

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MONIQUE SALERNO and KRISTA  
MENDOZA, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

-against-

KIRK'S NATURAL LLC D/B/A SOUTH  
OF FRANCE,

Defendant.

Case No. 1:21-cv-04987-BMC

**SETTLEMENT AGREEMENT**

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits ("Settlement Agreement"), is entered into between Plaintiffs Monique Salerno ("Salerno") and Krista Mendoza ("Mendoza") (collectively, the "Plaintiffs"), on behalf of themselves and on behalf of those similarly situated, hereinafter the Settlement Class Members, and Defendant Kirk's Natural LLC d/b/a South of France ("Kirk's" or the "Defendant"). Plaintiffs and Kirk's are collectively referred to as "the Parties."

**I. RECITALS**

1.1 WHEREAS, on September 3, 2021, Plaintiff Salerno filed a putative class action complaint in the United States District Court for the Eastern District of New York, *Salerno v. Kirk's Natural LLC*, Case No. 21-cv-4987 (the "Salerno Complaint"), against Kirk's on behalf of herself and all others similarly situated. In her Complaint, Plaintiff Salerno alleged claims for: (1) violations of the New York General Business Law ("GBL") §§ 349 & 350; and (2) unjust enrichment, based on: (a) the name of Kirk's "South of France" product line itself; (b) French translation of all text on the label; and (c) an image of the southern French coastline in the background, with notations of iconic cities such as Marseille, Cannes, and Nice on the front label of the products.

1.2 WHEREAS, on November 20, 2021, Kirk's filed an answer to the Salerno Complaint, denying liability, and asserting defenses to both liability and the suitability of Salerno's Complaint for class certification.

1.3 WHEREAS, on February 22, 2022, Plaintiff Mendoza sent a pre-suit demand letter and draft complaint to Kirk's ("Mendoza Complaint") in which she alleged the same labeling statements that were the subject of the Salerno Complaint violated California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, and threatened to file a lawsuit in California on behalf of a class of similarly situated California consumers.

1.4 WHEREAS, the Parties strongly disagree on the merits and viability of the claims set forth in the Salerno and Mendoza Complaints.

1.5 WHEREAS, the Parties have engaged in extensive interrogatory and document discovery directed at both liability and class certification in the Action since December 2021.

1.6 WHEREAS, Plaintiff Salerno has not filed a motion for class certification in the Action, nor has the Mendoza Complaint been filed in any court.

1.7 WHEREAS, Kirk's denies all of the allegations made by Plaintiffs, and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against it by Plaintiffs either on an individual basis, or on behalf of a putative class. Kirk's also denies that the claims asserted in the Salerno Complaint or Mendoza Complaint meet the requirements for certification as a class action, other than for purposes of settlement. Kirk's further denies that the evidence supports a finding of liability or monetary or equitable relief to Plaintiffs, any additional putative class representative, or any member of the Settlement Class (as defined below), with respect to any of the Labeling Claims (as defined below) or other allegations made by Plaintiffs.

1.8 WHEREAS, Plaintiffs believe all claims are viable and subject to class certification.

1.9 WHEREAS, the Parties have engaged in extensive arm's length, good-faith negotiations in an effort to reach a resolution of the Labeling Claims (as defined below). Such negotiations culminated in an all-day mediation with the Hon. Wayne Andersen (Ret.) of JAMS on May 17, 2022.

1.10 WHEREAS, the Parties, and their respective counsel, taking into account the risks, uncertainties, delay, and expense involved in pursuing the Labeling Claims, as well as other relevant considerations, have concluded that it is in the best interests of Plaintiffs and Kirk's to compromise fully and finally settle the Labeling Claims in the manner and upon the terms and conditions set forth in this Agreement.

1.11 WHEREAS, the attorneys representing Plaintiffs (hereinafter referred to as "Class Counsel") are experienced in litigating class action claims like the Labeling Claims asserted by Plaintiffs.

1.12 WHEREAS, Class Counsel has analyzed and evaluated the merits of all Parties' contentions and this settlement as it affects all Parties and the Settlement Class Members (as defined below). Among the risks and uncertainties of the Action are the possibility that Plaintiffs will be unable to prove liability or damages (individually or on a class wide basis) at trial on a class wide or individual basis. Plaintiffs and Class Counsel, after taking into account the foregoing, along with the risks, uncertainties and costs of further prosecution of the Action, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement and the prompt provision of meaningful benefits to the Settlement Class are in the best interests of the Settlement Class Members.

1.13 WHEREAS, Kirk's, while continuing to deny all allegations of, and disclaiming any liability with respect to any and all Labeling Claims, has concluded that it is in its best interests to resolve the Labeling Claims on the terms stated in this Agreement, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation.

1.14 WHEREAS, the undersigned Parties agree, subject to approval by the Court, that the Labeling Claims asserted by Plaintiffs shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement. The Parties intend that the Court conditionally certify a class for settlement and that this Agreement will encompass and end all pending, threatened, or possible litigation or claims of Plaintiffs against Kirk's based on the subject matter of the Labeling Claims (as defined below).

1.15 WHEREAS, for purposes of settlement only, Plaintiff Salerno will seek leave of Court to amend her Complaint to add Plaintiff Mendoza as a class representative, and to assert claims under Kentucky law—Kirk's state of organization and primary place of business—on behalf of a nationwide class of consumers, with Plaintiffs as class representatives ("Amended Complaint for Settlement").

1.16 WHEREAS, Plaintiffs and Kirk's specifically agree that Kirk's execution of this Agreement, and consent to the filing of the Amended Complaint for Settlement, is not, and shall not be construed as, an admission by Kirk's, or deemed to be evidence: (1) of the validity of any of the claims made by Plaintiffs or of any liability to Plaintiffs, as alleged in the Salerno Complaint, Mendoza Complaint, or Amended Complaint for Settlement; (2) that Kirk's violated any state of federal law in any respect; or (3) that class certification of the Labeling Claims is appropriate under Fed. R. Civ. P. 23 or any analogous state law. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.17 WHEREAS, Kirk's agrees to personal jurisdiction of the Court for purposes of Plaintiff Mendoza and the Nationwide Class alleged in the Amended Complaint solely for purposes of this settlement. If the Agreement fails to receive Court approval or the Effective Date does not occur, then Kirk's retains the right to challenge personal jurisdiction of the Court over these claims.



NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motions practice, or (b) any admission or concession of the merit of the Labeling Claims or of liability or wrongdoing or the lack of merit of any defense whatsoever by Kirk's, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class and Kirk's, that this Action and all Claims of the Settlement Class be settled, compromised, and finally adjudged, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

## **II. DEFINITIONS**

Capitalized terms in this Agreement shall be defined as follows:

2.1 "Action" means the lawsuit pending in the United States District Court for the Eastern District of New York, captioned *Salerno v. Kirk's Natural LLC*, Case No. 1:21-cv-04987-BMC (E.D.N.Y.).

2.2 "Agreement" or "Settlement Agreement" means this Settlement Agreement, including all exhibits hereto.

2.3 "Allegations" means the allegations as asserted in the Amended Complaint for Settlement (attached hereto as Exhibit E).

2.4 "Attorneys' Fees and Costs" means such funds as may be awarded by the Court to Plaintiffs' Counsel for their work, efforts, and expenditures in connection with the Action and settlement, including fees, costs, and expenses of experts, consultants, or other individuals retained by, or who assisted Plaintiffs' Counsel in connection with the Action and settlement, as described more particularly in Section V of this Agreement.

2.5 "Claim" means a claim for Settlement Benefits submitted under Section III of this Agreement.

2.6 “Claim Administrator” means, subject to Court approval, Angeion Group, unless another third-party administrator is later agreed to by the Parties in writing and approved by the Court.

2.7 “Claim Filing Deadline” means ninety (90) days after the hearing date on Final Approval.

2.8 “Claim Form” means a form in substantially the same form as Exhibit B hereto to be used by Class Member to make a Claim under the Settlement.

2.9 “Class Notice” means the notice to the Class to be disseminated by the Claim Administrator as set forth in the Notice Plan described in the Declaration of Steve Weisbrot re: Angeion Group, LLC Qualifications and Implementation of the Notice Plan filed on August 10, 2022 and as approved in accordance with the Court’s Preliminary Approval.

2.10 “Class Period” means the period of time from September 3, 2015 through Preliminary Approval.

2.11 “Class Representatives” means Plaintiffs Monique Salerno and Krista Mendoza collectively.

2.12 “Court” means the United States District Court, Eastern District of New York.

2.13 “Defendant” means Kirk’s Natural LLC d/b/a South of France.

2.14 “Effective Date” means the date on which the Final Approval is final and no longer subject to any further appeal as of right, or by discretionary review.

2.15 “Final Approval” means the order and judgment entered by the Court approving this Settlement Agreement and, certifying a class for settlement purposes.

2.16 “Household” means any number of natural persons who currently or during the class period occupied the same dwelling unit.

2.17 “Labeling Claims” means all outstanding and putative claims, including without limitation the labeling or other claims asserted in the Amended Complaint for Settlement, arising out of or relating to the Product Labeling (as defined in Section 2.29) that were, or could have been, asserted by Plaintiffs in the Action.

2.18 “Long Form Notice” means notice to Settlement Class Members in substantially the same form as Exhibit C1.

2.19 “Notice Date” means the day on which the Claim Administrator initiates the Online Notice.

2.20 “Notice Plan” means the Parties and Claim Administrator’s plan to provide the Settlement Class with notice of Settlement.

2.21 “Online Notice” means notice to Settlement Class Members in substantially the same form as Exhibit C2.

2.22 “Opt-Out and Objection Deadline” means twenty-one (21) days prior to the initially scheduled hearing date on Final Approval.

2.23 “Parties” means Plaintiffs Monique Salerno, Krista Mendoza and Defendant Kirk’s Natural LLC, collectively.

2.24 “Party” means any one of Plaintiffs or Defendant.

2.25 “Person(s)” means any natural person.

2.26 “Plaintiffs,” “Representative Plaintiffs” or “Class Representatives” means Monique Salerno and Krista Mendoza.

2.27 “Plaintiffs’ Counsel” or “Class Counsel” means Reese LLP.

2.28 “Preliminary Approval” means issuance of an order, granting preliminary approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Part V below; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

2.29 “Product Labeling” means (a) the name of the products themselves, i.e., “South of France”; (b) French translation of all text on the label; (c) an image of the southern French coastline in the background, with notations of iconic cities such as Marseille, Cannes, and Nice; and (d) any other iconography or language on the Products, Kirk’s’s website, or other marketing material that Plaintiffs allege would lead a reasonable consumer to believe the South of France Products were manufactured in France.

2.30 “Proof of Purchase” means a printed contemporaneous point of purchase receipt from a third-party retail source that reasonably establishes the fact and date of the purchase of the Product during the Class Period in the United States as determined by the Claim Administrator, subject to review of the Court. Such point of purchase receipt shall contain, at a minimum, the following information: (1) the identity of the retail establishment issuing the receipt; (2) the date of the purchase; (3) the price paid for the South of France Products and the number of units purchased; and (4) the form of payment used.

2.31 “Released Claims” means any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any member of the Settlement Class has or may have against the Released Parties arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in, or that could have been alleged in the Action, including but not limited to those claims asserted in the Salerano Complaint, Mendoza Complaint, and Amended Complaint for Settlement, and in connection with the conduct of the Action, that have been brought, could have been brought, or are currently pending in any forum in the United States. For sake of clarity Released Claims do not cover claims, if any, for bodily injury arising out of a Settlement Class Members’ use of the South of France Products.

