

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUIS A. RODRIGUEZ, on behalf of himself and
others similarly situated,

Plaintiffs,

-against-

CALVIN KLEIN, INC., and PVH
CORPORATION,

Defendants.

Civil Action No.
15-CV-02590-JSR-GWG

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is hereby entered into by and between LUIS A. RODRIGUEZ (the "Named Plaintiff" or "Class Representative") on behalf of himself and other similarly situated individuals (collectively "Plaintiffs"), and CALVIN KLEIN, INC. ("CKI") AND PVH CORP. ("PVH") (collectively "Defendants"). Plaintiffs and Defendants are collectively referred to as the "Parties." This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle all released rights and claims to the extent set forth below, subject to the terms and conditions set forth herein.

RECITALS

WHEREAS, on April 3, 2015, the Named Plaintiff filed a Class Action Complaint against Defendants in the United States District Court for the Southern District of New York, captioned *Luis A. Rodriguez v. Calvin Klein, Inc. and PVH Corporation*, Civil Action No. 15-CV-02590-JSR-GWG, alleging that Defendants violated the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA"), by failing to provide proper notice to job applicants about whom they obtained consumer reports for employment purposes, and also a copy of their reports and a statement of their FCRA rights, before taking adverse action against them by denying them employment (the "Litigation");

WHEREAS, the purpose of this Agreement is to settle the Named Plaintiff's claims and the claims of the Settlement Class Members as alleged in the Litigation;

WHEREAS, Defendants deny the allegations and claims asserted by Plaintiffs in the Litigation and deny that class certification would be appropriate if the case was litigated rather than settled, but nonetheless, without admitting or conceding any liability or damages whatsoever, Defendants have agreed to settle the Litigation on the terms and conditions set forth

in this Agreement, to avoid the burden, expense, and uncertainty of continuing to defend the Litigation;

WHEREAS, counsel for the Parties have conducted an extensive investigation of the facts and claims alleged in the Litigation, including, but not limited to, reviewing documents and data, interviewing witnesses, and preparing for, taking, and defending the depositions of the Named Plaintiff, PVH and certain non-party witnesses;

WHEREAS, the Parties have engaged in extensive arm's length negotiations and private mediation concerning the settlement of the claims asserted in the Litigation; and

WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever for the Named Plaintiff and the Settlement Class Members, or might result in a recovery that is less favorable to the Named Plaintiff and the Settlement Class Members, the Named Plaintiff and his counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interests of the Named Plaintiff and the Settlement Class Members.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

I. DEFINITIONS

The defined terms set forth above and herein shall have the meanings ascribed to them.

- 1.1 "CAFA Notice" means notice of this proposed settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715(a)-(d).
- 1.2 "Claims Administrator" or "Settlement Administrator" shall mean the entity selected by Defendants' Counsel, and approved by Class Counsel, to provide notice of the Settlement and administer payment of the Settlement.
- 1.3 "Class Members" or "Settlement Class Members" or the "Class" or the "Settlement Class" means all applicants for employment to Van Heusen, Izod, G.H. Bass and Calvin Klein retail stores or warehouses not owned or operated by CKI who were the subject of a consumer report that was used by Defendant in connection with an adverse employment decision regarding such applicants for employment from April 3, 2010 through May 11, 2015 for whom Defendants did not provide that applicant a copy of their consumer report at least five business days before it took such adverse action and a copy of the FCRA summary of rights at least five business days before it took such adverse action.

