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17  
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT- CENTRAL CIVIL WEST**

20 KRYSTE'AU FULCHER an individual, on  
21 behalf of himself, and those similarly  
situated and on behalf of the general public

22 Plaintiff,

23 v.

24 GUESS ?, Inc., a Delaware Corporation  
25 doing business in California and DOE 1-10,

26 Defendants.  
27  
28

Case No. BC516351

Assigned to: Hon. Jane L. Johnson, Dept. 308

**SECOND AMENDED CLASS ACTION  
SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS**

Complaint Filed: July 26, 2013

1 This Class Action Settlement Agreement and Release of Claims, which includes the  
2 Recitals and all Exhibits attached hereto (collectively, the "Agreement"), is entered into by  
3 and between Plaintiff, on behalf of all Settlement Class Members that she seeks to represent  
4 and Defendant.

5 **RECITALS**

6 On July 26, 2013, Plaintiff Kryste'au Fulcher, on behalf of herself and all persons who  
7 are current or former employees of Guess?, Inc. in California who incurred business expenses,  
8 including but not limited to mileage, between July 26, 2009, and the present and who were not  
9 fully reimbursed pursuant to applicable California Labor Code sections, filed this action  
10 against Defendant in the Superior Court of the State of California, for the County of Los  
11 Angeles, Case Number BC516351. Plaintiff alleges that Defendant violated various  
12 provisions of the California Labor Code and the California Business and Professions Code by  
13 allegedly failing to reimburse employees for work-related business expenses (the "Action").

14 Defendant denied and continues to deny all of the allegations made by Plaintiff in the  
15 Action and has denied and continues to deny that it is liable or owes damages or other  
16 compensation or remedies to anyone with respect to the alleged facts or causes of action  
17 asserted in the Action. Nonetheless, without admitting or conceding any liability or damages  
18 whatsoever, and without admitting that class certification is appropriate except for settlement  
19 purposes alone, Defendant has agreed to settle the Action on the terms and conditions set forth  
20 in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Action.

21 Plaintiff's Counsel investigated the claims against Defendant in the Action, which  
22 investigation included an analysis of any and all applicable defenses. The investigation also  
23 included, *inter alia*, the exchange of information pursuant to informal discovery methods,  
24 meetings and conferences between Plaintiff's Counsel and Defendant's counsel, and  
25 interviews of potential witnesses by Plaintiff's Counsel. Based on the foregoing investigation  
26 and evaluation, Plaintiff's Counsel is of the opinion that the terms set forth in this Agreement  
27 are fair, reasonable, adequate, and in the best interests of the Settlement Class Members. This  
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1 Agreement was reached after extensive arm's-length negotiations, and it was negotiated in  
2 light of all known facts and circumstances, including the risks of significant delay and  
3 uncertainty associated with litigation, various defenses asserted by Defendant, and numerous  
4 potential appellate issues.

5 The Parties conducted months-long negotiations in an effort to reach settlement.

6 On May 13, 2014, the Parties agreed upon material terms for settlement of the Action.

7 In August 2014, the Parties signed a Memorandum of Understanding setting forth the  
8 basic terms of the Settlement Agreement.

9 **1. DEFINITIONS**

10 The defined terms set forth herein shall have the meanings ascribed to them below.

11 **1.1. "Action"** means *Kryste'au Fulcher v. Guess?, Inc.*, Superior Court of the State  
12 of California, for the County of Los Angeles, Case No. BC516351.

13 **1.2. "Attorneys' Fees and Costs Award"** means the attorneys' fees and costs  
14 settlement payment from the Class Settlement Amount agreed upon by the Parties and  
15 approved by the Court for Plaintiff's fees and costs associated with the litigation and  
16 resolution of the Action (excluding the third-party Settlement Administration Costs which are  
17 separately identified and paid as described below). It is agreed by the Parties that Plaintiff's  
18 Counsel shall request attorneys' fees and costs not to exceed \$23,100. Defendant has agreed  
19 not to oppose Plaintiff's Counsel's request for fees and costs as set forth above. Any portion  
20 of the Attorneys' Fees and Costs Award not awarded to Plaintiff's Counsel shall remain part  
21 of the Class Settlement Fund for distribution to the Settlement Class Members.