2.32 “Released Parties” means Kirk’s and each and all of its respective present or former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, and each and all of its respective present or former members, officers, directors, managers, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, co-manufacturers, distributors, any trust of which Kirk’s is a settlor, trustee, or beneficiary, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

2.33 “Releasing Parties” means Plaintiffs Monique Salerno and Krista Mendoza, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and

all their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents, and assigns, and all those who claim through them or who assert or could assert claims on their behalf.

2.34 “Service Award” means any award sought by application to and approval by the Court that is payable to the Class Representatives to compensate them for their efforts in bringing this Action and achieving the benefits of this settlement on behalf of the Settlement Class.

2.35 “Settlement” means the settlement embodied in this Agreement.

2.36 “Settlement Benefit(s)” means the benefits provided to Settlement Class Members as set forth in Sections 3.4 through 3.6 of this Agreement.

2.37 “Settlement Class,” “Settlement Class Members,” “Class” or “Class Members” means all consumers in the United States who purchased the Products during the Class Period. Excluded from this definition are the Released Parties, any government entities, persons who made such purchase for the purpose of resale, persons who made a valid, timely request for exclusion, and the Hon. Brian M. Cogan and Hon. Wayne Andersen (Ret.), and any members of their immediate families.

2.38 “Settlement Website” means an internet website created and maintained by the Claim Administrator, the URL of which shall be specified in the Notice Plan.

2.39 “South of France Products,” “Product” and/or “Products” means the Products listed in Exhibit A hereto.

2.40 “Termination Date” means the date that the Agreement is terminated as set forth in Section 8.3.

2.41 “Valid Claim” means a claim submitted in compliance with Section III of this Agreement and determined to be valid by the Claim Administrator, and as further described in that Section.

### III. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION

3.1 Subject to the rights and limitations set forth in this Agreement, every Settlement Class Member shall have the right to submit a Claim for Settlement Benefits. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth in this Section III. Submission of a Claim, regardless of whether it is determined to be a Valid Claim, shall confer no rights or obligations on any Party, any Settlement Class Member, or any other Person, except as expressly provided herein.

3.2 At the election of the Settlement Class Member, Claim Forms may be submitted in paper via regular U.S. mail or online at the Settlement Website. Claim Forms must be postmarked or submitted online no later than the Claim Filing Deadline. Claim Forms received or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g., jpg, tif, pdf); to preview and confirm information entered in the Claim Form prior to submitting the claim; and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image files uploaded, and the date and time the Claim Form was received.

3.3 On the Claim Form, the Settlement Class Member, or a Person with authority to sign and bind the Settlement Class Member, must provide and certify the truth and accuracy of the following information under the penalty of perjury by signing the Claim Form physically, or by e-signature, to be considered a Valid Claim:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address (unless the Settlement Class Member submits a claim form by mail, in which case an email address is optional, or the Settlement Class Member attests that he or she does not have an e-mail address);
- (c) That the Settlement Class Member made the purchase or purchases directly at a retail establishment or online;
- (d) That the claimed purchases were not made for purposes of resale, commercial use or for any other purpose;

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(e) That no refund has been received for the claimed purchases; and

(f) For each claimed purchase that is not supported by Proof of Purchase: (i) the approximate date of the purchase; (ii) the name of the retail establishment or online retailer from which the purchase was made; (iii) if the purchase was made at a retail establishment, the city and state in which the retail establishment at which the purchase was made was located; (iv) the name(s) of the Product(s) purchased; and (v) the approximate amount(s) paid for the South of France Product(s) purchased.

3.4 Subject to the total dollar value cap in Settlement Benefits as provided in Section 3.6, each Settlement Class Member who submits one (1) Valid Claim per household, as determined by the Claim Administrator, shall receive a Settlement Benefit as follows:

(a) A Settlement Class Member who submits a Valid Claim, with a Proof of Purchase, shall receive cash payment of \$2.00 for each Product purchased by the Settlement Class Member, up to a maximum of forty (40) Products for which a Proof of Purchase is submitted.

(b) A Settlement Class Member who submits a Valid Claim, without a Proof of Purchase, shall receive a cash payment of \$2.00 for each Product purchased by the Settlement Class Member, up to a maximum of ten (10) Products.

(c) Claims with Proof of Purchase and without Proof of Purchase shall be cumulative. For example, if a Class Member makes a valid claim for 15 products with Proof of Purchase, and 3 products without Proof of Purchase, the claimant may receive up to \$36.

(d) The total cash payment due to the Settlement Class Member shall be provided electronically or in a single check payable to the Settlement Class Member, as elected by the Settlement Class Member.

3.5 Each Household is limited to and may only submit a single Claim Form.

3.6 The total dollar value of Valid Claims submitted will be capped at six-hundred fifty thousand dollars and 00/100 (\$650,000.00). If the total dollar value of Valid Claims submitted exceeds \$650,000, the Settlement Benefit payable for each Valid Claim shall be reduced on a pro rata basis.



3.7 The Claim Administrator shall be solely responsible for, among other things, providing notice as set forth in the Notice Plan, processing Claim Forms, administering the Settlement Website, administering the exclusion process, administering the Settlement Benefit claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement Class), and such other duties as may be reasonably necessary to administer the terms of this Agreement. The Claim Administrator shall not approve duplicate or multiple claims for the same purchase but shall deem valid only one claimant for each purchase. The Claim Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Claim Administrator and Parties shall have the right to audit claims, and the Claim Administrator may request additional information from claimants. If any fraud is detected or reasonably suspected, the Claim Administrator can require further information from the Settlement Class Member or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court.

3.8 The determination of validity of claims shall occur within a reasonable time. The Claim Administrator shall have discretion to reasonably approve or deny all claims. Plaintiffs' Counsel and Defendant shall have the right to audit claims and to challenge the Claim Administrator's decision by motion to the Court. Plaintiffs' Counsel's or Defendant's choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly, shall not be construed as a waiver or relinquishment by such Party as to any of its audit and other rights under this Agreement. No Person shall have any claim against Plaintiffs, Defendant, Plaintiffs' Counsel, Defendant's counsel or the Claim Administrator based on any determination of a Valid Claim, distributions or awards made in accordance with this Agreement and the Exhibits hereto. Neither Plaintiffs nor Defendant, nor their respective counsel, shall have any liability whatsoever for any act or omission of the Claim Administrator.



3.9 Within thirty (30) days after the Claim Filing Deadline, the Claim Administrator shall notify by email all Settlement Class Members whose claims are denied of the reason(s) for the denial, using the email address or physical address (if any) provided by the Settlement Class Member on the Claim Form. If no email address or physical address is provided by the Settlement Class Member on the Claim Form, the Administrator shall not have an obligation to provide the Settlement Class Member any notification of the denial of the claim or the reasons for denial.

3.10 Valid Claims shall be paid electronically or by check to the Settlement Class Member and mailed to the address provided on the Claim Form, as updated in the National Change of Address Database, one hundred and fifty (150) days after Final Approval. In the event of an appeal from Final Approval that challenges only the award of Attorneys' Fees and Costs and/or the Service Award and does not challenge any other aspect of the settlement and does not raise an issue that could result in the reversal of Final Approval or modification of other terms of the settlement, then all Valid Claims shall still be paid within one hundred and fifty (150) days after Final Approval, unless otherwise ordered by the Court. If the appeal challenges any other aspect of the Settlement, Valid Claims shall be paid sixty (60) days after the Effective Date.

3.11 All settlement payments shall be subject to a ninety (90) days void period, after which the payments shall no longer be negotiable. If a settlement payment is not negotiated, the Settlement Class Member shall not be entitled to any further payment under this Agreement. If the check is returned as undeliverable, the Claim Administrator shall send an email to the claimant, if one was provided with the claim, to attempt to obtain a better address, and if obtained, shall mail the check to the new address, but shall have no other obligation to skip-trace or obtain an updated address. The return or failure to cash checks shall have no effect on a Settlement Class Member's release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.12 No deductions for taxes will be taken from any Settlement Benefit at the time of distribution. Settlement Class Members are responsible for paying all taxes due on such Settlement Benefits. All Settlement Benefit payments shall be deemed to be paid solely in the year in which

such payments are actually issued. Counsel and the Parties do not purport to provide legal advice on tax matters to each other or Settlement Class Members. To the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

3.13 Defendant shall be responsible for paying all fees and expenses incurred by the Claim Administrator in administering claims and performing the other tasks set forth in this Section III. The Claim Administrator has represented to the Parties that its fees for administering this Settlement shall not exceed two-hundred and nineteen thousand and 00/100 dollars (\$219,000), and Defendant shall have the right to withhold payment for any fees of the Claims Administrator that exceed this amount, without violating this Agreement.

#### **IV. NOTICE**

4.1 The Claim Administrator will facilitate the notice process by assisting the Parties, including by providing notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA Notice"). The Claim Administrator shall serve notice of the Agreement that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days after the entry of an order by the Court granting the motion for preliminary approval. The Claim Administrator will file a certification with the Court stating the date or dates on which the CAFA Notice was sent. Defendant will provide Class Counsel with any substantive responses received in response to any CAFA Notice.

Prior to the Notice Date, the Claim Administrator shall establish the Settlement Website, which shall contain the Long Form Notice in a downloadable PDF format; answers to frequently asked questions; a Contact Information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiffs' Counsel and Defendant's Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable and online version of the Claim Form;

a downloadable and online version of the form by which Settlement Class Members may exclude themselves from the Settlement Class; and (when they become available) the motion for final approval and Plaintiffs' application(s) for Attorneys' Fees, Costs and Service Award, and any Order on Final Approval.

4.2 The Claim Administrator will terminate the Settlement Website two-hundred and forty (240) days after either (1) the Effective Date, or (2) the date on which the settlement is terminated or otherwise not approved by a court.

4.3 Notice to the Class shall be provided on websites and/or social media platforms chosen by the Claim Administrator and accessible to desktop and mobile users, so that overall notice of the Settlement is reasonably calculated to apprise the Settlement Class Members of the Settlement. Such notice shall begin no later than thirty (30) days after Preliminary Approval. No later than thirty (30) days prior to the hearing on Final Approval, the Claim Administrator shall submit a declaration to the Court under penalty of perjury explaining how the media were chosen and attesting to the number of impressions delivered.

4.4 The Claim Administrator shall establish and maintain a toll-free telephone helpline, available 24 hours per day, where callers may obtain information about the Settlement and Action.

4.5 Class Counsel and Kirk's shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section IV.

4.6 At least fourteen (14) days prior to the final approval hearing referenced in Section VI of this Agreement, Defendant and the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

4.7 Defendant shall be responsible for paying all costs of notice as set forth in this Section IV and all costs of the Claim Administrator in processing objections and exclusion requests as set forth in Sections 6.6 through 6.13, subject to the limitation set forth in Section 3.13 permitting Defendant to withhold payment for Claim Administrator fees that exceed two-hundred nineteen thousand and 00/100 (\$219,000).

