

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

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

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

Plaintiff,

v.

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

Defendants.

CASE NO. CIVDS1606479

**AMENDED SETTLEMENT
AGREEMENT AND RELEASE**

1 This Amended Settlement Agreement and Release (the “Agreement”) is made and entered
2 into by and between the following parties: Plaintiff Armin Amiri, individually and on behalf of
3 the Settlement Class (collectively, “Plaintiff” and/or “Class Representative”), and Defendant My
4 Pillow, Inc. (“Defendant”) and their respective counsel of record.

5 **I. DEFINITIONS**

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

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

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

14 C. “Claims Deadline” means the date set by the Court for the last date on which
15 Claim Forms may be submitted or postmarked. The Claims Deadline shall be at least sixty (60)
16 days after the last date of publication of the Publication Notice.

17 D. “Claim Form” means the form Settlement Class Members must submit to
18 participate in the refund provisions of the settlement under this Agreement substantially in the
19 form attached as Exhibit “D.”

20 E. “Class Counsel” means Clarkson Law Firm, P.C.

21 F. “Class Period” means April 26, 2012 through the date of entry of the
22 Preliminary Approval Order.

23 G. “Complaint” means the Complaint filed on April 26, 2016 in the Superior Court
24 for the State of California, County of San Bernardino.

25 H. “Court” means the Superior Court for the State of California, County of San
26 Bernardino.

1 I. "Competent and Reliable Scientific Evidence" means tests, analyses, research,
2 or studies that have been conducted by a qualified person in an objective manner and are generally
3 accepted in the profession to yield accurate and reliable results.

4 J. "Covered Products" means the products bearing the labeled brand name My
5 Pillow that are marketed and/or distributed by Defendant, including all sizes.

6 K. "Email Notice" means the proposed notice to be provided under Section V.A.4
7 of this Agreement substantially in the form attached as Exhibit B.

8 L. "Effective Date" means (a) if no objection is raised to this Settlement at the
9 Final Approval Hearing, the date on which the Final Approval Order and Judgment is entered; or
10 (b) if any objections are raised to the proposed settlement at the Final Approval Hearing, the latest
11 of (i) the expiration date of the time for the filing or notice of any appeal from the Final Approval
12 Order and Judgment, (ii) the date of final affirmance of any appeal of the Final Approval Order
13 and Judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of review of
14 the Final Approval Order and Judgment and, if the writ is granted, the date of final affirmance of
15 the Final Approval Order and Judgment following review pursuant to that grant; or (iv) the date of
16 final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of
17 any proceeding on *certiorari* to review the final approval order and judgment.

18 M. "Final Approval Hearing" means the hearing scheduled to take place at least
19 thirty (30) days after the Claims Deadline at which the Court shall, among other things: (a)
20 determine whether to grant final approval to this Agreement; (b) consider any timely objections to
21 this Settlement and all responses thereto; and (c) rule on any application for attorneys' fees, costs,
22 and/or incentive awards.

23 N. "Final Approval Order and Judgment" means the order, substantially in the
24 form of Exhibit "F" attached hereto, in which the Court grants final approval of this Agreement
25 and authorizes the entry of a final judgment.
26
27
28

1 O. "Long Form Notice" means notice of the proposed settlement to be provided to
2 Settlement Class Members under Section V of this Agreement substantially in the form attached
3 as Exhibit "A."

4 P. "Objection/Exclusion Deadline" means the date set by the Court for the
5 submission of objections or requests for exclusion from the class, and shall be at least sixty (60)
6 days after the last date of publication of the Publication Notice.

7 Q. "Parties" means Class Representative and Defendant.

8 R. "Person" means any individual, proprietorship, corporation, partnership,
9 association, trustee, unincorporated association, or any other type of legal entity, except a
10 governmental entity.

11 S. "Preliminary Approval" means the date the Court preliminarily approves the
12 settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

13 T. "Preliminary Approval Order" means the order, substantially in the form of
14 Exhibit "E" attached to this Agreement, in which the Court grants its preliminary approval to the
15 Agreement, conditionally certifies the Settlement Class, approves and authorizes notice to the
16 Settlement Class, appoints the Settlement Administrator, and sets a Final Approval Hearing.