22 **1.3. "Class Representative Incentive Payment"** means the amount to be paid to  
23 Plaintiff from the Class Settlement Amount in addition to her Individual Settlement Payment,  
24 subject to Court approval, in recognition of her efforts and work in prosecuting the Action on  
25 behalf of Settlement Class Members. It is agreed by the Parties that Plaintiff's Counsel may  
26 request an incentive payment for Plaintiff Kryste'au Fulcher, not to exceed \$500. Defendant  
27 has agreed not to oppose Plaintiff's Counsel's request for an incentive payment as set forth  
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1 above. Any portion of the Class Representative Incentive Payment not awarded to Plaintiff  
2 shall remain part of the Class Settlement Fund for distribution to the Settlement Class  
3 Members.

4 **1.4. “Class Settlement Amount”** means the maximum potential settlement amount  
5 of Seventy Thousand Dollars (\$70,000). The \$70,000 Class Settlement Amount is inclusive  
6 of all Individual Settlement Payments to Participating Settlement Class Members, the Class  
7 Representative Incentive Payment to Plaintiff, Settlement Administration Costs to be paid to  
8 the Settlement Administrator, and the Attorneys’ Fees and Costs Award.

9 **1.5. “Defendant”** means Guess?, Inc.

10 **1.6. “Defendant’s Counsel”** refers to Seyfarth Shaw LLP. For purposes of  
11 providing any notices required under this Agreement, Defendant’s Counsel shall refer to  
12 Andrew M. Paley, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, CA  
13 90067.

14 **1.7. “Effective Date”** means the date that all of the following have occurred:

15 **(A)** the Court has ruled on the motions for final approval of the settlement  
16 and for attorneys’ fees, costs, and an incentive payment to Plaintiff and entered the Final  
17 Judgment consistent with this Agreement; and

18 **(B)** the rulings on such motions and the Final Judgment have become Final.

19 **“Final”** means the later of:

20 **(1)** The time for seeking rehearing or reconsideration and/or  
21 appellate review has expired and no timely requests for such review have been made; or

22 **(2)** If rehearing, reconsideration, or appellate review is sought, after  
23 any and all avenues of rehearing, reconsideration, and appellate review have been exhausted  
24 and no further rehearing, reconsideration, or appellate review is permitted, and the time for  
25 seeking such review has expired, and the Final Judgment and rulings on attorneys’ fees, costs,  
26 and the incentive payment have not been modified, amended or reversed in any way.

27 **1.8. “Individual Settlement Payment”** means each Participating Settlement Class  
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1 Member's potential share of the Net Settlement Amount, which shall be determined by  
2 dividing the total number of weeks worked by each Participating Settlement Class Member in  
3 a relevant position during the Settlement Class Period by the total number of weeks all  
4 Settlement Class Members worked in a relevant position during the Settlement Class Period,  
5 multiplied by the Net Settlement Amount. Each Participating Settlement Class Member must  
6 submit a timely claim form to be entitled to receive an Individual Settlement Payment.

7 **1.9. "Net Settlement Amount"** means the portion of the Class Settlement Amount  
8 available for distribution to Participating Settlement Class Members who submit a claim form  
9 after deductions for approved Class Representative Incentive Payment, Settlement  
10 Administration Costs, and the Attorneys' Fees and Costs Award.

11 **1.10. "Notice Packet"** means the Notice of Class Action Settlement, substantially in  
12 the form attached as Exhibit A.

13 **1.11. "Participating Settlement Class Members"** refers to and includes all  
14 Settlement Class Members who have not submitted timely, valid Requests for Exclusion.

15 **1.12. "Plaintiff"** refers to the named plaintiff, Kryste'au Fulcher.