**V. ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE PAYMENT**

5.1 Attorneys' Fees, Costs, and Expenses. No later than thirty (30) days prior to the initially scheduled hearing on Final Approval, Class Counsel may apply to the Court for an award from Defendant of its Attorneys' Fees and Costs in a total amount not to exceed \$385,000. Class Counsel submits to the jurisdiction of this Court for the enforcement of this provision of the Agreement and for enforcement of all other provisions of this Agreement.

5.2 Class Representative Payment. No later than thirty (30) days prior to the initially scheduled hearing on Final Approval, Plaintiffs may apply to the Court for a Service Award in an amount not to exceed \$3,000 each (for a total of \$6,000), subject to approval by the Court, as compensation for (a) the work they performed to represent the class, and (b) the general release set forth in Section 7.1.

5.3 Defendant agrees not to oppose Plaintiffs' Counsel's application for Attorneys' Fees and Costs or Plaintiffs' application for Service Awards, made in accordance with the provisions of Sections 5.1 and 5.2.

5.4 In no event shall Defendant be obligated to pay to Plaintiffs' Counsel an amount larger than the amounts specified in Section 5.1. In the event the Court awards attorney's fees in excess of the amount specified in Section 5.1, the terms and provisions of this Settlement Agreement will have no further force and effect with respect to the Parties, and the Parties will be restored to their respective places in the Action as of the Court's June 20, 2022 order staying the case deadlines.

5.5 Any payment of a Service Award as set forth in Section 5.2 shall be, in addition to any amount claimed by Plaintiffs subject to Section III above, the total obligation of Defendant to pay money to Plaintiffs, in connection with the Action and this settlement. In the event the Court awards Service Award amounts in excess of the amount specified in Section 5.2, the terms and provisions of this Settlement Agreement will have no further force and effect with respect to the Parties, and the Parties will be restored to their respective places in the Action as of the Court's June 20, 2022 order staying the case deadlines.

5.6 In the event the Court approves the Settlement Agreement, but declines to award fees and costs in the amount requested by Plaintiffs' Counsel, the Settlement will nevertheless be binding on the Parties. Plaintiffs' Counsel and Plaintiffs agree that the denial, downward modification, failure to grant the request for Attorneys' Fees and Costs or a Service Award, or the reversal or modification on appeal of any such awards, shall not constitute grounds for modification or termination of the settlement.

5.7 In the event that Plaintiffs' counsel does not seek the full amount of expenses, fees or Service awards contemplated, such action will not increase the Settlement Benefit to the Settlement Class Members. Likewise, full payment of Plaintiffs' Counsel fees and expenses will not decrease the amount of the Settlement Benefit.

5.8 Defendant shall be responsible for paying its own attorneys' fees and expenses.

5.9 The Attorneys' Fees and Costs awarded to Plaintiffs' Counsel shall be paid to Plaintiffs' Counsel within sixty (60) days after the Effective Date.

5.10 Within sixty (60) days after the Effective Date, any Court-approved Service Award shall be wired by Defendant to Plaintiffs' Counsel to be paid to Plaintiffs.

## **VI. CLASS SETTLEMENT PROCEDURES**

6.1 Class Certification. The Parties agree that, for settlement purposes only, this Action shall be certified as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) with Representative Plaintiffs as the Class Representatives and Plaintiffs' counsel as Class Counsel.

6.2 In the event the Settlement Agreement is terminated for any reason, the certification of the Class shall be vacated, and the Action shall proceed as if the Class had not been certified, and the parties will be restored to their respective places in the Action as of the Court's June 20, 2022 order staying the case deadlines. Kirk's conditional consent herein to certification of the Class shall not be used against Kirk's by any Party or non-party for any purpose in this Action or any other litigation, lawsuit, or proceeding of any kind whatsoever.

6.3 Settlement Approval. On or before August 10, 2022, Plaintiffs shall move for an order granting Preliminary Approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Part IV above; and setting a hearing to consider Final Approval of the settlement and any objections thereto. Defendant shall have no obligation to make separate filings in support of the motion but may do so at its election after the motion has been filed. Defendant shall appear at the hearing to confirm its agreement with the terms of the settlement as provided herein. The Parties agree to the form and substance of the Proposed Order of Preliminary Approval, attached hereto as Exhibit D.

6.4 Amended Complaint for Settlement. Solely for purposes of implementing this Agreement and effectuating the proposed Settlement, the Parties agree and stipulate that:

(a) Plaintiffs shall seek leave of Court to file the Amended Complaint for Settlement, without material changes to the version attached hereto as Exhibit E, and Kirk's shall consent to such amendment pursuant to Fed. R. Civ. P. 15(a)(2). The motion for leave to file the Amended Complaint for Settlement shall be filed concurrently with the motion for preliminary approval of the Settlement so that the Amended Complaint for Settlement may become operative upon the Court's preliminary approval of the Settlement. Obtaining the Court's approval to file the Amended Complaint for Settlement, and the filing of the Amended Complaint for Settlement, are material conditions of this Agreement.

(b) The Parties agree and stipulate that Kirk's may seek an order from the Court that the allegations in the Amended Complaint for Settlement are deemed controverted by the answer previously filed by Kirk's in response to the currently operative complaint in the Action, such that no further responsive pleading from Kirk's is required.

(c) If for any reason Final Approval of the Settlement does not occur, the Amended Complaint shall be stricken from the record and the operative complaint in the Action shall be the complaint in effect as of June 20, 2022.

6.5 Final Approval Order and Judgment. No later than thirty (30) days prior to the hearing on Final Approval, or otherwise in accordance with the court's schedule for the Final

Approval Hearing, Plaintiffs shall move for entry of an order of Final Approval, granting Final Approval of this Settlement and holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below, and ordering that the settlement relief be provided as set forth in this Agreement, ordering the releases as set forth in Part VII, below, and entering judgment in this case. Defendant shall have no obligation to make separate filings in support of the motion. Defendant shall appear at the hearing to confirm its agreement with the terms of the Settlement as provided herein.

6.6 Exclusions and Objections. The Notice shall advise prospective Settlement Class Members of their rights to forego the benefits of this Settlement and pursue an individual claim; to object to this Settlement individually or through counsel; and, if they object, to appear at the final approval hearing.

6.7 If any Settlement Class Member wishes to object to the settlement, the Settlement Class Member must submit a written objection to the Claim Administrator. The written objection may be submitted by mail, express mail, electronic transmission, or personal delivery, but to be timely, it must be *delivered to* the Claim Administrator (not just postmarked or sent) prior to the Opt-Out and Objection Deadline. Each objection must include: (i) the case name and number: *Salerno v. Kirk's Natural LLC*, Case No. 21-cv-04987-BMC; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds therefor; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement



Class Member, or his/her counsel, to any class litigations submitted in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and (x) the objector's signature, in addition to the signature of the objector's attorney (if any). Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection on grounds that the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this paragraph also shall be grounds for overruling an objection. The Parties may respond to any objection to the Settlement with appropriate arguments and evidence.

6.8 If any Settlement Class Member wishes to be excluded from (in other words, opt out of) this Settlement, the Settlement Class Member may do so by completing the exclusion form at the Settlement Website; downloading and submitting to the Claim Administrator a completed exclusion form; or submitting a valid request to exclude themselves, as described in the Notice, to the Claim Administrator. Requests to exclude themselves must be delivered (not just postmarked) by the Opt-Out and Objection Deadline or they shall not be valid. A Settlement Class Member who elects to exclude themselves from this Settlement shall not be permitted to object to this Settlement or to intervene. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Approval in this Action relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Kirk's relating to the Released Claims.

6.9 The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Member wishing to object or exclude themselves who fails to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

6.10 Immediately upon receipt of any objection, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least fourteen (14) days prior to the hearing on Final Approval, Plaintiffs' Counsel shall file all such objections



and supporting documentation with the Court along with any response to the objection made by the Parties.

6.11 At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the Persons who, pursuant to the Long Form Notice, have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiffs' Counsel shall file that list with the Court.

6.12 If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

6.13 A Settlement Class Member who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

6.14 If a Settlement Class Member submits both an objection and an exclusion request, the exclusion shall take precedence and be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

6.15 Effect if Settlement Not Approved or Agreement is Terminated. This Agreement was entered into only for purposes of settlement. In the event that Preliminary or Final Approval of this settlement and this Agreement does not occur for any reason, other than a modification of the attorney's fees that Class Counsel will seek under Section 5.1, or if Final Approval is reversed on appeal, other than a reduction of the amount of attorney's fees awarded to Class Counsel, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, and the parties will be restored to their respective places in the Action as of the Court's June 20, 2022 order staying the case deadlines. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the

Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any Person other than the Parties' counsel, and only for purposes of the Action.

## **VII. RELEASES**

7.1 Upon the Effective Date and by operation of the judgment, the Releasing Parties shall have fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims (including, without limitation, any unknown claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of this Action or the Released Claims.

7.2 No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendant expressly denies the allegations of the Salerno Complaint, Mendoza Complaint, and Amended Complaint for Settlement in the Action including all Labeling Claims. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties. The Released Parties may file the Agreement and/or the Final Approval order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata,

collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.3 This Agreement and all negotiations, correspondence and communications leading up to its execution will be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles.

## **VIII. ADDITIONAL PROVISIONS**

8.1 Best Efforts. Subject to the limitations expressed herein, the Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement and settlement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, to cooperate in addressing any objections, and to obtain Final Approval of this Agreement. The Parties and Counsel shall not encourage anyone directly or indirectly to opt out or object. If the Court requires changes to the Agreement as a prerequisite to Preliminary Approval or Final Approval, the Parties shall negotiate in good faith regarding such changes.

8.2 Changes of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

8.3 Termination Rights. Either Party may unilaterally terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

- a. The Parties fail to obtain and maintain preliminary approval of the proposed settlement;
- b. The Court refuses to certify the Settlement Class;
- c. The Court refuses to permit the Amended Complaint for Settlement to become the operative complaint in the Action;

- d. The Court fails to enter Final Approval consistent with the provisions in Section 6.5, other than with respect to the denial of any request for an award of attorney's fees contemplated under Section 5.1, or reduction in the amount of the award of attorney's fees sought under that section; or
- e. The Settlement Agreement is not upheld on appeal, including review by the United States Supreme Court, other than with respect to the denial of any request for an award of attorney's fees as contemplated under Section 5.1, or reduction in the amount of the award of attorney's fees sought under that section.

8.4 Time for Compliance. All time periods set forth herein shall be computed in calendar days unless otherwise specified. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

8.5 Governing Law. This Agreement is intended to and shall be governed by the laws of the Commonwealth of Kentucky, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

8.6 Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms as between the Parties hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Agreement. Any amendment or modification of the Agreement must be in writing signed by each of the Parties and their counsel.

8.7 Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel.

8.8 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto.

8.9 No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

8.10 No Assignment. Plaintiffs and Plaintiffs' Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

8.11 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

8.12 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this Agreement.

8.13 Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

8.14 Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement. All Parties hereto submit to the jurisdiction of the Court for these purposes.

8.15 Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

8.16 No Primary Drafter of Settlement Agreement. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by and participation of, the Parties hereto and their counsel.

8.17 Variance in Terms. In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

8.18 Authorization to Enter Settlement Agreement. The individual signing this Settlement Agreement on behalf of Kirk's represents that he/she is fully authorized by Kirk's to enter into, and to execute, this Settlement Agreement on behalf of Kirk's. Plaintiffs' Counsel represent that they are fully authorized to conduct settlement negotiations with Kirk's's counsel on behalf of Plaintiffs, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). Plaintiffs enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

8.19 Plaintiffs to be Included in Settlement Class. Plaintiffs hereby agree not to request to exclude themselves from the Settlement Class and any such request shall be of no force or effect.