- 1.4 "Court" shall mean the United States District Court for the Southern District of New York, where the above-referenced case, captioned *Rodriguez v. Calvin Klein, Inc., et al.*, Civil Action No. 15-CV-02590-JSR-GWG, is currently pending.
- 1.5 "Defendants' Counsel" shall mean Eric J. Wallach and Daniel Turinsky of the law firm DLA Piper LLP (US).
- 1.6 The "Effective Date" is the date on which this Agreement becomes effective, which shall mean the later of: (1) thirty (30) days following the Court's Order granting final approval of the settlement if no appeal is taken, or (2) the date of the Court's entry of a final order and judgment after resolving any appeals.
- 1.7 "Final Approval" means the approval of the Agreement by the Court at or after the Final Approval Hearing, and entry on the Court's docket of the Final Approval Order.
- 1.8 "Final Approval Order" means a final order and judgment entered by the Court giving Final Approval to the Agreement and dismissing with prejudice Plaintiffs' claims and entering a judgment according to the terms set forth in this Agreement, substantially in the form of Exhibit A hereto.
- 1.9 "Final Approval Hearing" or "Fairness Hearing" means the hearing at which the Court will consider and finally decide whether to approve this Settlement, enter the Final Approval Order, and make such other rulings as are contemplated by this Settlement. The Final Approval Hearing shall not be scheduled for a date less than 90 days following the mailing of the CAFA Notice.
- 1.10 "Net Settlement Fund" means the amount remaining in the Settlement Fund after the deduction of Court-approved attorneys' fees and expenses and a Court-approved Service Payment to Named Plaintiff. The proceeds remaining in the Net Settlement Fund will be distributed to Settlement Class Members by the Claims Administrator as set forth herein.
- 1.11 "Notice of Objection" means an objection made by a Settlement Class Member to this Settlement by sending a written notice of such objection within sixty (60) days after the Settlement Notice (the "Objection Date") is mailed to Settlement Class Members.
- 1.12 "Notice and Administration Expenses" means the fees, costs, and expenses incurred by the Settlement Administrator in order to carry out its obligations under this Agreement.
- 1.13 "Opt-Out Deadline" means sixty (60) days from the date on which the Claims Administrator mails the Settlement Notice to Settlement Class Members.
- 1.14 "Plan of Allocation" refers to the methodology by which the Net Settlement Fund will be distributed to Settlement Class Members.
- 1.15 "Preliminary Approval" means preliminary approval of the Agreement by the Court, conditional certification of the Settlement Class, and approval of the method and content of notice to the Settlement Class.

- 1.16 "Preliminary Approval Hearing" means the initial hearing that shall be requested by the Parties in order for the Court to consider the Parties' proposed Settlement.
- 1.17 "Preliminary Approval Motion" means the motion that Plaintiffs shall file seeking the Court's preliminary approval of the Settlement.
- 1.18 "Preliminary Approval Order" means the order entered by the Court granting Preliminary Approval substantially in the form of Exhibit B hereto.
- 1.19 "Released Parties" shall mean Defendants, and Defendants' predecessors, successors, affiliates, divisions, parents and subsidiaries, and their respective present or former officers, directors, agents, employees, stockholders, shareholders, insurers, and attorneys.
- 1.20 "Request for Exclusion" is that request to opt-out of the Settlement as set forth in section IX hereof.
- 1.21 "Settlement" means the agreement between the Named Plaintiff (on behalf of himself personally and as proposed representative of the Settlement Class Members) and Defendants to settle and compromise Named Plaintiff's and the Settlement Class Members' claims in the Litigation, as memorialized in this Agreement and the accompanying documents attached hereto, fully, finally and forever.
- 1.22 "Settlement Class Counsel" or "Class Counsel" shall mean James A. Francis, John Soumilas, David A. Searles and Lauren KW Brennan of the law firm Francis & Mailman, P.C., and Adam G. Singer of the law firm Law Office of Adam G. Singer.
- 1.23 "Settlement Fund" means the settlement amount of One Million Thirteen Thousand Four Hundred Dollars and Zero Cents (\$1,013,400.00), to be paid by Defendants to the Claims Administrator and distributed to Settlement Class Members, the Named Plaintiff and Class Counsel in accordance with the terms of this Agreement, which is the maximum amount Defendants will pay to settle the Litigation as set forth in this Agreement, except that Defendants will also pay, separate and apart from the Settlement Fund, the Notice and Administration Expenses.
- 1.24 "Settlement Notices" are the notices to be sent to the Settlement Class Members by the Claims Administrator, pursuant to the terms of this Agreement and subject to the Court's approval thereof, which shall contain the information set forth in Section 8.2 of this Agreement and be substantially in the form of Exhibit C hereto.
- 1.25 "Service Payment" means the payment made out of the Settlement Fund to the Named Plaintiff for his individual claims and his service in the matter. Subject to Court approval, this amount will be \$15,000.

II. NO ADMISSION OF LIABILITY OR ELEMENTS OF CLASS CERTIFICATION

2.1 Defendants' Denial of Wrongdoing or Liability

Defendants have asserted and continue to assert many defenses in the Litigation and have expressly denied and continue to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. Defendants expressly deny any fault, wrongdoing or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. The Parties expressly acknowledge and agree that neither the fact of, nor any provision contained in, this Agreement, nor any of the implementing documents or actions taken under them, nor Defendants' willingness to enter into this Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the Settlement shall constitute or be construed as an admission by or against Defendants or any of the Released Parties of any fault, wrongdoing, violation of law or liability whatsoever, the validity of any claim or fact alleged in the Litigation, or any infirmity of any defense asserted by Defendants in the litigation.