16 **1.13. "Plaintiff's Counsel"** are R. Craig Clark and James M. Treglio of Clark &  
17 Treglio, 205 West Date Street, San Diego, California 92101 and Walter Haines of United  
18 Employees Law Group, 5500 Bolsa Avenue, #201, Huntington Beach, California 92649.

19 **1.14. "Settlement Administrator"** means Phoenix Settlement Administrators.

20 **1.15. "Settlement Administration Costs"** means the costs payable from the Class  
21 Settlement Amount to the Settlement Administrator for administering this settlement,  
22 including, but not limited to, printing, distributing, and tracking Notice Packets, any required  
23 tax reporting, making any required tax payments, providing required 1099 forms, distributing  
24 the Individual Settlement Payments, Class Representative Incentive Payment, and Attorneys'  
25 Fees and Costs Award, escheating un-cashed checks, and providing necessary reports and  
26 declarations, as requested by the Parties, including weekly reports on the number of  
27 Settlement Class Members who have timely submitted valid Requests for Exclusion and on  
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1 whether any Settlement Class Member submitted a challenge to the information in their  
2 Notice Packet.

3 **1.16. "Settlement Class"** refers to all persons who are current or former employees  
4 of Guess?, Inc. who worked in California retail store locations at any time during the period  
5 commencing July 26, 2009 until the date the Court preliminarily approves this Settlement  
6 Agreement.

7 **1.17. "Settlement Class Period"** means and refers to the period from July 26, 2009,  
8 through the date the Court preliminarily approves this Settlement Agreement.

9 **2. APPROVAL AND CLASS NOTICE**

10 **2.1. Preliminary Approval Hearing.** Plaintiff shall submit to the Court a Motion  
11 for Order Granting Preliminary Approval of Class Action Settlement. The motion shall  
12 request the entry of an Order Granting Preliminary Approval, substantially in the form  
13 attached hereto as Exhibit B, which will, among other things: (i) provisionally certify the  
14 Settlement Class for settlement purposes only; (ii) preliminarily approve the proposed  
15 settlement; (iii) set a date for the Fairness Hearing; and (iv) provide for the Notice Packet to  
16 be sent to all Settlement Class Members as specified herein. To the extent that Plaintiff's  
17 Motion is consistent with the terms of this Agreement, and does not seek relief inconsistent  
18 with this Agreement, Plaintiff's Motion shall be unopposed by Defendant. Defendant reserves  
19 the right to address any factual assertions that are not contained in this Agreement.

20 **(A)** If a mutually-agreed class settlement is not approved, the Action will  
21 proceed as if no settlement has been attempted, unless the Parties jointly agree to seek  
22 reconsideration of the ruling or seek Court approval of a renegotiated settlement, and  
23 Defendant retains the right to contest whether any aspect of the Action should be maintained  
24 as a class action and to contest the merits of the claims being asserted by Plaintiff in the  
25 Action.

26 **2.2. Notice Procedures.**

1                   **(A) Settlement Class List.** Within 14 business days after entry of the Order  
2 Granting Preliminary Approval, Defendant shall provide to the Settlement Administrator a list  
3 of all Settlement Class Members, along with their last known mailing address; and dates of  
4 employment for positions within the Settlement Class during the Settlement Class Period.

5                   **(B) Notice by First-Class U.S. Mail.** Within ten business days after  
6 receiving the Settlement Class List from Defendant, or a later date approved by the Court  
7 upon good cause shown, the Settlement Administrator shall send a Notice Packet to all  
8 Settlement Class Members via First-Class U.S. Mail, using the most current, known mailing  
9 addresses for each Settlement Class Member.

10                   **(1) Confirmation of Addresses in the Settlement Class List.** Any  
11 Notice Packets returned to the Settlement Administrator as undeliverable on or before the  
12 deadline for postmarking Requests for Exclusion shall be sent promptly via First-Class U.S.  
13 Mail to the forwarding address affixed thereto, and the Settlement Administrator shall indicate  
14 the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the  
15 Settlement Administrator shall promptly attempt to determine the correct address using a  
16 single skip-trace, and it shall then perform a single re-mailing. If after performing a skip-trace  
17 search, the Notice Packet is still returned to the Settlement Administrator as undeliverable,  
18 that Settlement Class Member will be deemed a Participating Settlement Class Member.  
19 There is no obligation to attempt to locate Settlement Class Members after the Request for  
20 Exclusion deadline set forth in the Notice Packet.