17 U. "Publication Notice" means notice of this Settlement to be provided to
18 Settlement Class Members under Section V of the Agreement substantially in the form attached as
19 Exhibit "C."

20 V. "Released Parties" means Defendant and all other Persons.

21 W. "Request for Exclusion" means a valid request for exclusion from a Settlement
22 Class Member.

23 X. "Settled Claims" means any and all claims, demands, actions, and causes of
24 action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct,
25 indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or
26 undeveloped, arising under common law, regulatory law, statutory law, or otherwise, including but
27 not limited to unjust enrichment, theft by deception, fraud, breach of warranty express or implied,
28

1 violation of California Civil Code 1750 et seq., violation of California Business and Professions
2 Code Sections 17200 et seq. and 17500 et seq., and any related or similar state consumer protection
3 statutes, claims for restitution, disgorgement of profits, injunctive and declaratory relief, arising
4 during the Class Period, and arising out of or relating to the advertising, packaging, labeling,
5 marketing, promotion, sale or distribution of the Covered Products, including all claims which were
6 alleged or which could have been alleged by Plaintiff, Class Counsel, the Settlement Class and/or
7 any Settlement Class Member against the Released Parties in the Action, or any other legal action,
8 whether those claims are asserted individually or on a class-wide basis (the "Released Claims").
9 However, this definition expressly excludes claims for personal injury.

10 Y. "Settlement Administrator" means Digital Settlement Group.

11 Z. "Settlement Class" means all persons who purchased Covered Products in the
12 United States, its territories, or at any United States military facility or exchange during the Class
13 Period. Excluded from the Settlement Class are all persons who validly opt out of the Settlement
14 Class in a timely manner, counsel of record (and their respective law firms) for the Parties,
15 Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of
16 their respective employees, officers, and directors; the presiding judge in any of the Actions; any
17 natural person or entity that entered into a release with Defendant prior to the Effective Date
18 concerning any Covered Products.

19 AA. "Settlement Class Member" means any member of the Settlement Class.

20 BB. "Valid Claim" means a claim for reimbursement timely submitted by a
21 Settlement Class Member that satisfies all the criteria to qualify for reimbursement established by
22 the Parties' Counsel and the Settlement Administrator.

23 **II. LITIGATION BACKGROUND**

24 A. Plaintiff has alleged that Defendant made false and misleading statements in its
25 labeling and advertising of the Covered Products, including that they paid more for the Covered
26 Products as a result of those alleged statements. Plaintiff has asserted claims on behalf of himself
27
28

1 and for others similarly situated in the United States based on violation of Cal. Bus. & Prof. Code
2 §§ 17200 *et seq.* and 17500 *et seq.* and other consumer protection statutes.

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

6 C. The Parties have, in advance of settlement, engaged in extensive arms-length
7 negotiations and an informal exchange of documents and other information pertaining to
8 Plaintiff's claims. The Parties have had a full and fair opportunity to evaluate the strengths and
9 weaknesses of their respective positions.

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

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

23 F. Based on the foregoing, which the Parties expressly incorporate as material
24 terms of the Agreement, it is the desire of the Parties to fully, finally, and forever settle,
25 compromise, and discharge all disputes and claims arising from or related to the Products and the
26 Action which exist between Plaintiff and the Settlement Class on the one hand, and Defendant, on
27 the other hand. Therefore, it is the intention of the Parties that this Agreement shall constitute a
28

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

7 **III. TERMS OF SETTLEMENT**

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

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

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

25 C. Releases:
26
27
28

1 1. Upon the Effective Date, and except as to such rights or claims as may be
2 created by this Agreement, Plaintiff and the Settlement Class (together, the “Releasing Parties”)
3 shall fully release and discharge the Released Parties from the Released Claims.