2.2 No Admission by Defendants of Elements of Class Certification

Defendants deny that a litigation class should properly be certified other than for purposes of this Settlement and reserve their rights to continue to contest any class certification motion. Nothing in this Agreement shall be construed as an admission by Defendants or any of the Released Parties that this Litigation is amenable to class certification for any purpose.

III. HEARINGS AND MOTION FOR PRELIMINARY APPROVAL

3.1 On or before October 23, 2015, Plaintiffs shall file an unopposed Preliminary Approval Motion with the Court, subject to prior review and comment by Defendants' Counsel, which shall seek entry of an order that would, for settlement purposes only: (i) certify a conditional settlement class under Federal Rule of Civil Procedure 23 composed of the Settlement Class Members; (ii) preliminarily approve this proposed Settlement Agreement; (iii) approve the manner of notice to the proposed Settlement Class Members, objection procedures and opt-out procedures; (iv) certify the Named Plaintiff as the representative of the Class; (v) appoint Settlement Class Counsel; and (vi) appoint the Settlement Administrator. The Preliminary Approval Motion shall also ask the Court to schedule a Fairness Hearing.

3.2 The date of any Fairness Hearing shall be no earlier than ninety (90) days after the CAFA Notice is served. Defendants agree to provide the CAFA Notice within ten (10) days of the proposed settlement of this class action being filed with the Court. Class Counsel shall file a motion for final approval of the Settlement and a petition for fees (the "Fee Petition") no later than ten (10) days prior to the Fairness Hearing; provided, however, Defendants' Counsel shall have an opportunity to review and comment on the motion for final approval prior to its filing with the Court.

IV. CLASS LISTS

The Parties agree that there are approximately 842 Settlement Class Members. This estimate constitutes a material term of the Settlement. If the Class size turns out to be in excess

of 900, the amount to be paid to the Class may increase commensurately. If the Class size turns out to be less than 784, the amount to be paid to the Class may decrease commensurately.

V. THE SETTLEMENT FUND

5.1 Creation of and Deposit Into the Settlement Fund

The Settlement Fund shall consist of \$1,013,400, to be paid to the Settlement Administrator by Defendants within ten (10) business days after the Effective Date. No funds shall be distributed or paid by the Settlement Administrator without written confirmation from both Settlement Class Counsel and Defendants' Counsel.

5.2 Responsibilities of the Settlement Administrator

The Settlement Administrator shall bear all responsibilities for the preparation and distribution of checks, 1099 and/or W-9 Forms, and the Settlement Notices. In addition, the Settlement Administrator shall certify to counsel for the Parties that the necessary tax forms have been properly mailed to all Settlement Class Members. The address of the Settlement Administrator will be used as the return address for the Settlement Notices. The Settlement Administrator and Class Counsel will respond to any inquiries from Class Members arising from or relating to this Settlement.

The Parties will have equal access to the Settlement Administrator and the Settlement Administrator will provide regular reports to the Parties, but no less frequently than every two weeks, regarding the status of the mailing of the Settlement Notices to Settlement Class Members, the claims administration process, the identity and number of Settlement Class Members who object and/or opt-out of the Settlement, and the distribution and redemption of the Settlement Checks.

VI. ALLOCATION OF THE SETTLEMENT FUND AND DISBURSEMENT OF THE SETTLEMENT FUND PAYMENTS

6.1 Plan of Allocation of the Settlement Fund

The Net Settlement Fund shall be allocated to each Class Member as follows:

(A) Class Counsel shall allocate the Net Settlement Fund between the members of the two year class (i.e., individual Class Members whose claims accrued on or after April 3, 2013) and the five year class (i.e., individual Class Members whose claims accrued between April 3, 2010 and April 2, 2013), with members of the two year class receiving no more than \$975 per class member.

(B) Defendants will provide the Settlement Administrator with a list of the names and addresses of the Settlement Class Members no later than seven (7) days after the entry of the Preliminary Approval Order. Class Members will be mailed a Settlement Notice within fourteen (14) days after the entry of the Preliminary Approval Order, to their addresses available from Defendants' records.