21                   **2.3. Claims Process.** Participating Settlement Class Members shall be required to  
22 submit a claim form in order to receive an Individual Settlement Payment. No Participating  
23 Settlement Class Member shall receive an Individual Settlement Payment if they submit a  
24 claim form and also submit a valid Request for Exclusion.

25                   **(A) Disputed Information in Notice Packets.** If a Settlement Class  
26 Member disputes the information regarding his/her weeks worked as a Settlement Class  
27 Member during the Settlement Period, the Settlement Class Member may produce evidence to  
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1 the Settlement Administrator substantiating his/her assertion. Defendant's records will be  
2 presumed determinative absent evidence which rebuts those records, but the Settlement  
3 Administrator shall evaluate the evidence submitted by the Settlement Class Member and  
4 make the final decisions as to which data should be applied. Any evidence supporting the  
5 Settlement Class Member's claim must be submitted no later than 60 calendar days after the  
6 Notice Packet is first mailed out.

7 **2.4. Request for Exclusion Procedures.** Any Settlement Class Member who wants  
8 to opt out of the Action must sign and mail a written Request for Exclusion postmarked no  
9 later than 60 calendar days after the Notice Packet is first mailed out. The written Request for  
10 Exclusion must (a) contain the name, address, telephone number, and last four digits of the  
11 Social Security Number of the Settlement Class Member requesting exclusion; (b) state that "I  
12 understand that I am requesting to be excluded from the class monetary settlement and that I  
13 will receive no money from the Class Settlement Amount. I understand that if I am excluded  
14 from the Settlement Class, I may bring a separate action, but I might lose my separate action  
15 or win and recover nothing or less than what I would have recovered under the class monetary  
16 provisions in this case"; (c) be addressed to the Settlement Administrator at the address  
17 indicated in the Notice Packet; (d) be postmarked on or before the deadline set forth above;  
18 and (e) be signed by the Settlement Class Member requesting exclusion. The Notice Packet  
19 shall provide these instructions to all Settlement Class Members who want to exclude  
20 themselves from the Settlement Class.

21 **(A)** The date of the postmark on the return-mailing envelope shall be the  
22 exclusive means to determine whether a Request for Exclusion has been timely submitted.

23 **(B)** A Settlement Class Member who does not submit a valid Request for  
24 Exclusion shall be deemed a Participating Class Member and shall be bound by all terms of  
25 the Agreement and any Final Judgment entered by the Court if the Court grants final approval  
26 of the settlement.

27 **(C)** All Requests for Exclusion will be submitted to the Settlement  
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1 Administrator, who shall, within 10 days after the deadline for submitting a Request for  
2 Exclusion, certify jointly to Plaintiff's Counsel and Defendant's Counsel the total number of  
3 Settlement Class Members who have excluded themselves from the settlement.

4 **2.5. Revocation of Agreement by Defendant.** If 10.0% or more of the Settlement  
5 Class Members submit a valid Request for Exclusion and do not thereafter withdraw their  
6 Request for Exclusion, Defendant may, at its sole discretion, void this Agreement, and all  
7 actions taken in furtherance of it will be thereby null and void.

8 (A) Defendant must exercise this right by filing with the Court a Notice of  
9 Withdrawal From Settlement within 15 calendar days after the Settlement Administrator  
10 notifies the Parties of the total number of valid Requests for Exclusion.

11 (B) If Defendant files a timely Notice of Withdrawal, the Action will  
12 proceed as if no settlement has been attempted. In that event, the Court will enter an order  
13 voiding the Order Granting Preliminary Approval and Defendant retains the right to contest  
14 whether any aspect of the Action should be maintained as a class action and to contest the  
15 merits of the claims being asserted by Plaintiff in the Action.