4 D. Compensation to the Settlement Class: In consideration of a full, complete, and
5 final settlement of the Action, dismissal of the Action with prejudice, and the Releases in Section
6 VII below, and subject to the Court’s approval, the Parties agree to the following relief:

7 2. Monetary Relief: Settlement Class members who submit a valid and timely
8 Claim Form with sufficient proof will be eligible to receive compensation in the form of cash
9 refunds as follows:

10 For those Settlement Class Members who substantiate their claims through a
11 submission of an Affidavit attesting to their purchase of the Covered Products under
12 penalty of perjury, together with additional information requested by the Settlement
13 Administrator on the Claim Form, a total of \$5.00 per household. All claims must be
14 submitted using the Claim Form, which may be submitted by mail or online.

15 Notwithstanding the foregoing sentence, if a Settlement Class Member submits an
16 Affidavit under penalty of perjury attesting that he or she simultaneously purchased
17 three or more Covered Products during his or her initial purchase of any Covered
18 Products together with additional information requested by the Settlement
19 Administrator on the Claim Form, such Settlement Class Member shall be entitled to
20 an additional payment of up to \$5. However, if more than 5,000 Settlement Class
21 Members seek and qualify for this supplemental payment, each such Settlement Class
22 Member shall receive an additional payment equal to his or her pro rata share of
23 \$25,000, which is the cap on such payments.

24 3. Changes to Advertising & Marketing: Within 60 days after the full
25 execution of this Agreement, Defendant will remove health claims and testimonials that include
26 health claims from its website and other marketing materials, unless it has Competent and Reliable
27 Scientific Evidence for such claims.

1 E. Incentive Awards for Class Representatives: Class Counsel agrees that it will
2 apply to the Court for an incentive award to the Class Representative in an amount not to exceed
3 \$2,500, for his participation as the Class Representative, for taking on the risks of litigation, and
4 for settlement of his individual claims as Class Member in this Action. Defendant agrees not to
5 oppose Class Representative's motion for an incentive award, provided the requested incentive
6 award does not exceed the amount set forth herein. Class Representative and Class Counsel agree
7 not to move for an incentive award exceeding the amount set forth herein. Defendant shall pay the
8 lesser of \$2,500 or the incentive award authorized by the Court within ten (10) calendar days of
9 the Effective Date.

10 F. Attorneys' Fees and Costs:

11 4. Class Counsel agrees that it will apply to the Court, no later than 21 days before the Final
12 Approval Hearing, for an award of attorneys' fees not to exceed \$100,000.00 plus costs and
13 expenses not to exceed \$5,000.00. Defendant agrees not to oppose Class Counsel's motion for
14 attorneys' fees and costs, provided the requested attorneys' fees and costs do not exceed \$105,000
15 in total. Plaintiff and Class Counsel agree not to move for attorneys' fees and costs exceeding
16 \$105,000.00.

17 5. Defendant shall pay the lesser of \$105,000.00 or the amount of fees, costs and expenses
18 awarded by the Court to Class Counsel within five (5) calendar days of the entry of a Final
19 Approval Order, provided that Class Counsel agree to repay such amount in the event the Final
20 Approval Order and Judgment is not entered.

21 6. If the Final Approval Order and Judgment is reversed, vacated, modified and/or remanded
22 for further proceedings or otherwise disposed of in any manner other than one resulting in an
23 affirmance of the Final Approval Order (other than on the issue of attorneys' fees and expenses),
24 or if this Agreement is terminated according to its terms, then Class Counsel shall, within five (5)
25 calendar days of such events, repay to Defendant the full amount of any award of attorney's fees
26 and costs paid by Defendant to Class Counsel pursuant to Section III.F.5 of this Agreement.

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

5 G. Termination:

6 8. Defendant shall have the right to terminate this Agreement if, prior to the date of the Final
7 Approval Order and Judgment, the total number of Persons that have submitted timely and valid
8 Requests for Exclusion from the Settlement Class exceeds one thousand (1,000). If Defendant
9 elects to terminate this Agreement under this paragraph, Defendant must provide written notice to
10 the other Parties' counsel on or before the date of the Final Approval Order and Judgment. Such
11 written notice shall be provided by hand delivery or mail to the Parties' counsel.