8.20 Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

Michael R. Reese, Esq.  
REESE LLP  
100 West 93rd Street, 16th Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272  
Email: mreese@reesellp.com

If to Defendant or Defendant's Counsel:

Stacy A. Cole, Esq.  
GRAYDON HEAD & RITCHEY LLP  
2400 Chamber Center Dr., Suite 300  
Ft. Mitchell, Kentucky 41017  
Telephone: (513) 629-2838  
Facsimile: (513) 333-4358  
Email: scole@graydon.law

## EXECUTION COPY

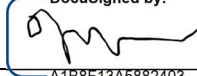
8.21 Confidentiality and Non-Disparagement. The Parties and their counsel agree that they shall not cause any aspect of the Litigation or the terms of this Settlement not available in the public record to be reported to the public, the media, news reporting services. Any statement to the public, the media, or news reporting services shall be limited to what is available in the public record. Neither Plaintiffs nor Defendant shall disparage the other

8.22 Protective Orders. All orders and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provision to certify the destruction of “Confidential” documents.

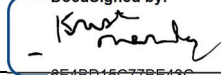
IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the last date it is executed by all of the undersigned.

**APPROVED AND AGREED:**

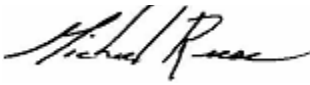
DATED: August 3, 2022

DocuSigned by:  
  
A1B8F13A5882403...  
Monique Salerno  
*Plaintiff and Class Representative*

DATED: August 3, 2022

DocuSigned by:  
  
6E4BD15C77BE43C...  
Krista Mendoza  
*Plaintiff and Class Representative*

DATED: August 3, 2022


**REESE LLP**  
  
Michael R. Reese  
*Class Counsel and Plaintiffs' Counsel*

EXECUTION COPY

**APPROVED AND AGREED (CONTINUED):**


DATED: 8.9.2022

**DEFENDANT KIRK'S NATURALS LLC**

By:   
Name: KATHERINE O. JAENIGO  
Its: CO. CEO

DATED: 8.9.22

**GRAYDON HEAD & RITCHEY LLP**

  
\_\_\_\_\_  
Stacy A. Cole  
*Defendant's Counsel*



**LIST OF EXHIBITS**

Exhibit A: Product List

Exhibit B: Claim Form

Exhibit C1: Long Form Notice

Exhibit C2: Online Notice

Exhibit D: Proposed Order of Preliminary Approval

Exhibit E: Amended Complaint

**EXHIBIT A**

| <b>SOUTH OF FRANCE PRODUCT LIST</b> |
|-------------------------------------|
|                                     |
| <b>6 OZ BAR SOAP</b>                |
| Blooming Jasmine                    |
| Almond Gourmande                    |
| Climbing Wild Rose                  |
| Côte d'Azur                         |
| Green Tea                           |
| Herbes de Provence                  |
| Lavender Fields                     |
| Lemon Verbena                       |
| Lush Gardenia                       |
| Mediterranean Fig                   |
| Orange Blossom Honey                |
| Shea Butter                         |
| Cherry Blossom                      |
| Glazed Apricots                     |
| Violet Bouquet                      |
| <b>8 OZ HAND WASH</b>               |
| Green Tea                           |
| Climbing Wild Rose                  |
| Côte d'Azur                         |
| Lavender Fields                     |
| Lemon Verbena                       |
| Mediterranean Fig                   |
| Orange Blossom Honey                |
| Shea Butter                         |
| Violet Bouquet                      |
| <b>8.0 OZ FOAMING HAND WASH</b>     |
| Almond Gourmande                    |
| Blooming Jasmine                    |
| Lemon Verbena                       |
| Orange Blossom Honey                |
| Cherry Blossom                      |
| Glazed Apricots                     |

|                                             |
|---------------------------------------------|
| <b>1.5 OZ TRIAL AND TRAVEL SIZE BAR</b>     |
| Almond Gourmande                            |
| Blooming Jasmine                            |
| Climbing Wild Rose                          |
| Cote d'Azur                                 |
| Green Tea                                   |
| Herbes de Provence                          |
| Lavender Fields                             |
| Lemon Verbena                               |
| Lush Gardenia                               |
| Mediterranean Fig                           |
| Orange Blossom Honey                        |
| Shea Butter                                 |
| Cherry Blossom                              |
| Glazed Apricots                             |
| Violet Bouquet                              |
| <b>8 oz HYDRATING HAND &amp; BODY CREAM</b> |
| Climbing Wild Rose                          |
| Violet Bouquet                              |

## **EXHIBIT B**

**Salerno et al. v. Kirk's Natural LLC**  
**Claim Form Instructions**

**INSTRUCTIONS FOR COMPLETING THE CLAIM FORM**

If you believe you are an eligible Settlement Class Member, and you wish to apply for a Settlement benefit, you must complete and submit a Claim Form. Please read the full Class Notice available at the Settlement Website, **[INSERT WEBSITE]**, carefully before completing a Claim Form. You may submit your Claim Form online at the Settlement Website or by mailing it to the Settlement Administrator:

**ONLINE:** Visit the Settlement Website, **[INSERT WEBSITE]**, and submit your Claim Form online.

**MAIL:** **[INSERT ADDRESS]**

If you submit your Claim Form online, you must do so on or before **[90 days after Final Approval]**, 2023. If you are mailing your Claim Form, you must do so via first-class United States Mail, and it must be postmarked no later than **[90 days after Final Approval]**, 2023.

If you have questions about this Claim Form, please visit the Settlement Website, **[INSERT WEBSITE]**, or contact the Settlement Administrator via email at **[insert email address]** or call toll-free at **[phone number]**.

**CLAIM FORM REMINDER CHECKLIST**

**Before submitting this Claim Form, please make sure you:**

1. Complete all fields in Section A (Name and Contact Information) of this Claim Form.
2. Include the number of purchased Products in Section B of this Claim Form.
3. YOU MUST sign the Attestation under penalty of perjury in Section C of this Claim Form.
4. Include copies of your Proof of Purchase documentation that you are submitting in support of your Claim Form. Do not send original documents.

**Please keep a copy of your Claim Form for your records.**

**Your claim must  
be postmarked by:  
XXXX XX, 2023**

**Salerno et al. v. Kirk's Natural LLC  
Claim Form**

**Claim Form**

**SECTION A: NAME AND CONTACT INFORMATION**

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

|                       |                       |                      |
|-----------------------|-----------------------|----------------------|
| <input type="text"/>  | <input type="text"/>  |                      |
| <b>First Name</b>     | <b>Last Name</b>      |                      |
| <input type="text"/>  |                       |                      |
| <b>Street Address</b> |                       |                      |
| <input type="text"/>  | <input type="text"/>  | <input type="text"/> |
| <b>City</b>           | <b>State</b>          | <b>Zip Code</b>      |
| <input type="text"/>  | <input type="text"/>  |                      |
| <b>Phone Number</b>   | <b>E-Mail Address</b> |                      |

**SECTION B: PRODUCTS PURCHASE VERIFICATION**

Provide the following information regarding purchases you made during the Class Period of Products, and indicate the purchases for which you are attaching Proof of Purchase documentation. Proof of Purchase means a receipt establishing that you purchased a specific quantity of Products at a specific price, on a specific date, from a specific location, during the Class Period. You may submit claims for up to 10 products without Proof of Purchase, and up to 40 products with Proof of Purchase. Your claims will be cumulative meaning, any claims for products with Proof of Purchase will not be counted towards your limit on claims without Proof of Purchase

**Limit 1 Claim Form per Household.**

| <b>Number of Product Without Proof of Purchase</b> | <b>Number of Products With Proof of Purchase</b> |
|----------------------------------------------------|--------------------------------------------------|
| <input type="text"/>                               | <input type="text"/>                             |

**I elect to receive my settlement in (select 1) via:**

**Check to the address listed in SECTION A**

**Electronic Payment**

**Routing Number**

**Account Number**

**SECTION C: ATTESTATION UNDER PENALTY OF PERJURY**

---

I declare, under penalty of perjury, that the information in the Claim Form is true and correct to the best of my knowledge, and that I purchased the Product(s) claimed above from retail locations in the United States during the Class Period. The purchases were not made for resale or commercial use. I understand that my Claim Form may be subject to audit, verification, and Court review. Neither I nor anyone from my Household have previously submitted a Claim Form in this Settlement.

Signature

Date

Print Name

**Please note that you will not be eligible to receive any Settlement benefits unless you sign above.**

**EXHIBIT C1**



## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

**If you purchased any South of France Products  
Between September 3, 2015 and [DATE OF PRELIMINARY APPROVAL  
ORDER]**

**You May be Eligible to Receive a Payment from a Class Action Settlement.**

*A Federal Court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed nationwide settlement (“Settlement”) has been reached in a class action lawsuit involving Defendant Kirk’s Natural, LLC, (“Defendant” or “Kirk’s”), the distributor of products sold in stores under the “South of France” brand in the United States (“Products”). The Settlement resolves contested litigation over whether the Defendant allegedly violated state laws regarding the marketing and sale of the Products.
- You may be eligible to participate in the proposed Settlement, if it is finally approved, if you purchased any Products between September 3, 2015 and [DATE OF PRELIMINARY APPROVAL ORDER].
- The Settlement will provide payments to those who qualify. You will need to file a Claim Form to get a payment from the Settlement.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                     |                                                                                                                                                                                   |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SUBMIT A CLAIM FORM<br/>BY [INSERT DEADLINE]</b> | This is the only way to get a payment under the Settlement.                                                                                                                       |
| <b>EXCLUDE YOURSELF<br/>BY [INSERT DEADLINE]</b>    | Get no payment from the Settlement. This is the only option that allows you to ever be a part of any other lawsuit against the Defendant about the legal claims in this case.     |
| <b>OBJECT BY<br/>[INSERT DEADLINE]</b>              | Write to the Court about why you think the Settlement is unfair, inadequate, or unreasonable.                                                                                     |
| <b>GO TO A HEARING<br/>[INSERT HEARING DATE]</b>    | Ask to speak in Court about the fairness of the Settlement.                                                                                                                       |
| <b>DO NOTHING</b>                                   | You will not receive a payment, but will be bound by the terms of the Settlement, which includes releasing your right to sue Defendant on the claims released by the Settlement.. |

- These rights and options—and the deadlines to exercise them—are explained in this notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement Website, [INSERT URL], regularly for updates and further details.
- 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 any appeals are resolved.

## WHAT THIS NOTICE CONTAINS:

### **BASIC INFORMATION**

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

### **WHO IS IN THE SETTLEMENT?**

5. How do I know if I am in the Settlement?
6. Which Products are included in the Settlement?
7. What if I am still not sure if I am included in the Settlement?

### **SETTLEMENT BENEFITS**

8. What does the Settlement provide?
9. What can I get from the Settlement?
10. What am I giving up to stay in the Class?

### **HOW TO GET A PAYMENT**

11. How can I get a payment?
12. When will I get my payment?

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

13. How do I get out of the Settlement?
14. If I do not exclude myself, can I sue the Defendant for the same thing later?
15. If I exclude myself, can I still get a payment?