16 **2.6. Objection Procedures.** Settlement Class Members who want to present  
17 objections to the proposed settlement at the Fairness Hearing must first do so in writing. The  
18 objection must set forth the factual and legal bases for the objection. To be considered, any  
19 objections must be served and filed with the Settlement Administrator by the date specified in  
20 the Notice Packet, which shall be 60 calendar days after the initial mailing of the Notice  
21 Packet. The Parties shall file all objections with the Court within 10 calendar days after the  
22 end of the Request-for-Exclusion period set forth above. Settlement Class Members who opt  
23 out are not entitled to file objections. An objector also has the right to appear at the Fairness  
24 Hearing either in person or through counsel. An objector who wants to appear at the Fairness  
25 Hearing must state his or her intention to do so at the time he or she submits his or her written  
26 objections. An objector may withdraw his or her objections at any time. A Settlement Class  
27 Member who submits an objection remains bound by this Agreement.  
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1           **2.7. Motion for Final Approval.** Not later than 14 calendar days before the  
2 Fairness Hearing, or such other time as the Court may require, Plaintiff will submit a motion  
3 for final approval of the settlement.

4           **(A) Entry of Judgment.** At the Fairness Hearing, the Parties will request  
5 that the Court, among other things, (a) grant final certification of the Settlement Class for  
6 purposes of settlement; (b) enter Final Judgment in accordance with this Agreement and  
7 without further fees or costs to any party except as expressly set forth in this Agreement;  
8 (c) approve the Agreement as fair, reasonable, adequate, and binding on all Participating  
9 Settlement Class Members who have not timely submitted a Request for Exclusion; (d) enter  
10 an order as to Plaintiff's Counsel's request for attorneys' fees and costs; (e) enter an order  
11 approving the Class Representative Incentive Payment; and (f) enter an order permanently  
12 enjoining all Participating Settlement Class Members from pursuing and/or seeking to reopen  
13 claims that have been released by this Agreement. After entry of the Final Judgment, the  
14 Court shall have continuing jurisdiction solely for purposes of addressing: (i) the  
15 interpretation and enforcement of the terms of the Agreement, (ii) settlement administration  
16 matters, and (iii) such post-Final Judgment matters as may be appropriate under court rules or  
17 as set forth in this Agreement.

18           **2.8. Effect of Failure to Grant Final Approval.** In the event the Court fails to  
19 enter Final Judgment in accordance with this Agreement, or such Final Judgment does not  
20 become Final as defined herein, the Parties shall proceed as follows: The Action will resume  
21 unless the Parties jointly agree to (1) seek reconsideration or appellate review of the decision  
22 denying entry of Final Judgment or (2) attempt to renegotiate the settlement and seek Court  
23 approval of the renegotiated settlement. In the event any reconsideration and/or appellate  
24 review is denied, or a mutually agreed settlement is not approved:

25           **(A)** The Action will proceed as if no settlement has been attempted. In that  
26 event, the Court will enter an order voiding the Order Granting Preliminary Approval and  
27 Defendant retains the right to contest whether any aspect of the Action should be maintained  
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1 as a class action and to contest the merits of the claims being asserted by Plaintiff in the  
2 Action.

3 **3. SETTLEMENT PROCEEDS**

4 **3.1. Class Settlement Amount.**

5 (A) Within fifteen calendar days after the Effective Date, Defendant will  
6 deposit with the Settlement Administrator an amount equal to the Attorneys' Fees and Costs,  
7 Class Representative Incentive Payment and Settlement Administration Costs approved by the  
8 Court, as well as the Individual Settlement Payments claimed by the Participating Settlement  
9 Class Members.

10 (B) Plaintiff, the Participating Settlement Class Members, and Plaintiff's  
11 Counsel shall not seek any further compensation or consideration from Defendant and/or any  
12 other Releasee in connection with the Action or any claims encompassed and released by this  
13 Agreement.

