, attached hereto.

17. As a direct result of Defendant's deceptive practices and actions as described above, Plaintiff was damaged and paid a price premium for the two (2) My Pillow pillows and did not receive the advertised price.

CLASS REPRESENTATION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself and for (1) a Nationwide Class and (2) a New York Subclass that consists of citizens of New York.

19. The Class and Subclass of persons that Plaintiff seeks to represent are defined as:

(a) The "Nationwide Class" is defined as:

All persons who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised.

(b) The "New York Subclass" is defined as:

All citizens of the State of New York who (1) attempted to purchase My Pillow pillows from Defendant using a

BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised.

20. Excluded from the Nationwide Class and New York Subclass are Defendant's legal representatives, officers, directors, employees, assigns, and successors; the United States government and any agency or instrumentality thereof; the judge to whom this case is assigned and any member of the judge's immediate family.

21. The exact number of members of the Nationwide Class and New York Subclass are believed to be so numerous that joinder of all members into one action, or into an individual statewide action is impractical. Upon information and belief, the Nationwide Class consists of hundreds of thousands of members, and the New York Subclass consists of thousands of members.

22. The claims raised by Plaintiff are typical of the claims of the Nationwide Class and New York Subclass members, and all claims are based on the same general legal theories and claims for relief.

23. There are common questions of law and fact that relate to and affect the rights of each member of the Nationwide Class and New York Subclass, and these questions predominate over any questions affecting only individual members. The common issues include, but are not limited to:

For the Nationwide Class:

- (a) Whether Defendant advertised a BOGO promotion for the sale of its My Pillow pillows that included the use of a BOGO promo code;

- (b) Whether Defendant misrepresented that its BOGO promo code would work as advertised and result in purchasers receiving a "free" My Pillow pillow;
- (c) Whether Defendant's BOGO representations were false and/or misleading and/or deceptive;
- (d) Whether Defendant failed to honor its BOGO promotion when presented with a BOGO promo code; and
- (e) Whether Defendant instead provided a promotion code of a lesser value.

For the New York Subclass:

- (a) Did Defendant violate New York General Business Law § 349 because its conduct constituted deceptive acts or practices that was materially misleading and resulting in Plaintiff suffering damages;
- (b) Whether Defendant advertised a BOGO promotion for the sale of its My Pillow pillows that included the use of a BOGO promo code;
- (c) Whether Defendant failed to provide the New York Class with working BOGO promo codes;
- (d) Whether Defendant failed to honor its BOGO promotion when presented with a BOGO promo code; and
- (e) Whether Defendant engaged in unconscionable, unfair, or deceptive acts or practices related to the sale of My Pillow pillows.

24. Plaintiff's claims are typical of the claims of the members of the Nationwide Class. Each Nationwide Class claim arises from the same facts, circumstances, and Defendant's course of conduct and practices. Plaintiff's legal theories are the same that will be asserted on

behalf of the Nationwide Class; namely, money damage claims arising from deceptive conduct which harmed consumers.

25. Plaintiff's claims are typical of the claims of the New York Subclass, in that the claims of all New York Subclass members are based on (a) Defendant's failure to provide working BOGO promo codes, (b) Defendant's failure to honor its BOGO promotion, (c) Defendant's unconscionable, unfair, and/or deceptive acts and/or practices related to failure to honor its advertised price, and (d) Defendant's unjust enrichment. There is no conflict between Plaintiff and other members of the New York Subclass with respect to this action or with respect to the claims for relief set forth herein.

26. Plaintiff will fairly and adequately protect the interests of all Nationwide Class and New York Subclass members in the prosecution of this action and in the administration of all matters relating to the claims raised in this lawsuit. Plaintiff is similarly situated with all Nationwide Class and New York Subclass members who purchased the My Pillow pillows, and he has sustained damages similar to those sustained by the members of the Nationwide Class and New York Subclass he seeks to represent.

27. Plaintiff has retained the services of attorneys who are experienced and capable in prosecuting class action lawsuits. Neither Plaintiff nor Plaintiff's counsel have any interests which might prevent them from vigorously pursuing this action.

28. Maintaining this action as a class action is superior to all other available methods of adjudication because it will promote the convenient administration of justice and will achieve a fair and efficient adjudication of the controversy in this matter, which will affect the interests of tens of thousands of potential class members.

29. The prosecution of separate actions by or against individual members of the Nationwide Class and/or New York Subclass would create a risk of inconsistent or varying adjudications that would confront Defendant with incompatible standards of conduct.

30. The dollar amount of the individual claims is insufficient to support separate actions, thus a multitude of potential claimants have small potential damages that require aggregation in order to be pursued.

31. Final equitable and declaratory relief is appropriate because Defendant should be required, in addition to paying damages, to be enjoined from its continuing violations of the law.

32. This lawsuit is manageable as a class action because the proofs are essentially the same for all members of the Nationwide Class and New York Subclass on all of the principal issues.

33. Defendant's conduct was the same as to all members of the Nationwide Class and New York Subclass.

34. The Nationwide Class and New York Subclass members do not have a significant interest in controlling the prosecution of separate actions involving the subject matter of this litigation, especially because the individual claims are too small individually to warrant litigating their claims on an individual basis.