(C) Within 30 days of the Effective Date, Class Members who did not timely exclude themselves from the Settlement (as set forth herein) will automatically be mailed a Settlement Check from the Settlement Administrator. This payment shall be made in consideration for the Release in Section 7, *infra*, and such other promises and obligations as are set forth herein. Class Members will also be sent an I.R.S. Form 1099 with these payments.

6.2 Settlement Amounts Payable as Attorneys' Fees and Costs

- (A) Class Counsel shall petition the Court for an award of attorneys' fees plus reimbursement of litigation costs and expenses in an amount not to exceed Two Hundred Eighty Two Thousand Dollars and Zero Cents (\$282,000.00). After depositing the Settlement Fund with the Settlement Administrator, Defendants shall have no additional liability for Class Counsel's attorneys' fees and costs.
- (B) The payment of attorneys' fees and costs shall be made without withholding. Plaintiffs' Counsel will receive a Form 1099 for this payment. Plaintiffs' Counsel will provide Defendants with a completed Form W-9.
- (C) Within fifteen (15) business days after the Effective Date, the Settlement Administrator shall deduct Class Counsel's Court-approved fees and expenses pursuant to this Settlement from the Settlement Fund and make that payment to Class Counsel prior to making disbursements to Class Members out of the remaining Net Settlement Fund.
- (D) The substance of the Fee Petition is to be considered separately from the Court's consideration of the fairness, reasonableness, and good faith of the Settlement of the Litigation. The outcome of any proceeding related to the Fee Petition shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any fees or costs sought by Class Counsel but not approved by the Court shall be returned to Defendants.

6.3 Service Payment to Class Representative

The Class Representative shall, subject to Court approval, receive from the Settlement Fund a one-time Service Payment of Fifteen Thousand Dollars and Zero cents (\$15,000.00) in consideration of the settlement of his individual claims and for his services in this matter. Within fifteen (15) business days of the Effective Date, the Settlement Administrator shall remit these funds to Class Counsel, who shall then distribute the Service Payment to the Class Representative. The Class Representative will also be entitled to his respective portion of the Settlement Fund as a member of the Settlement Class. The Class Representative agrees to the general release in Section 7.2 in consideration for his receipt of the Service Payment, if any, and his respective share of the Settlement Fund.

6.4 Treatment of Uncashed Settlement Checks

Class Members will have ninety (90) days from the date on which the Settlement checks are issued to cash them. Any remaining checks uncashed on that date shall become null and void, and any such Class Member will have no further recourse pursuant to this Settlement. The

amount of the uncashed or returned Settlement check funds will be distributed to a *cypres* recipient chosen by Plaintiff and Defendants in the New York City area whose mission it is to help consumers with credit/debt problems or to help former prisoners to re-enter the workforce.

6.5 Undeliverable Settlement Checks

In the event that a Settlement Fund disbursement is returned as undeliverable, the Settlement Administrator shall promptly re-mail the returned Settlement check to a corrected address of the intended Class Member recipient as may be determined by the Settlement Administrator through reasonable efforts of the Settlement Administrator. If a corrected address cannot be obtained for the intended Class Member recipient, such return distribution will be paid in accordance with Section 6.4 above.

6.6 Tax Consequences to Class Members

The Settlement Administrator shall provide each Class Member with a notice advising him or her to seek personal tax advice regarding any tax consequences of the Settlement Fund disbursement. The notice regarding the potential tax treatment to Class Members shall be included with each disbursement to Class Members. For the avoidance of doubt, neither the Defendants, nor Defendants' Counsel, nor Class Counsel, have made, or are making in connection with the Settlement, any representations regarding possible tax consequences relating to the Settlement Fund disbursements to Class Members, and neither Defendants, Defendants' Counsel nor Class Counsel shall be held responsible for any such tax consequences.

6.7 Notice and Administration Expenses

Defendants will be responsible for paying all costs of notice and settlement administration.

VII. RELEASE OF CLAIMS

7.1 Settlement Class Members

Upon the Effective Date, and in exchange for the relief described in this Agreement, all Settlement Class Members who do not timely and validly opt out of the Settlement, on behalf of themselves, their issue, heirs, representatives, successors, agents, executors, administrators or assigns, completely, finally and forever release and discharge the Released Parties of and from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) arising under 15 U.S.C. § 1681b. The claims are released regardless of whether they are known or unknown, concealed or hidden, suspected or unsuspected, anticipated or unanticipated, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, fixed or contingent.