14 **3.2. Settlement Amounts Payable as Attorneys' Fees and Costs.**

15 (A) Plaintiff's Counsel shall request an award from the Court of up to  
16 \$23,100 of the Class Settlement Amount for attorneys' fees and costs. Defendant will not  
17 oppose such a fee and cost application. Defendant shall have no additional liability for  
18 attorneys' fees or costs in connection with the Action. The Settlement Administrator shall pay  
19 to Plaintiff's Counsel the approved attorneys' fees and costs no later than thirty calendar days  
20 after the Effective Date. Within ten calendar days after the Effective Date, Plaintiff's Counsel  
21 shall transmit instructions to the Settlement Administrator as to how the Attorneys' Fees and  
22 Costs Award shall be paid. Plaintiff's Counsel agrees that they are responsible for allocating  
23 this portion of the Class Settlement Amount among themselves and any other counsel for  
24 Plaintiff or Settlement Class Members with any claims being settled through this Agreement.  
25 In the event an attorneys' lien is asserted relating to this Agreement or any portion of the  
26 Class Settlement Amount, Defendant shall tender the Class Settlement Amount to the Court  
27 and shall thereafter be released from any attorneys' lien claim.  
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1                   **(1)** Plaintiff's Counsel shall be solely and legally responsible for  
2 paying all applicable taxes on their respective Attorneys' Fees and Costs Award payment and  
3 shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties,  
4 or interest arising as a result of the payment. The Settlement Administrator shall issue an  
5 Internal Revenue Service ("IRS") Form 1099 to Plaintiff's Counsel for their respective  
6 Attorneys' Fees and Costs Award payment.

7                   **(2)** The substance of Plaintiff's Counsel's application for attorneys'  
8 fees and costs is not part of this Agreement and is to be considered separately from the  
9 Court's consideration of the fairness, reasonableness, adequacy, and good faith of the  
10 settlement. The Court's award of approved attorneys' fees and costs is not a material term of  
11 this Agreement. The outcome of any proceeding related to Plaintiff's Counsel's application  
12 for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's  
13 ruling on the motion for final approval.

14                   **3.3. Class Representative Incentive Payment.** The Class Representative Incentive  
15 Payment shall be deducted from the Class Settlement Amount.

16                   **(A)** Defendant agrees not to oppose Plaintiff's application to the Court for a  
17 Class Representative Incentive Payment of up to \$500 for Plaintiff.

18                   **(B)** The Class Representative Incentive Payment shall be in addition to  
19 Plaintiff's Individual Settlement Payment.

20                   **(C)** Within thirty calendar days after the Effective Date, the Settlement  
21 Administrator will release to Plaintiff the total Class Representative Incentive Payment  
22 approved by the Court. The Settlement Administrator shall issue an IRS Form 1099 to the  
23 Plaintiff for her Class Representative Incentive Payment. Plaintiff shall be solely and legally  
24 responsible for paying any and all applicable taxes on her Class Representative Incentive  
25 Payment, and she shall indemnify and hold harmless Defendant from any claim or liability for  
26 taxes, penalties, or interest arising as a result of the payments.

27                   **3.4. Settlement Administration Costs.** The Settlement Administrator shall be paid  
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1 the approved Settlement Administration Costs from the Class Settlement Amount. The  
2 Settlement Administration Costs are estimated to be \$10,000.00. An IRS Form 1099 shall be  
3 issued to the Settlement Administrator.

4 **(A) Excess Administrative Costs.** Defendant agrees to pay Settlement  
5 Administration Costs in excess of \$10,000.00 up to an additional \$8,000. This excess amount  
6 is currently estimated to be around \$6,500.00. If the excess amount is above \$8000, the  
7 Parties shall meet and confer to determine the additional amount each might pay. If the  
8 Parties cannot agree on who should pay any additional unanticipated excess administrative  
9 costs, the Parties shall seeks the Court's guidance.

10 **(B) Certification of Completion.** Upon completion of administration of  
11 the settlement, the Settlement Administrator shall provide written certification of such  
12 completion to the Court and counsel for all Parties.