COUNT I

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349

(On Behalf of the New York Subclass)

35. Plaintiff incorporates by reference each and every preceding allegation as if it is specifically set forth herein.

36. GBL Section 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

37. Defendant violated GBL Section 349 because it engaged in (a) consumer-oriented conduct that was (b) materially misleading and that (c) caused plaintiff to suffer injury as a result of the Defendant's deceptive act or practice.

38. Defendant engaged in commercial conduct by selling the My Pillow pillows directly to its end user customers in New York and elsewhere.

39. Defendant's deceptive acts were directed at New York citizens.

40. Defendant misled Plaintiff (and the New York Subclass) for the following reasons:

- (a) Advertising the sale of My Pillow pillows under a BOGO promotion with an ineffective BOGO promo code;
- (b) Refusing to honor the BOGO promotion and/or BOGO promo code; and
- (c) Imposing an alternative and inadequate “discount” promo code.

41. Defendant's deceptive practice(s) caused Plaintiff (and the New York Subclass) to pay more for the My Pillow pillows than the My Pillow pillows were actually worth.

42. Defendant's unfair practices offend public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to the New York Subclass.

43. Defendant profited from the sale of the My Pillow pillows to Plaintiff and members of the New York Subclass.

44. Defendant's BOGO promotion relating to the sale of its My Pillow pillows, refusal to honor this promotion, and substitution of an inferior discount for the same products, constitutes unconscionable commercial practices, deception, false pretenses, the knowing

concealment, suppression, or omissions of material facts with the intent that others would rely on such concealment, suppression, or omission in connection with the sale of the My Pillow pillows into the stream of commerce in violation of the New York Consumer Protection from Deceptive Acts and Practices Act, GBL § 349.

COUNT II

FRAUD/DECEIT

(On Behalf of the Nationwide Class and the New York Subclass)

45. Plaintiff repeats and incorporates the allegations above as if fully set forth herein

46. Defendant represented to Plaintiff and to each class member that there was a BOGO Promotion by which Plaintiff and each class member would obtain a free pillow from My Pillow if they purchased one pillow from My Pillow at the regular price. For example, Plaintiff attempted to place an order over the internet for two (2) standard/queen size My Pillow pillows using the provided “promo” code so that he would receive his second My Pillow for “free”, and as advertised. The My Pillow promo code was not accepted by Defendant’s website and Plaintiff was not able to complete his order using this promo code to secure the BOGO “benefits.” Immediately thereafter, Plaintiff telephoned Defendant and asked a representative of Defendant to accept the BOGO promo code and complete his order. The representative of Defendant inputted a promo code known as “my539” which only provided Plaintiff a discount of approximately 33% off of the purported full retail price for two (2) My Pillow pillows instead of the promised and advertised BOGO promotion. Plaintiff was therefore improperly charged \$125.15, including shipping, handling, and tax.

47. My Pillow intended that its misrepresentation be acted on by Plaintiff and by the rest of the class members.

48. Plaintiff as well as other class members was not aware of the true price of the pillow and reasonably relied on the truth of My Pillow's representations.

49. As a direct and proximate result of Plaintiff's and class members' reliance on My Pillow's material misrepresentations, Plaintiff, Nationwide Class, and the New York Subclass members have suffered an ascertainable loss of money.

COUNT III

UNJUST ENRICHMENT

(On Behalf of the Nationwide Class and the New York Subclass)

50. Plaintiff repeats and incorporates the allegations above as if fully set forth herein.

51. As a result of the deceptive and unfair sales and marketing practices, Plaintiff, the Nationwide Class and the New York Subclass have been harmed because the revenues flowing to the Company inured to the benefit of Defendant.

52. Defendant has been enriched, at the expense of unwitting consumers, by profiting from the unconscionable sales and marketing practices.

53. Plaintiff and other members of the Class are entitled to damages as a result of the unjust enrichment of Defendant, including the disgorgement of all revenue received by Defendant as a result of the foregoing plus interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

As to the Nationwide Class:

- (A) Certify the Nationwide Class pursuant to CPLR Article 9;
- (B) Award damages to Plaintiff and the Nationwide Class in an amount to be determined at trial;

- (C) Award Plaintiff and the Nationwide Class their expenses and costs of suit, pre-judgement interest, and reasonable attorney's fees;
- (D) Grant restitution to Plaintiff and the Nationwide Class and require Defendant to disgorge its ill-gotten gains; and
- (E) Award Plaintiff and the Nationwide Class punitive and/or exemplary damages as appropriate.

As to the New York Subclass:

- (A) Certify the New York Subclass pursuant to CPLR Article 9;
- (B) Award damages, including statutory and actual damages to Plaintiff and the New York Subclass in an amount to be determined at trial;
- (C) Award Plaintiff and the New York Subclass their expenses and costs of the suit, pre-judgment interest, post-judgment interest, and reasonable attorney's fees; and
- (D) Grant restitution to Plaintiff and the New York Subclass and require Defendant to disgorge its ill-gotten gains;

As to both the Nationwide Class and New York Subclass:

- (A) Permanently enjoin Defendant from conducting the aforementioned types of deceptive practices; and
- (B) Grant any and all such other relief as the Court deems appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: March 21, 2017

GAINY, McKENNA, & EGLESTON

By: Thomas J. McKenna
Thomas J. McKenna

Gregory M. Egleston
440 Park Avenue South, 5th Floor
New York, NY 10016
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gme-law.com
Email: gingleton@gme-law.com

Attorneys for Plaintiff