### **OBJECTING TO THE SETTLEMENT**

16. How can I tell the Court if I do not like the Settlement?
17. What is the difference between objecting and excluding?

### **THE LAWYERS REPRESENTING YOU**

18. Do I have a lawyer in this case?
19. How will the lawyers be paid?

### **THE COURT'S FAIRNESS HEARING**

20. When and where will the Court decide whether to approve the Settlement?
21. Do I have to come to the hearing?
22. May I speak at the hearing?

### **IF YOU DO NOTHING**

23. What happens if I do nothing at all?

### **GETTING MORE INFORMATION**

24. How do I get more information?

## BASIC INFORMATION

### 1. **Why is there a notice?**

You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The Court in charge of this case is the United States District Court for the Eastern District of New York (the “Court”), and the case is called *Salerno, et al v. Kirk’s Natural, LLC*, Case Number 1:21-cv-04987-BMC. The individuals who sued are called the Plaintiffs, and the company Plaintiffs sued, Kirk’s Natural, LLC is called the Defendant.

### 2. **What is this lawsuit about?**

The lawsuit alleges that the South of France Products are misleading because the name of the Products, French translations, images of the southern French coastline, and other statements and iconograph on the labels give consumers the mistaken belief that the Products, which are manufactured in the United States, are from France.

The Defendant denies any and all wrongdoing of any kind whatsoever, and denies any liability to Plaintiffs and to the Settlement Class.

### 3. **Why is this a class action?**

In a class action, one or more people, called “Class Representative(s),” sue on behalf of people who have similar claims. All the people who have similar claims are in a “class” and are “class members,” except for those who exclude themselves from the class. United States District Court Judge Brian M. Cogan of the United States District Court for the Eastern District of New York is the judge presiding over the lawsuit.

### 4. **Why is there a Settlement?**

The Defendant is not admitting that it did anything wrong, but both sides want to avoid the cost of further litigation. The Court has not decided in favor of the Plaintiffs or the Defendant. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected. The Settlement provides the opportunity for Settlement Class Members to receive Settlement benefits.

## WHO IS IN THE SETTLEMENT?

### 5. **How do I know if I am in the Settlement?**

The Settlement Class includes all persons who, from September 15, 2015 to [DATE OF PRELIMINARY APPROVAL ORDER], purchased one or more of the Products for personal or household use, and not for resale, in the United States. Excluded from the Settlement Class and Settlement Class Members are: (a) persons who purchased Products for the purpose of resale; (b) the directors, officers, employees, and attorneys of Defendant, its parents and subsidiaries; (c) governmental entities; (d) the Court, the Court’s immediate family, and Court staff; (e) the Honorable Wayne Andersen (Ret.) and his immediate family; and (f) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

### 6. **Which Products are included in the Settlement?**

The Products covered by this Settlement are products sold under the brand name South of France in the United States. A complete list of products is available on the Settlement Website at [INSERT URL].

### 7. **What if I am still not sure if I am included in the Settlement?**

If you are not sure whether you are a Settlement Class Member, or have any other questions about the Settlement Agreement, you should visit the Settlement Website, [INSERT URL], or call the toll-free number, [INSERT TOLL FREE NUMBER].

## SETTLEMENT BENEFITS

8. **What does the Settlement provide?**

The Settlement provides that Defendant will pay eligible Claims submitted by Settlement Class Members, up to a total of \$650,000. Settlement Class Members who timely submit valid Claim Forms are entitled to receive a cash payment from the Settlement. Defendant will pay separately the costs of Notice and Claim Administration, as well as any award of Attorney Fees or Service Award.

9. **What can I get from the Settlement?**

If you submit a valid Claim Form by the deadline, you can get a payment from the Settlement for up to two dollars (\$2.00) per product, for up to 10 products without proof of purchase, and up to 40 products with proof of purchase. Any claims with proof of purchase will not count against your total claims without proof of purchase. The actual amount recovered by each Settlement Class Member will not be determined until after the Claims Period has ended and all Claims have been calculated. If the total amount of eligible Claims exceeds \$650,000, each eligible Claim will be reduced on a *pro rata* basis.

10. **What am I giving up to stay in the Class?**

Unless you timely exclude yourself from the Settlement, you cannot sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant about the claims released in this Settlement. It also means that all of the decisions by the Court will bind you. Below is a summary of Released Claims. The full Release is described more fully in the Settlement Agreement and describes exactly the legal claims that you give up if you stay in the Settlement Class. The Settlement Agreement is available at the Settlement Website, [**INSERT URL**].

“Released Claims” means any and all claims, whether known or unknown, arising from the purchase of the South of France Products based on all outstanding and purported claims, including without limitation the labeling or other claims asserted in the Amended Complaint in the Litigation, relating to the French Representations on the labeling of the South of France Products that were, or could have been, alleged in the Litigation to be false, misleading, or non-compliant with federal or state laws or regulations during the Class Period against the Released Parties under federal, state, or any other law or regulation. For sake of clarity Released Claims do not cover claims, if any, for personal injury.

## HOW TO GET A PAYMENT

11. **How can I get a payment?**

To be eligible to receive a payment from the Settlement, you must complete and submit a timely Claim Form. You can complete and submit your Claim Form online at the Settlement Website, [**INSERT URL**]. The Claim Form can be downloaded from the Settlement Website, as well. You can request a Claim Form be sent to you by sending a written request to the Settlement Administrator by mail or by email.

**MAIL:** [**INSERT ADDRESS**]

**EMAIL:** [**INSERT EMAIL ADDRESS**]

Please read the instructions carefully, fill out the Claim Form, and mail it via first-class United States Mail, postmarked no later than [**INSERT DEADLINE DATE**] to: Settlement Administrator, [**INSERT ADDRESS**], or submit your Claim Form online at the Settlement Website, [**INSERT URL**], by [**INSERT DEADLINE DATE**].

If you do not submit a valid Claim Form by the deadline, you will not receive a payment.

12. **When will I get my payment?**

Payments will be sent to Settlement Class Members who send in valid and timely Claim Forms after the Court grants “final approval” to the Settlement and after any and all appeals are resolved. If the Court approves the Settlement

after a hearing on **[INSERT DATE]**, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from the Settlement, and you want to keep the right to sue or continue to sue the Defendant on your own about the claims released in this Settlement, then you must take steps to do so. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class.

### 13. **How do I get out of the Settlement?**

To exclude yourself (or “Opt-Out”) from the Settlement, you must complete and mail to the Settlement Administrator a written request that includes the following:

- Your name and address;
- The name of the case: *Salerno, et al v. Kirk's Natural, LLC*, Case Number 1:21-cv-04987-BMC;
- A statement that you want to be excluded from this Settlement; and
- Your signature. Your exclusion request must be personally signed.

You must mail your exclusion request via first-class United States Mail, it must be *delivered to* the Settlement Administrator (not just postmarked or sent) prior to **[INSERT DEADLINE DATE]** to:

**[INSERT ADDRESS]**

If you do not include the required information or submit your request for exclusion on time, you will remain a Settlement Class Member and will not be able to sue the Defendant about the claims in this lawsuit.

### 14. **If I do not exclude myself, can I sue the Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. If you properly exclude yourself from the Settlement Class, you will not be bound by any orders or judgments entered in the Action relating to the Settlement Agreement.

### 15. **If I exclude myself, can I still get a payment?**

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

## OBJECTING TO THE SETTLEMENT

### 16. **How can I tell the Court if I do not like the Settlement?**

A Settlement Class Member may object to the proposed Settlement. A Settlement Class Member may object to the Settlement either on his or her own without an attorney, or through an attorney hired at his or her expense. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), it must be *delivered to* the Settlement Administrator (not just postmarked or sent) prior to **[INSERT DEADLINE DATE]**. Any objection shall contain a caption or title that identifies it as “Objection to Class Settlement in *Salerno, et al v. Kirk's Natural, LLC*, Case Number 1:21-cv-04987-BMC.”

**The written objection must include:** (i) the case name and number: *Salerno v. Kirk's Natural LLC*, Case No. 21-cv-04987-BMC; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed

statement of any objection asserted, including the grounds therefor; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class Litigations submitted in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and (x) the objector's signature, in addition to the signature of the objector's attorney (if any).

Your objection, along with any supporting material you wish to submit, must be *delivered to* the Settlement Administrator (not just postmarked or sent) prior to **[INSERT DEADLINE DATE]**.

**17. 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 to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

### **THE LAWYERS REPRESENTING YOU**

**18. Do I have a lawyer in this case?**

Yes. The Court has appointed Reese LLP as "Class Counsel," meaning that they were appointed to represent all Settlement Class Members.

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.

**19. How will the lawyers be paid?**

Class Counsel intends to file a motion on or before **[INSERT DATE]** seeking \$385,000.00 for attorney fees and costs. The fees and expenses awarded by the Court will be paid in addition to the amounts paid to claimants under the terms of the Settlement. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that the Court award \$6,000 to the named Plaintiffs (\$3,000.00 for each named Plaintiff) who helped Class Counsel on behalf of the whole Class.

### **THE COURT'S FAIRNESS HEARING**

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on **[INSERT DATE]** at the United States District Court for the Eastern District of New York, before the Honorable Brian M. Cogan, United States District Judge, at 225 Cadman Plaza East, Brooklyn, NY 11201.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**21. Do I have to come to the hearing?**

No. Class Counsel will answer any questions that the Court may have, but you may 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 to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**22. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” Please refer to question 16 above for more information.

Your Notice of Intent to Appear must be filed with the Court and served on Class Counsel and Defendant’s Counsel no later than **[INSERT DEADLINE DATE]**.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the legal issues in this case, ever again.

**GETTING MORE INFORMATION**

**24. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Class Action Settlement Agreement. You can review a complete copy the Settlement Agreement and other information at the Settlement Website, **[INSERT URL]**. If you have additional questions or want to request a Claim Form, you can visit the Settlement Website, **[INSERT URL]**. You can also write to the Settlement Administrator by mail or email, or call toll-free.

**MAIL:** **[INSERT ADDRESS]**

**EMAIL:** **[INSERT EMAIL ADDRESS]**

**PHONE:** **[INSERT TOLL FREE NUMBER]**

Updates will be posted at the Settlement Website, **[INSERT URL]**, as information about the Settlement process becomes available.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE CONCERNING THIS CASE.**

**EXHIBIT C2**



## **If you purchased any South of France Products, you may be eligible to receive a payment from a class action Settlement.**

If you purchased any of Defendant Kirk's Natural LLC ("Defendant" or "Kirk's") "South of France" products sold in stores in the United States ("Products"), you may be eligible to receive a payment from a class action settlement ("Settlement"). The lawsuit against Defendant alleges the South of France Products are misleading because the name of the Products, French translations, images of the southern French coastline, and other statements and iconograph on the labels give consumers the mistaken belief that the Products, which are manufactured in the United States, are from France. Defendant denies any and all wrongdoing of any kind whatsoever and denies any liability to Plaintiffs and to the Settlement Class. The Court has not decided who is right. Both sides have agreed to settle the dispute and provide an opportunity for payments and other benefits to Settlement Class Members. The case is called *Salerno, et al v. Kirk's Natural, LLC*, Case Number 1:21-cv-04987-BMC.

### **WHO IS INCLUDED IN THE SETTLEMENT?**

All persons who, from September 15, 2015 to [DATE OF PRELIMINARY APPROVAL ORDER], purchased one or more of the Products for personal or household use, and not for resale, in the United States. The Products covered by this Settlement are products sold under the brand name South of France in the United States. A complete list of products is available on the Settlement Website at [INSERT URL].