13 **(C) Minimization of Administrative Costs.** The Parties agree to cooperate  
14 in the settlement administration process and to make all reasonable efforts to control and  
15 minimize the costs and expenses incurred in administration of the Agreement.

16 **3.5. Distribution to Participating Settlement Class Members.**

17 **(A)** Settlement payments to Plaintiff and/or Participating Settlement Class  
18 Members shall not be considered as a payment of overtime, salary, wages and/or  
19 compensation under the terms of any applicable benefit plan or for any purpose. The receipt  
20 of settlement payments under the terms of this class action settlement shall not affect  
21 participation in, eligibility for, vesting in, the amount of any past or future contribution to, or  
22 level of benefits under any applicable benefit plan. Any amounts paid will not impact or  
23 modify any previously credited hours of service or compensation taken into account under any  
24 employee benefit plan sponsored or contributed to by Defendant or any jointly-trusted  
25 benefit plans. For purposes of this Agreement, "benefit plan" means each and every  
26 "employee benefit plan" as defined in 29 U.S.C. § 1002(3), and, even if not thereby included,  
27 any bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing,  
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1 retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred  
2 compensation, or any other similar benefit plan, practice, program, or policy.

3 **(B) Calculation of Individual Settlement Payments.** The Net Settlement  
4 Amount shall be apportioned among Participating Settlement Class Members who submit  
5 claim forms based on the number of weeks worked in a relevant position during the  
6 Settlement Class Period. The Settlement Administrator will calculate Individual Settlement  
7 Payments for all Participating Settlement Class Members who submit a claim form.

8 **(C) Resolution of Disputes Concerning Individual Settlement Payments.**  
9 Should any questions arise regarding the determination of eligibility for, or the amounts of,  
10 any Individual Settlement Payments under the terms of this Agreement that are not otherwise  
11 resolved by the Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel shall  
12 meet and confer in an attempt to reach an agreement. If Plaintiff's Counsel and Defendant's  
13 Counsel cannot agree, the Settlement Administrator shall make the final determination, and  
14 that determination shall be conclusive, final and binding.

15 **(D)** The distribution to Participating Settlement Class Members shall be  
16 made within 30 calendar days after the Effective Date; no payment of any portion of the Class  
17 Settlement Amount shall be made prior to the Effective Date. Checks will be sent to  
18 Participating Settlement Class Members by First-Class U.S. Mail.

19 **3.6. Provisions Governing Un-Cashed Checks and Requests for Replacement**  
20 **Checks.**

21 **(A) Un-cashed Checks.** Any checks issued to Settlement Class Members  
22 shall be negotiable for at least 120 calendar days. Any uncashed checks will escheat pursuant  
23 to applicable law. Regardless of whether the checks are cashed, this Agreement will be  
24 binding on every Settlement Class Member who does not timely submit a Request for  
25 Exclusion.

26 **(B) Replacement Checks.** If any Settlement Class Member requests  
27 issuance of a replacement check, the request must be received within 120 days of issuance of  
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1 the initial check. Any request for a replacement check must be made by written declaration,  
2 under penalty of perjury, that the initially-issued check was lost, stolen or destroyed.  
3 However, any replacement checks that are issued will only be issued after the 120-day  
4 negotiability period on initially-issued checks has passed and after an additional 60-day hold  
5 period has passed to ensure that negotiation of an initial check is not in process at a financial  
6 institution. A replacement check will be issued only one time for any particular Settlement  
7 Class Member. To avoid the risk of any such double payment, Defendant or the Settlement  
8 Administrator will put a stop payment on any checks to be reissued before reissuing the  
9 checks. Settlement Class Members seeking a replacement check agree to pay any fees  
10 associated with a stop payment on their original check(s) before a replacement check will  
11 issue.

### 12 **3.7. Tax Considerations.**

13 **(A)** 100% of all Individual Settlement Payments to Settlement Class  
14 Members are for the settlement of claims for reimbursements for mileage and any other  
15 expenses, interest and penalties and shall be paid without withholding and reported to the IRS  
16 and the payee, to the extent required by law, under the payee's name and Social Security  
17 Number on an IRS Form 1099.