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

21 **IV. ADMINISTRATION OF SETTLEMENT**

22 A. The Settlement Administrator's duties to administer the settlement include: (1)
23 preparing and publishing class notice; (2) establishing and maintaining a website for notification
24 and Claim Form distribution; (3) establishing a telephone number and responding to inquiries and
25 requests for Claim Forms and assistance from Settlement Class Members; (4) distributing Claim
26 Forms; (5) receiving and independently reviewing the Claim Forms submitted by Settlement Class
27 Members for the purpose of verifying any amounts due to Authorized Claimants; (6) receiving and
28

1 serving upon Class Counsel and Defendant's counsel any written objections or opt-out statements;
2 (7) reporting, in summary or narrative form, to Class Counsel, Defendant's Counsel, and the
3 Court, regarding the completion of its tasks identified within this Agreement; and (8) carrying out
4 other related tasks in accordance with the terms of this Agreement, including printing and sending
5 the settlement checks to Settlement Class Members.

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

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

14 **V. NOTICE TO THE SETTLEMENT CLASS**

15 A. Class Notice: Subject to Court approval, the Parties agree that after entry of the
16 Preliminary Approval Order, Defendant shall provide the Settlement Class with notice of the
17 settlement by the following methods:

18 1. Internet Notice:

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

26 b. Internet Ads: The Settlement Administrator or Defendant will cause to be
27 published internet advertisements, in sufficient quantity and frequency, as Plaintiff
28

1 and Defendant will agree to prior to the Preliminary Approval Hearing. The
2 Settlement Administrator shall provide the Parties with the specifics of Internet ads
3 prior to the Preliminary Approval Hearing and the Parties will, if necessary,
4 provide the specific information to the Court at or before the Preliminary Approval
5 Hearing.

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

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

14 4. Email Notice: The Settlement Administrator will cause the Email Notice to
15 be emailed to all Settlement Class Members for whom Defendant has email information.

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

19 **VI. CLAIMS PROCESS/CLAIMS ADMINISTRATION**

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

25 B. Submission of Claim Form: All Claim Forms shall be signed under penalty of
26 perjury and sent directly to the Settlement Administrator at the address indicated on the Claim
27 Form. All claim forms seeking refunds shall be accompanied by a return of the Covered Products,
28 original retail receipts, and/or a Claim Form signed under penalty of perjury. The Settlement

1 Administrator shall review the Claim Forms and make any calculations of payments to be
2 distributed to the Settlement Class Member.

3 C. Validity of Submitted Claims: No Claim Form will be deemed valid if it is not
4 signed by the Settlement Class Member under penalty of perjury, is not postmarked or submitted
5 electronically on or before the Claims Deadline, or does not contain the requested information.
6 Notwithstanding the above, Class Counsel and Defendant may, but need not, seek permission
7 from the Court to consider late-filed Claim Forms that are received prior to the distribution of
8 settlement funds to the Settlement Class. Any Settlement Class Members who fail to submit valid
9 and timely Claim Forms shall be bound by all terms of the settlement and any judgment entered in
10 this Action, and will be barred from receiving any monetary relief under this Agreement.

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

15 E. Issuance of Settlement Proceeds: The Settlement Administrator is responsible
16 for issuing the refunds to Authorized Claimants. Refunds will be mailed by the Settlement
17 Administrator within twenty-one (21) calendar days of the Effective Date. A declaration of
18 payment will be filed by the Settlement Administrator with the Court and provided to the Parties
19 within ten (10) calendar days of mailing the settlement proceeds.