7.2 Named Plaintiff

Upon the Effective Date, the Named Plaintiff completely, finally and forever releases and discharges the Released Parties of and from any and all charges, complaints, claims, liabilities,

obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, in law or equity, known or unknown, suspected or unsuspected, that the Named Plaintiff, his issue, heirs, representatives, successors, agents, executors, administrators or assigns, ever had, now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, up to and including the date the Named Plaintiff executes this General Release (the "Named Plaintiff Release"). The Named Plaintiff Release includes, but is not limited to, any claims arising under or for alleged violation or breach of any contract, express or implied, or any covenant of good faith and fair dealing, express or implied, or any tort, whether intentional or unintentional, including without limitation defamation, intentional infliction of emotional distress, fraud and breach of duty, or any legal restriction on the Company's right to terminate or decline to hire employees, and any federal, state or other governmental statute, regulation, or ordinance, including without limitation the Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964, the Florida Civil Rights Act of 1992, the Americans With Disabilities Act of 1990, the Civil Rights Act of 1991, the Family and Medical Leave Act of 1993, the Worker Adjustment Retraining and Notification ("WARN") Act and any state WARN statutes, the Sarbanes-Oxley Act of 2002, the Equal Pay Act, the Employee Retirement Income Security Act of 1974 and the Rehabilitation Act of 1973, each as amended from time to time; provided, however, that Named Plaintiff does not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC"), subject to the condition that he agrees not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom; and further provided that Named Plaintiff does not release any claim for breach of this Agreement. Nor shall anything in this Named Plaintiff Release prohibit or restrict Named Plaintiff from: (i) providing information to, or otherwise assisting in, an investigation by any federal or state law enforcement agency in response to any request for information from such agency; or (ii) complying with a lawful subpoena or other legal process, subject to the terms of this Agreement.

VIII. THE SETTLEMENT NOTICE

8.1 Class Counsel shall bear the cost and responsibility of the preparation of the Settlement Notices, which shall be subject to comment and prior approval by Defendants' Counsel. The Settlement Administrator will be responsible for actually mailing the Settlement Notices, and its address will be used as the return address for the Settlement Notices. The Settlement Administrator shall mail the Settlement Notices by first-class mail to the Class Members at their mailing addresses no later than fourteen (14) days after entry of the Preliminary Approval Order. In the event that a Settlement Notice is returned as undeliverable, the Settlement Administrator shall re-mail the Settlement Notice to the corrected address, if any, of the intended Class Member recipient as may be determined by the Settlement Administrator through reasonable efforts of the Settlement Administrator.

8.2 The Settlement Notice shall contain the following information:

- (A) that the Settlement shall become effective only if it is finally approved by the Court;
- (B) that, if approved, the Settlement shall be effective as to all Class Members that do

not timely exclude themselves;

(C) that such Class Member has the right to object to this Settlement, either in person or through counsel, and be heard at the Fairness Hearing;

(D) the projected dollar amount such Class Member may receive as a net payment under this Settlement, if this Settlement becomes effective, which amount shall be calculated by Class Counsel;

(E) that upon the Effective Date, and in exchange for the consideration described in the Settlement Notice, those Class Members who have not timely opted out shall be bound by the Release as set forth herein;

(F) that any and all claims released under the Settlement Agreement shall be waived, and that no person, including the Settlement Class Members, shall be entitled to any further distribution thereon; and

(G) that each Settlement Class Member has a right to exclude himself or herself from the Settlement as set forth herein.

IX. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

9.1 Any Class Member may make a Request for Exclusion by mailing or delivering the Request for Exclusion in writing to the Claims Administrator. To be effective, a Request for Exclusion must be post-marked by not later than the Opt-Out Deadline, and further must be signed by the individual seeking exclusion, and shall further include the name, address and telephone number of the person requesting exclusion, and indicate that such person elects to be excluded from the Settlement, does not wish to be a Settlement Class Member and elects to be excluded from the Release and from any judgment entered by the Court pursuant to the Settlement. Any Request for Exclusion which fails to comply with each of the out-out procedures set forth in this Section 9.1 shall be deemed deficient and of no force or effect.

9.2 Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement, and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

9.3 After the deadline for submission of Requests for Exclusion, the Claims Administrator shall prepare a list of all people who have timely excluded themselves from the Settlement and shall provide such list to Class Counsel and Defendants' Counsel, who will then report the names appearing on this Opt-Out List to the Court at or before the time of the Final Approval Hearing.