### **WHAT DOES THE SETTLEMENT PROVIDE?**

The Settlement provides that Defendant will pay eligible Claims submitted by Settlement Class Members up to a total of \$650,000 for all eligible Claims. Settlement Class Members who timely submit valid Claim Forms are entitled to receive a cash payment from the Settlement. Defendant will pay separately the costs of Notice and Claim Administration, as well as Attorney Fees and Service Award. Settlement Class Members who timely submit a valid Claim Form by the deadline, you can get a payment from the Settlement for up to two dollars (\$2.00) per product, for up to 10 products without proof of purchase, and up to 40 products with proof of purchase. The actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all claims have been calculated. If the total amount of eligible Claims exceeds \$650,000, each eligible Claim will be reduced on a *pro rata* basis.

### **WHAT ARE MY RIGHTS?**

**Submit a Claim Form.** If you wish to participate in the Settlement and be eligible to receive benefits under the Settlement, you must fill out and submit a Claim Form by [INSERT DEADLINE DATE]. You can obtain a Claim Form by (1) Visiting the Settlement Website, [INSERT URL], where you can file your claim online or print a Claim Form to submit by mail; (2) Mailing a written request for a Claim Form to the Settlement Administrator: [INSERT ADDRESS]; or (3) E-mailing the Settlement Administrator at [INSERT EMAIL ADDRESS]. If you do not timely submit a valid Claim Form and do not exclude yourself from the Settlement, you will be bound by the Settlement but will not receive any benefits of the Settlement.

**Object to the Settlement.** If you do not agree with the Settlement or any part of it, you may submit a written objection to the Settlement Administrator. The deadline for submitting an objection is [INSERT DEADLINE DATE].

**"Opt Out" or Exclude Yourself from the Settlement.** If you do not want a payment from the Settlement, and you want to keep the right to sue or continue to sue the Defendant on your own about the claims released in this Settlement, you must exclude yourself by [INSERT DEADLINE DATE], or you give up any right to sue the Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. If you exclude yourself, you cannot get money from this Settlement. The Class Notice, available at [INSERT URL], explains how to exclude yourself or object. If you do nothing, you will be bound by the Court's decisions.

### **THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing on [INSERT DATE AND TIME] to consider whether to approve the Settlement, Class Counsel's request for Attorneys' Fees and Expenses of up to \$385,000.00, and a Service Award for the Plaintiffs of \$6,000. The Attorneys' Fees and Expenses and Service Awards awarded by the Court will be paid in addition to the amounts paid for eligible Claims. You or your own lawyer may appear and speak at the hearing at your own expense.

### **FOR MORE INFORMATION**

Call Toll-Free [INSERT TOLL FREE NUMBER] or visit [INSERT URL]

**EXHIBIT D**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MONIQUE SALERNO, *et al.*, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

-against-

KIRK'S NATURAL LLC,

Defendant.

Case No. 1:21-cv-04987-BMC

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT,  
APPROVAL OF FORM NOTICE, SCHEDULING OF FINAL APPROVAL HEARING,  
AND GRANTING LEAVE TO FILE AMENDED COMPLAINT**

Upon consideration of Plaintiffs' Monique Salerno and Krista Mendoza's ("Plaintiff") Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan, the motion hearing before this Court, and the entire record herein, the Court grants preliminary approval of the Settlement contained in the Parties' Settlement Agreement ("Settlement Agreement"), upon the terms and conditions set forth in this Order. Capitalized terms and phrases in this Order shall have the same meaning ascribed to them in the Settlement Agreement. The Court makes the following findings:

### **FINDINGS OF FACT**

1. Plaintiffs bring this Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan before the Court, with the consent of Defendant Kirk's Natural LLC ("Defendant" or "Kirk's").

2. Plaintiff Monique Salerno was granted leave to file her Amended Complaint for Settlement against Defendant, and she did so, on \_\_\_\_\_ (the "Action") in the United States District Court for the Eastern District of New York, joining Plaintiff Krista Mendoza as a plaintiff, alleging that Kirk's South of France Products are misleading because the name of the Products, French translations, images of the southern French coastline, and other statements and iconograph on the labels give consumers the mistaken belief that the Products, which are manufactured in the United States, are from France.

3. The Parties conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the potential claims to determine the strength of both defenses and liability sought in the Action.

4. The Parties engaged in discovery, where Defendant provided Plaintiffs with extensive information and documents, including sales, pricing, profit-and-loss information.

5. In addition, Class Counsel evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the proposed Settlement.

6. The Parties entered into a Settlement Agreement pursuant to which they agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice.

7. The Court has reviewed the Settlement Agreement, including the exhibits attached thereto and all prior proceedings herein, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of the Court.

2. **Granting Leave to File the Amended Complaint.** The Court GRANTS Plaintiffs leave to file the proposed Amended Complaint for settlement purposes attached as Exhibit E to the Settlement Agreement. Kirk's may seek an order from the Court that the allegations in the Amended Complaint are deemed controverted by the answer previously filed by Kirk's in response to the currently operative complaint in the Action within 14 days in lieu of filing an answer to the Amended Complaint.

3. **Preliminary Class Certification for Settlement Purposes Only.** Having made the findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), in accordance with the terms of the Settlement Agreement (the "Settlement Class"). The Court preliminarily finds, based on the terms of the Settlement described in the Settlement Agreement and for settlement

purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are issues of law and fact that are typical and common to the Class, and that those issues predominate over individual questions; (c) a class action on behalf of the certified Class is superior to other available means of adjudicating this dispute; and (d) as set forth below, Plaintiffs and Class Counsel are adequate representatives of the Class. If the Court does not grant final approval of the Settlement set forth in the Settlement Agreement, or if the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue. Defendant retains all rights to assert that the Action may not be certified as a class action, other than for purposes of this Settlement.

4. **Class Definition.** The Settlement Class is defined as all persons who, from September 3, 2015 to [INSERT DATE OF PRELIMINARY APPROVAL] 2022, purchased one or more South of France products for personal or household use and not for resale in the United States. Excluded from the Settlement Class and Settlement Class Members are: (a) the directors, officers, employees, and attorneys of Defendant, its parents and subsidiaries; (b) governmental entities; (c) the Court, the Court's immediate family, and Court staff; (d) the Honorable Wayne Andersen (Ret.) and his immediate family; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

5. **Class Representatives and Class Counsel.** The Court appoints Michael R. Reese and Charles D. Moore from Reese LLP as counsel for the Settlement Class. Monique Salerno and Krista Mendoza are hereby appointed as Class Representatives.

6. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement as being within the range of possible approval as fair, reasonable, and adequate, within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below. Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the Class.

7. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367 and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

8. **Fairness Hearing.** A Fairness Hearing shall be held on [INSERT DATE HERE], 2022 at [REDACTED] : [REDACTED] .m. at the United States District Court for the Eastern District Court of New York in Courtroom [REDACTED] on the [REDACTED] floor, to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Rule 23(a) and (b)(3); (b) whether the Settlement of the Action should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) whether Settlement Class Members and related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Action; (f) whether the application of Class Counsel for an award of Attorneys' Fees and Expenses should be approved pursuant to Rule 23(h); and (g) whether the application of the named Plaintiffs for an Service Award should be approved. The submissions of

the Parties in support of the Settlement, including Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and Service Awards, shall be filed with the Court no later than thirty (30) days prior to the Fairness Hearing and may be supplemented up to fourteen (14) days prior to the Fairness Hearing.

9. **Administration and Class Notice.**

a. The Court accepts the recommendations of Class Counsel and Defendant, and hereby appoints Angeion Group to serve as Settlement Administrator in accordance with the terms of the Settlement Agreement, and to help implement the terms of the Settlement Agreement.

b. The proposed Class Notice, Summary Settlement Notice, the notice methodology described in the Settlement Agreement and in the Declaration of Steven Weisbrot, Esq. of Angeion Group, LLC (the "Weisbrot Declaration") are hereby approved.

c. No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice Plan to commence as described in the Weisbrot Declaration. Specifically, the Settlement Administrator shall establish a website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.

d. Not later than thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members.

e. The Settlement Administrator shall disseminate any remaining notice, as stated in the Settlement Agreement and the Weisbrot Declaration.



f. Not later than fourteen (14) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) attests to the proper implementation of the Notice Plan.

g. No later than ten (10) calendar days after the Settlement Agreement is filed with the Court, the Settlement Administrator, with assistance from the Parties as needed, shall mail or cause the items specified in 28 U.S.C. § 1715(b) to be mailed to each State and Federal official, as specified in 28 U.S.C. § 1715(a).

10. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

11. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Class may elect to opt out of the Settlement under this Agreement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued

during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send to the Class Action Settlement Administrator by U.S. Mail a personally signed letter including their name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. Any request for exclusion must be received on or before the Opt-Out Date specified in this Preliminary Approval Order. Any potential Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant or other Released Persons (as defined in the Settlement Agreement) relating to the claims and transactions released in this Action.

12. **Objections and Appearances.** Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and filed with the Court, with a copy delivered to Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice, no later than the Objection Date. The written objection must include: (i) the case name and number: *Salerno v. Kirk's Natural LLC*, Case No. 21-cv-04987-BMC; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds therefor; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final

approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class Litigations submitted in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and (x) the objector's signature, in addition to the signature of the objector's attorney (if any). Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection on grounds that the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this paragraph also shall be grounds for overruling an objection.

Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses and Service Awards. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice, and to Defendant's Counsel, and file the notice of appearance with the Court, no later than fifteen (15) days before the Final Approval Hearing, or as the Court may otherwise direct.

Any Settlement Class Member who fails to comply with Section VI.6.6 of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and

judgments in the Action, including, but not limited to, the Released Claims and the releases in Section VII of the Agreement.

Class Counsel shall have the right, and Defendant shall reserve its right, to respond to any objection no later than fourteen (14) days before the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Settlement Class Member or to the individually hired attorney for the objecting Settlement Class Member, to Class Counsel, and to Defendant's Counsel.

13. **Disclosures.** The Settlement Administrator, Defendant's Counsel, and Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

14. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court or does not become final, pursuant to the terms of the Settlement Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

15. **Nationwide Stay and Preliminary Injunction.** Effective immediately, any actions or proceedings pending in any state or federal court in the United States involving the labeling or marketing of Defendant's Products, except any matters necessary to implement, advance, or further approval of the Settlement Agreement or settlement process, are stayed pending the final Fairness Hearing and the issuance of a final order and judgment in this Action.

In addition, pending the final Fairness Hearing and the issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction in the United States (defined to including both states and territories of the United States) arising out of or relating to the Merchandise or the facts and circumstances at issue in the Action.

Also, pending the final Fairness Hearing and issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, or maintaining any other lawsuit on behalf of members of the Settlement Class, if such other action is based on or relates to Defendant's Products.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action. The Court finds no bond is necessary for issuance of this injunction.

16. **Effect of Settlement Agreement and Order.** Plaintiffs' Counsel, on behalf of the Settlement Class, and Defendant entered into the Agreement solely for the purpose of

compromising and settling disputed claims. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and should not in any event be (a) construed, deemed, offered, or received as evidence of a presumption, concession, or admission on the part of Plaintiffs, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any fault, wrongdoing, breach, or liability, or that the claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

17. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class. If the Settlement receives final approval, this Court shall retain jurisdiction over any action to enforce the release provisions in the Settlement Agreement.

18. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

- a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no later than [30 days before the Fairness Hearing] \_\_\_\_\_.

- b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Expenses, and Motion for Service Award by no later than [30 days before the Fairness Hearing] \_\_\_\_\_.
- c. Settlement Class Members must file any objections to the Settlement and the Motion for Attorneys' Fees, Costs, and Expenses, and the Motion for Service Award by no later than [21 days before the Fairness Hearing] \_\_\_\_\_.
- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than [21 days before the Fairness Hearing] \_\_\_\_\_.
- e. Settlement Class Members who intend to appear at the Final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before the Fairness Hearing] \_\_\_\_\_.
- f. The Settlement Administrator shall file a declaration or affidavit with the Court that confirms the implementation of the Notice Plan pursuant to the Preliminary Approval Order [14 days before the Fairness Hearing] \_\_\_\_\_.
- g. Class Counsel and Defendant's Counsel shall have the right to respond to any objection no later than [14 days before the Fairness Hearing] \_\_\_\_\_.

h. The Fairness Hearing will take place on \_\_\_\_\_, 2022 at \_\_:\_\_\_.m.  
at the United States District Court for the Eastern District Court of New  
York in the Courtroom \_\_\_ on the \_\_\_ floor.

**SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2022:**

**HONORABLE BRIAN M. COGAN**  
**United States District Court Judge**



**EXHIBIT E**

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*Counsel for Plaintiffs and the Proposed Class*

United States District Court

Eastern District of New York

Monique Salerno and Krista Mendoza  
individually and on behalf of all others  
similarly situated

Plaintiffs

- against -

Kirk's Natural LLC

Defendant

Case No. 21-cv-4987-BMC

[Proposed] Amended Class Action  
Complaint

Jury Trial Demanded

Plaintiffs Monique Salerno and Krista Mendoza (“Plaintiffs”), by their undersigned attorneys allege upon information and belief, except for allegations pertaining to Plaintiffs, which are based on personal knowledge:

### **INTRODUCTION**

1. This is a proposed class action brought on behalf of nationwide consumers of Defendant Kirk’s Natural LLC (“Defendant”) beauty care products (collectively the “Products” or individually the “Product”)<sup>1</sup> who have purchased the Products with the misrepresentation on the front of the packaging that the Products are from France.

2. The Products come in four categories, including bar soap, hand wash, foaming hand wash, and hand & body cream. Each category of product contains multiple different fragrances.<sup>2</sup>

3. Defendant’s marketing and sale of the South of France Products misleads consumers to believe the beauty care products are imported from France by prominently displaying on the front of each Product’s package: (1) the name of the product itself – South of France – a region in France; (2) French translation of all text on the label; (3) an image of the southern French coastline in the background, with notations of iconic cities such as Marseille, Cannes, and Nice (collectively “French Representations”).

4. Consumers interpret the French Representations to mean that the Products are manufactured in and imported from France. Unfortunately for consumers, the French Representations are false and misleading, because the Products are manufactured in Kentucky.

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<sup>1</sup> A complete list of all products is provided in Ex. A.

5. By labeling the Products with the French Representations, Defendant creates consumer deception and confusion. A reasonable consumer purchases the Products believing that they are, as marketed, advertised, and labeled, made in France. However, a reasonable consumer would not deem the Products to be made in France if they knew the Products were manufactured in Kentucky.

6. Defendant's misrepresentations about the Products were uniform and were communicated to Plaintiffs, and every other member of the Class, at every point of purchase and consumption throughout the Class Period.

7. Plaintiffs now bring this action to stop Defendant's misrepresentation and recover the monies they paid for the Products as a result of the misrepresentation, as well as statutory damages and the other relief detailed below.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

9. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

10. This court has personal jurisdiction over Defendant because it conducts and transacts

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<sup>2</sup> Bar soap comes in the following fragrances: almond gourmande, blooming jasmine, cherry blossom, climbing wild rose, cote d'azur, glazed apricots, green tea, lavender fields, lemon verbena, lush gardenia, orange blossom honey, shea butter, and violet bouquet.

Hand wash comes in the following fragrances: climbing wild rose, cote d'azur, green tea, lavender fields, lemon verbena, orange blossom honey, shea butter, and violet bouquet.

Foaming hand wash comes in the following fragrances: almond gourmande, blooming jasmine, cherry blossom, glazed apricots, lemon verbena, and orange blossom honey.

Hand & body cream comes in the following fragrances: climbing wild rose and violet bouquet.

business within New York and contracts to supply and supplies goods within New York.<sup>3</sup>

11. Venue is proper because Plaintiff Salerno and many class members reside in this District and Defendant does business in this District and in New York.

12. A substantial part of the events and omissions giving rise to the claims occurred in this District.

### **PARTIES**

13. Plaintiff Salerno is a resident of Queens, New York. Plaintiff Salerno purchased Defendant's Hand and Body Cream Product while in Queens during the Class Period because she saw the Product's labeling with the French Representations. Plaintiff Salerno relied on Defendant's false, misleading, and deceptive French Representations about the Product to believe that it was made in France. Had Plaintiff Salerno known the truth – that the French Representations relied upon in making the purchase were false, misleading, and deceptive – Plaintiff Salerno would not have purchased the Product at a premium price. If Defendant started manufacturing the Products in France, or the Products were not deceptively labeled, Plaintiff Salerno would purchase the Products again in the future. Plaintiff Salerno brings the claims below seeking damages, actual and statutory.

14. Plaintiff Mendoza is a resident of Yuba County, California. Plaintiff Mendoza purchased Defendant's Bar Soap, as well as Hand and Body Cream Product from retailers in or around Roseville, California during the Class Period because she saw the Product's labeling with the French Representations. Plaintiff Mendoza relied on Defendant's false, misleading, and deceptive French Representations about the Product to believe that it was made in France. Had Plaintiff Mendoza known the truth – that the French Representations relied upon in making the

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<sup>3</sup> By way of example, the Products are sold in Gristedes, Foodtown, Morton Williams Supermarket, and Brooklyn Harvest, all located in New York.

purchase were false, misleading, and deceptive – Plaintiff Mendoza would not have purchased the Product at a premium price. If Defendant started manufacturing the Products in France, or the Products were not deceptively labeled, Plaintiff Mendoza would purchase the Products again in the future. Plaintiff Mendoza brings the claims below seeking damages, actual and statutory.

15. Defendant Kirk's Natural LLC is a Kentucky limited liability company with a principal place of business in Erlanger, Kentucky.

16. On information and belief, the labeling for the Products that Plaintiffs and the Class members relied upon in making their decisions to purchase the Products were conceived, designed, prepared and/or approved by Defendant and were disseminated by Defendant and its agents through labeling, marketing and advertising containing the misrepresentations, from its headquarters, alleged herein.

17. On information and belief, in committing the wrongful acts alleged herein, Defendant, in connection with its subsidiaries, affiliates, and/or other related entities and their employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Products by means of false, misleading, deceptive and fraudulent representations, and Defendant participated in the making of such representations in that it disseminated those misrepresentations or caused them to be disseminated.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. Defendant deliberately deceives consumers by falsely labeling the Products with the French Representations.**

18. Since the time of Louis XV, the world has looked to France as a leader in beauty products.<sup>4</sup> In 1927, the iconic French brand Chanel launched a wide variety of new skincare

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<sup>4</sup> *Women's Hairstyles & Cosmetics of the 18<sup>th</sup> Century: France & England, 1750-1790*, DEMODE, available at <http://demodecouture.com/hairstyles-cosmetics-18th-century/> (last visited Sept. 2, 2021).

potions from toners to creams to soaps.<sup>5</sup> In 1954, Jacques Courtin launched French luxury skincare brand Clarins.<sup>6</sup> By 1990, it was the top selling brand in Europe, and distributed to 150 countries around the world.<sup>7</sup>

19. Today, France dominates the global beauty market with a 23% market share of the global cosmetic industry.<sup>8</sup> “This supremacy is based on the quality of the products, constant innovation and a powerful [imagery] related to French culture and heritage.”<sup>9</sup> Other commentators have noted

French cosmetics continue to play a leading role across the world. Admired for its excellence, it innovates constantly to meet the new quest of consumers for well-being: quality and safety of formulations, personalization of products and environmental commitment.<sup>10</sup>

20. Seeking to cash in on the French reputation for beauty products, Defendant prominently makes the claim "South of France" on the front label of its Products, includes French translations, and places in the background the southern French coastline.

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<sup>5</sup> *A Guide to French Beauty During Les Annees Folles and What Is Next in 2020*, SUNDAY EDIT, available at <https://edit.sundayriley.com/french-beauty-in-2020/> (last visited Sept. 2, 2020).

<sup>6</sup> *A brief history of Clarins*, The GUARDIAN, available at <https://www.theguardian.com/fashion/fashion-blog/2012/jan/03/brief-history-clarins> (last visited Sept. 2, 2021)

<sup>7</sup> *Id.*

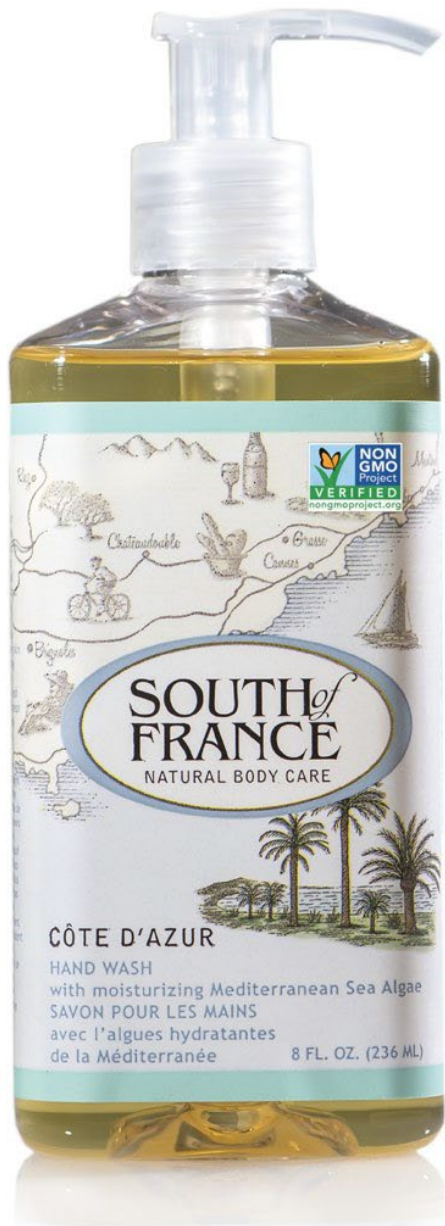
<sup>8</sup> *France dominates the global beauty market but needs to adapt*, PREMIUM BEAUTY NEWS, available at <https://www.premiumbeautynews.com/en/france-dominates-the-global-beauty,15180> (last visited Sept. 2, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *New export sales record for the French cosmetic industry*, PREMIUM BEAUTY NEWS, available at <https://www.premiumbeautynews.com/en/new-export-sales-record-for-the,14663> (last visited Sept. 2, 2021) (quoting Patrick O’Quin, President of the French Federation of Beauty Companies).