20 **VII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION**
21 **FROM SETTLEMENT**

22 A. Objections: Only Settlement Class Members, on their own behalf and not on
23 behalf of any class, may object to the Settlement. Those who wish to object to the Settlement
24 must do so in writing. Written objections must (1) state the basis of the objection and all required
25 information from the Long Form Notice, (2) be mailed to the Settlement Administrator, Class
26 Counsel, and Defendant's counsel, and (3) be filed with the Court by the Objection/Exclusion
27 Deadline. Although Settlement Class Members do not need to attend the Final Approval Hearing
28

1 in order to object, no Settlement Class Member shall be entitled to be heard at the Final Approval
2 Hearing (whether individually or through separate counsel) unless written notice of the Settlement
3 Class Member's intention to appear at the Final Approval Hearing, and copies of any written
4 objections or briefs, have been timely filed with the Court and served on counsel for the Parties
5 and the Settlement Administrator on or before the Objection/Exclusion Deadline.

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

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

19 B. Procedure for Requesting Exclusion: Settlement Class Members who wish to
20 opt out of this Settlement must submit a written statement before the Objection/Exclusion
21 Deadline. Requests for Exclusion that do not include all required information and/or that are not
22 submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark
23 on the mailing envelope shall be the exclusive means used to determine whether a Settlement
24 Class Member's Request for Exclusion has been timely submitted. In the event that the postmark
25 is illegible, the Request for Exclusion shall be deemed untimely unless it is received by the
26 Settlement Administrator within two (2) calendar days of the Objection/Exclusion Deadline. Any
27 Settlement Class Member who properly opts out of the Settlement Class using this procedure will
28

1 not be entitled to any relief, will not be bound by the Settlement, and will not have any right to
2 object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and
3 timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all
4 terms of the Settlement and any final judgment entered in this litigation if the Settlement is
5 approved by the Court, regardless of whether they ineffectively or untimely requested exclusion
6 from the Settlement.

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

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

18 **VIII. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL**

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

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

1 B. Approving as to form and content the Internet Notice, Email Notice,
2 Publication Notice and the Long Form Notice;

3 C. Approving as to form and content the proposed Claim Form and instructions;

4 D. Directing publication of the Publication Notice, and the method and frequency
5 of class notice;

6 E. Preliminarily approving the Settlement;

7 F. Preliminarily and conditionally certifying the Settlement Class for settlement
8 purposes;

9 G. Preliminarily approving the Settlement Administrator and the administration of
10 the settlement in accordance with the procedures set forth in this Agreement;

11 H. Staying all proceedings in the Action, and enjoining the prosecution of any
12 other individual or class claims;

13 I. Providing that, in the event the Settlement set forth in this Agreement is not
14 approved by the Court, or in the event that this Agreement becomes null and void pursuant to its
15 terms, this Agreement and all orders entered in connection therewith, including but not limited to
16 any order conditionally certifying the Class, shall become null and void and shall be of no further
17 force and effect and shall not be used or referred to for any purposes whatsoever in the Action or
18 in any other case or controversy; and that in such an event, this Agreement and all negotiations
19 and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all
20 parties hereto, who shall be restored to the respective positions as of the date of this Agreement.
21 In the event the Court does not enter the Preliminary Approval order described herein, or decides
22 to do so only with material modifications, then this entire Agreement shall become null and void,
23 unless the Parties hereto agree in writing to proceed with this Agreement as modified.

24 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT**
25 **APPROVAL**

26 Class Counsel will submit a proposed Final Order and Judgment at the Final Approval
27 Hearing in the form set forth as Exhibit "F," which shall:

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

3 B. Approve Class Counsel's application for the requested award of attorneys' fees
4 and costs and the Class Representative's application for incentive award; and

5 C. Permanently bar Plaintiff and Settlement Class Members from prosecuting
6 against Defendant, and other Released Parties from any and all Released Claims.

7 **X. PARTIES' AUTHORITY**

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

10 **XI. MUTUAL FULL COOPERATION**

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

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

21 **XII. NO ADMISSION**

22 This Agreement is not to be construed or deemed as an admission of liability, culpability,
23 negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims
24 asserted in the Action. Each of the Parties has entered into this Agreement with the intention to
25 avoid further disputes and litigation with the attendant inconvenience and expenses. This
26 Agreement is a settlement document and shall, pursuant to Cal. Evid. Code §§ 1151 and 1152 be
27
28

1 inadmissible in evidence in any proceeding in order to establish liability. The preceding sentence
2 shall not apply to an action or proceeding to approve or enforce this Agreement.