X. OBJECTIONS AND REQUESTS TO APPEAR AT FINAL APPROVAL HEARING

10.1 Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, and/or who wishes for any objection to be considered, must file a written notice of objection by the Objection Date. The notice of objection shall be sent by First Class United States Mail, to (a) Class Counsel, (b) Defendants' Counsel, and (c) the Clerk of the Court. Such

objection shall be personally signed and state the caption of the Litigation and the name, address and telephone number of the person objecting to the Settlement, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person wishes to be considered in support of the objection, and all relief sought. Any objector wishing to be heard at the Final Approval Hearing must also file a notice of intent to appear with the Court Clerk's office, and must provide both Class Counsel and Defendants' Counsel with copies of the notice of intent to appear.

10.2 The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

10.3 In accordance with law, only Settlement Class Members who timely object to the Settlement pursuant to the terms immediately above may appeal any Final Judgment.

XI. MISCELANNEOUS PROVISIONS

11.1 Cooperation Among the Parties; Further Acts.

The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. The Parties shall work together, diligently and in good faith, to obtain expeditiously a Preliminary Approval Order, Final Approval Order, and final Judgment and dismissal. Each of the Parties, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

11.2 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties (including the Parties' settlement term sheet) shall be deemed merged into this Agreement.

11.3 Binding Effect.

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

11.4 Arms' Length Transaction; Materiality of Terms.

The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement

are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

11.5 Captions.

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

11.6 Construction.

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

11.7 Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.8 Continuing Jurisdiction.

The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.

11.9 Waivers, etc. to Be in Writing.

No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

11.10 Public Statements.

Settlement Class Counsel agree to make no statements, directly or indirectly, to any media source, including but not limited to press releases, concerning the Settlement.

11.11 Notices.

Any notice or other formal communication required or permitted to be delivered under this Agreement shall be in writing and sent by mail to counsel for the Party to whom the notice is

directed at the following addresses:

If to Defendants:

DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, NY 10020
Attention: Eric J. Wallach, Esq.

If to Plaintiffs:

Francis & Mailman, P.C.
Land Title Building, 19th Floor
100 South Broad Street
Philadelphia, PA 19119
Attention: John Soumilas, Esq.

11.12 Authorization of Counsel.

Settlement Class Counsel, on behalf of the Class, are expressly authorized by Named Plaintiff and the Settlement Class Members to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class that they deem necessary or appropriate. Each attorney or other person executing the Agreement on behalf of any Party hereto hereby warrants that such attorney or other person has the full authority to do so.

11.13 Blue Penciling.

If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

11.14 Counterparts.

The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

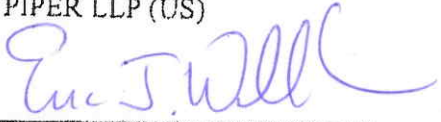
11.15 Facsimile and Scanned Signatures.

Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement and Release to be executed as of the date written below.

DLA PIPER LLP (US)

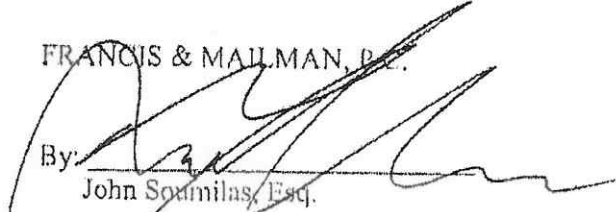
Dated: Oct. 21, 2015

By: 
Eric J. Wallach, Esq.
Daniel Turinsky, Esq.

Attorneys for Defendants

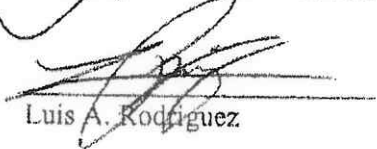
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Dated: Oct. 14, 2015

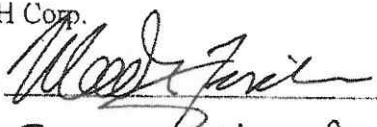
By: 
John Soumilas, Esq.

Attorneys for Named Plaintiff and Class Members

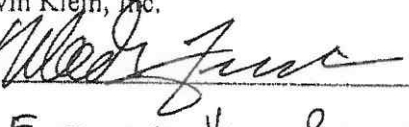
Dated: Oct. 15, 2015


Luis A. Rodriguez

Dated: Oct. 21, 2015

PVH Corp.
By: 
Its: EXECUTIVE VICE PRESIDENT

Dated: Oct. 21, 2015

Calvin Klein, Inc.
By: 
Its: EXECUTIVE VICE PRESIDENT