21. Taken as a whole, the verbiage and iconography used on Defendant's labels leads consumers to believe that Products are made in France.

**B. Reasonable consumers reasonably relied on Defendant's misrepresentations to their Detriment.**

22. Despite Defendant's labeling of the Products with the French Representation, the Products are from Kentucky; perhaps "South of Kentucky" does not have the same appeal for beauty products.

23. Defendant's labeling of the Products with the French Representations demonstrates its intent to persuade consumers that the Products are made in France. However, as described above, the Products are from Kentucky.

24. Hence, Defendant's representations that the Products are made in France are false and misleading.

25. Reasonable consumers, including Plaintiffs, purchased the Products based upon their belief that the Products were made in France. However, a reasonable consumer would not deem the Products to be made in France if they knew the Products were from Kentucky.

26. Defendant's misrepresentations cause confusion among consumers, who believe they are purchasing beauty products imported from France, when, in fact, they are purchasing beauty products made in the United States.

27. Plaintiffs and the Class members reasonably relied to their detriment on Defendant's misleading representations and omissions.

28. Defendant's false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled Plaintiffs and the Class members.

**C. Defendant's wrongful conduct caused Plaintiffs' and the Class members' injuries.**

29. Defendant knows that consumers are willing to pay more for French beauty care products due to their perception that they are of better quality, and believe they are paying costs associated with importing French products to the United States, over competing American beauty care products.

30. As a result of these unfair and deceptive practices, Defendant has likely collected millions of dollars from the sale of South of France Products that it would not have otherwise earned. Plaintiffs and Class members paid money for beauty care products that are not what they purported to be or what they bargained for. They paid a premium for French products when they could have instead bought other, less expensive, American beauty products. By way of example, Amazon sells a three pack of 8 fluid ounce South of France Lemon Verena Foaming Hand Wash for \$14.97; or \$0.62 cents per fluid ounce.<sup>11</sup> Contemporaneously, Amazon sells a three pack of 12.5 fluid ounce Mrs. Meyer's Lemon Verbena Liquid Hand Soap for \$11.64; or \$0.31 cents per fluid ounce.<sup>12</sup>

- a. In making the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay for, and/or pay a premium for, Products labeled with the French Representations. As a result, Plaintiffs and the Class

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<sup>11</sup> Amazon, [https://www.amazon.com/South-France-Verbena-Extract-Coconut/dp/B077KFC7SD/ref=sr\\_1\\_6?dchild=1&keywords=south+of+france+hand+soap+lemon&qid=1630683330&sr=8-6](https://www.amazon.com/South-France-Verbena-Extract-Coconut/dp/B077KFC7SD/ref=sr_1_6?dchild=1&keywords=south+of+france+hand+soap+lemon&qid=1630683330&sr=8-6) (last visited Sept. 3, 2021).

<sup>12</sup> Amazon, [https://www.amazon.com/Mrs-Meyer%C2%B4s-Clean-Day-Verbena/dp/B00NU9MJYS/ref=sr\\_1\\_1\\_sspa?dchild=1&keywords=natural+hand+soap&qid=1630682819&sr=8-1-spons&psc=1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEzSjFBMkZYQlNFWjUyJmVuY3J5cHRlZEIkPUEwNjU2MTQwMzNGNIJPM1JXNkUxQiZlbnNyeXB0ZWRBZEIkPUEwMjIyOTg3UzBBREg3OFZJWUNHJndpZGldE5hbWU9c3BfYXRmJmFjdGlvbj1jbGlja1JlZGlyZWNOJmRvTm90TG9nQ2xpY2s9dHJ1ZQ==](https://www.amazon.com/Mrs-Meyer%C2%B4s-Clean-Day-Verbena/dp/B00NU9MJYS/ref=sr_1_1_sspa?dchild=1&keywords=natural+hand+soap&qid=1630682819&sr=8-1-spons&psc=1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEzSjFBMkZYQlNFWjUyJmVuY3J5cHRlZEIkPUEwNjU2MTQwMzNGNIJPM1JXNkUxQiZlbnNyeXB0ZWRBZEIkPUEwMjIyOTg3UzBBREg3OFZJWUNHJndpZGldE5hbWU9c3BfYXRmJmFjdGlvbj1jbGlja1JlZGlyZWNOJmRvTm90TG9nQ2xpY2s9dHJ1ZQ==) (last visited Sept. 3, 2021).

members were injured in that they:

- a. Paid a sum of money for the Products, which were not what Defendant represented;
- a. Paid a premium price for the Products, which were not what Defendant represented;
- b. Were deprived of the benefit of the bargain because the Products they purchased were different from what Defendant warranted;
- c. Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendant represented;
- d. Could not be used for the purpose for which they were purchased; and
- e. Were of a different quality than what Defendant promised.

31. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiffs and the Class members would not have been willing to pay the same amount for the Products they purchased, and/or Plaintiffs and the Class members would not have been willing to purchase the Products at all.

32. Plaintiffs and the Class members paid for Products that were represented as being from France but received Products that were from Kentucky. The Products Plaintiffs and the Class members received were worth less than the Products for which they paid.

33. Based on Defendant's misleading and deceptive representations, Defendant was able to, and did, charge a premium price for the Products over the cost of competitive products not bearing the label.

34. Plaintiffs and the Class members all paid money for the Products. However, Plaintiffs and the Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiffs and the Class members purchased and/or paid more for, the Products than they would have had they known the truth about the Products. Consequently, Plaintiffs and the Class members have suffered injury in fact and lost money as a result of Defendant's wrongful conduct.

### **CLASS ALLEGATIONS**

35. Plaintiffs seek to represent the following class of consumers:

All consumers who purchased any Products in the United States at any time during the period September 3, 2015 to the date of class certification

(“Nationwide Class” or “Class”);

36. A class action is superior to other methods for fair and efficient adjudication.

37. The class is so numerous that joinder of all members, even if permitted, is impracticable, as there are likely hundreds of thousands of members.

38. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if Plaintiffs(s) and class members are entitled to damages.

39. Plaintiffs’ claims and the basis for relief are typical to other members because all were subjected to the same representations.

40. Plaintiffs are adequate representatives because their interests do not conflict with other members.

41. No individual inquiry is necessary because the focus is only on Defendant’s practices and the class is definable and ascertainable.

42. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

43. Plaintiffs’ counsel are competent and experienced in complex class action litigation and intends to adequately and fairly protect class members’ interests.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**VIOLATION OF KENTUCKY'S CONSUMER PROTECTION ACT**

**(On Behalf of Plaintiffs and the Class Members)**

44. Plaintiffs incorporates by references all preceding paragraphs.

45. Defendant, Plaintiffs, and members of the Class are “persons” within the meaning of the Ky. Rev. Stat. § 367.110(1).

46. Defendant engaged in “trade” or “commerce” within the meaning of KY. REV. STAT. § 367.110(2).

47. The Kentucky Consumer Protection Act (“KCPA”) makes unlawful “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce ....” Ky. Rev. Stat. § 367.170(1).

48. Defendant participated in misleading, false, or deceptive acts that violated the KCPA by representing to consumers that the Products were from France when they were in fact made in the United States.

49. In the course of its business, Defendant engaged in consumer transactions with numerous consumers in connection with the sale of the Products, yet misleadingly labeled the Products with the French Representations.

50. Defendant engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with its Products consumers.

51. By misleadingly marketing the Products to consumers, Defendant engaged in deceptive business practices in violation of the KCPA.

52. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Class, about where the Products were from.

53. Defendant intentionally and knowingly misrepresented material facts regarding its Products with an intent to mislead Plaintiffs and the Class.

54. Defendant knew or should have known that its conduct violated the KCPA.

55. Defendant made material statements about the Products that were either false or misleading.

56. As a result of Defendant's misrepresentations, it charged consumers a premium for the Products over competitors products not bearing such labeling.

57. Defendant's misrepresentations and omissions were material to Plaintiffs and other Class member's transactions with Defendant and were made knowingly and with reason to know that Plaintiffs and the Class would rely on the misrepresentations and omissions.

58. Plaintiffs and the Class suffered ascertainable loss caused by Defendant's misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Class members overpaid for the Products and did not receive the benefit of their bargain but for Defendant's violations of the KCPA.

59. Defendant had an ongoing duty to all Defendant customers to refrain from unfair and deceptive practices under the KCPA.

60. Defendant's violations present a continuing risk to Plaintiffs and the Class as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

61. As a direct and proximate result of Defendant's violations of the KCPA, Plaintiffs and the Class have suffered injury-in-fact and/or actual damage.



62. Plaintiffs and the Class members seek monetary relief against Defendant in the amount of actual damages, as well as punitive damages because Defendant acted with fraud and/or malice and/or was grossly negligent.

63. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiffs and the Class seek to recover actual damages in an amount to be determined at trial; declaratory relief; attorneys' fees; and any other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

**SECOND CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION UNDER KENTUCKY COMMON LAW**

**(On Behalf of Plaintiffs and the Class Members)**

64. Plaintiffs incorporates by references all preceding paragraphs.

65. As set forth above, Defendant repeatedly advertised, on the Products' labels, on its website and through a national advertising campaign, the French Representations.

66. Contrary to Defendant's representations, the Products are not from France.

67. Defendant owed a duty of care to Plaintiffs and Class members who were the likely and foreseeable purchasers and customers of the Products.

68. Defendant breached this duty of care by misrepresenting the origin of the Products. Defendant misrepresented the Product were from France when the Products were from the United States

69. At the time Defendant made these false representations to consumers, Defendant knew, or in the exercise of reasonable diligence should have known, that these representations were incorrect as the Products were from the United States.

70. Defendant, and its employees in charge of labeling and marketing, made such statements in a careless and reckless manner, throughout the class period.

71. Defendant knew, or in the exercise of reasonable diligence should have known, that

the ordinary consumer would be misled by these false representations.

72. The misrepresentations made by Defendant, upon which Plaintiffs and the Class members reasonably and justifiably relied, were intended to induce, and did actually induce Plaintiffs and the Class members to purchase the Products.

73. Plaintiffs and the Class members did in fact rely on Defendant's false and misleading statements to their detriment. Plaintiffs and the Class members purchased and used Defendant's Products believing that they were from France.

74. Plaintiffs and the Class members did not know that Defendant's representations were false and, therefore, were justified in their reasonable reliance.

75. Had Plaintiffs and the Class members known the truth about the origin of the Products, they would not have purchased the Products on the same terms or for the same price.

76. As a direct and proximate result of Defendant's negligent misrepresentations described herein, Plaintiffs and the Class members sustained injuries and damages as alleged herein.

77. Plaintiffs and the Class members are entitled to compensatory damages, and exemplary and punitive damages together with interest, and such other and further relief as this Court deems just and proper

**THIRD CAUSE OF ACTION**  
**UNJUST ENRICHMENT**  
**(On Behalf of Plaintiffs and Class Members)**

78. Plaintiffs incorporates by references all preceding paragraphs.

79. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of Plaintiffs and class members, who seek restitution and disgorgement of inequitably obtained profits.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for judgment:

1. Declaring this a proper class action, certifying Plaintiffs as representative and the undersigned as counsel for the Class;
2. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this suit;
3. Awarding damages and interest;
4. Awarding costs and expenses, including reasonable fees for Plaintiffs' attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs demands a jury trial on all issues.

Dated: August 10, 2022

Respectfully submitted,

**REESE LLP**

*/s/draft*

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