3 **XIII. ENFORCEMENT ACTIONS**

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

7 **XIV. NOTICES**

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

For the Settlement Class	For Defendant
Ryan Clarkson Clarkson Law Firm, P.C. The Pershing Square Building 448 S. Hill St., Suite 701 Los Angeles, CA 90013-1133	Jeff Richardson Mitchell, Silberberg & Knupp LLP 11377 West Olympic Boulevard Los Angeles, CA 90064

16
17 **XV. CONSTRUCTION**

18 The Parties agree that the terms and conditions of this Agreement are the result of arm's
19 length negotiations between the Parties and that this Agreement shall not be construed in favor of
20 or against any Party by reason of the extent to which any Party or his or its counsel participated in
21 the drafting of this Agreement.

22 **XVI. MATERIAL TERMS; CAPTIONS**

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

1 **XVII. INTEGRATION CLAUSE**

2 This Agreement contains the entire agreement between the Parties relating to the
3 settlement, and all prior or contemporaneous agreements, understandings, representations, and
4 statements, whether oral or written, and whether by a party or such party’s legal counsel, are
5 extinguished.

6 **XVIII. NON-EVIDENTIARY USE**

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

11 **XIX. NO COLLATERAL ATTACK**

12 This Agreement shall not be subject to collateral attack by any Settlement Class Member
13 or any recipient of the notices to the Settlement Class after the final judgment. Such prohibited
14 collateral attacks shall include claims made before the Final Approval Hearing that a Settlement
15 Class Member’s settlement amount was improperly calculated or adjusted.

16 **XX. AMENDMENTS**

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

20 **XXI. GOVERNING LAW**

21 This Agreement shall be governed by, construed under, and interpreted and the rights of
22 the Parties determined in accordance with, the laws of the State of California, irrespective of the
23 State of California’s choice of law principles.

24 **XXII. BINDING ON ASSIGNS**

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

27
28

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

XXIII. CLASS COUNSEL SIGNATORIES

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

XXIV. COUNTERPARTS

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

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

CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL:

DATED: August 8, 2016

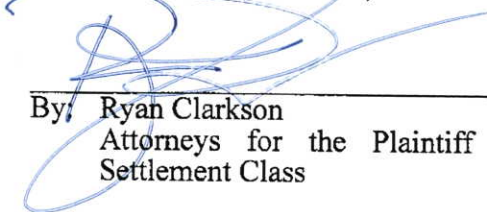
ARMIN AMIRI



Individually and on behalf of the Settlement Class

DATED: August 2, 2016

CLARKSON LAW FIRM, P.C.



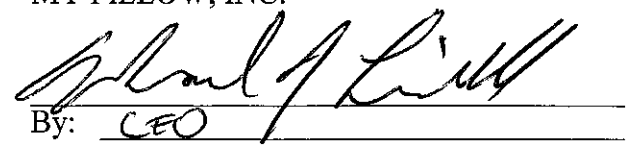
By: Ryan Clarkson
Attorneys for the Plaintiff and the Settlement Class

DEFENDANT:

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

DATED: August 5, 2016

MY PILLOW, INC.


By: CEO

APPROVED AS TO FORM:

DATED: August __, 2016

MITCHELL, SILBERBERG & KNUPP LLP

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

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

DEFENDANT:

DATED: August __, 2016

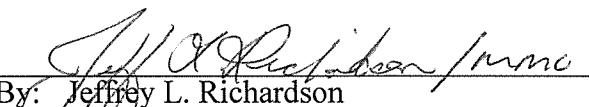
MY PILLOW, INC.

By: _____

APPROVED AS TO FORM:

DATED: August 5, 2016

MITCHELL, SILBERBERG & KNUPP LLP


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