18 **(B)** The Attorneys' Fees and Costs Award payment shall be made without  
19 withholding and reported to the IRS and the payees under the payees' name and taxpayer  
20 identification number, which the payees shall provide for this purpose, on an IRS Form 1099.

21 **(C)** To the extent that a recipient of a payment pursuant this Agreement  
22 (including Plaintiff, any individual Settlement Class Member or any of Plaintiff's Counsel)  
23 incurs any liability as a result of failing to pay all taxes, interest, fees, penalties, or  
24 assessments due on that recipient's respective share (and only the respective share) of the  
25 payments issued pursuant to this Agreement, the recipient so failing to pay such obligations  
26 will indemnify, defend, and hold Defendant harmless from and against any and all liability for  
27 such failure to pay such obligations, including liability in the form of taxes, interest, fees,  
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1 assessments, or penalties, attorneys' fees, and other costs imposed upon Defendant for the  
2 recipient's failure to pay such obligations. Plaintiff, on behalf of each individual Settlement  
3 Class Member, acknowledges and agrees that Defendant is not giving any tax advice in  
4 connection with this Agreement or the payments to be made pursuant to this Agreement and  
5 she has not relied upon any advice from Defendant or Plaintiff's Counsel as to the taxability  
6 of the payments received pursuant to this Agreement.

7 **4. RELEASE**

8 **4.1. Release of Claims.**

9 **(A)** By operation of the entry of the Final Judgment and final approval, and  
10 except as to such rights or claims as may be created by this Agreement, Plaintiff and each  
11 individual Participating Settlement Class Member, and each of their respective executors,  
12 administrators, representatives, agents, heirs, successors, assigns, trustees, guardians, will  
13 forever and fully release Defendant and any of its owners, stockholders, predecessors,  
14 successors, assignors, assigns, agents, vendors, directors, officers, employees, representatives,  
15 attorneys, attorneys-in-fact, insurers, parent companies, divisions, subsidiaries (whether or not  
16 wholly owned), affiliates, insurers, benefit plans, plan fiduciaries and/or administrators, the  
17 plan sponsors, and all persons acting by, through, under or in concert with any of them,  
18 including any party that was or could have been named as a defendant in the Action  
19 (collectively, the "Releasees") from any and all claims, rights, demands, liabilities, and causes  
20 of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or  
21 regulation, in equity or otherwise, and whether arising under federal, state, or other applicable  
22 law, which any such Settlement Class Member has or might have, known or unknown, of any  
23 kind whatsoever, that are based upon or arise out of Defendant's alleged failure to reimburse  
24 business expenses, as alleged in the Action, whether or not those claims were specifically  
25 asserted therein, up until the date of preliminary approval of this Agreement. As to Plaintiff  
26 and Participating Class Members who submit a valid claim form, the release shall also include  
27 a release of all claims pursuant to the Employment Retirement Income Security Act  
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1 (“ERISA”) arising out of or relating to the unreimbursed business expenses claims in the  
2 Action, the claims resolved through this Agreement, and/or the payments made pursuant to  
3 this Agreement (“Released Claims”). This release does not include any claims that cannot be  
4 waived as a matter of law, but Plaintiff and the Settlement Class Members agree that they will  
5 not accept any monetary recovery from any proceedings relating to such claims.

6 **(B)** In addition to those claims released above, Plaintiff, in consideration for  
7 the statements, agreements, covenants, promises, obligations, and undertakings contained in  
8 this Agreement, on behalf of herself, her heirs, agents, attorneys, representatives, executors,  
9 administrators, and assigns, hereby unconditionally, irrevocably and forever releases,  
10 discharges, absolves, acquits and relieves Defendant, and all other Releasees from any and all  
11 additional claims, demands, damages, losses, actions, disputes, costs, penalties, or expenses of  
12 whatever kind or nature, in law or in equity, whether known or unknown, past or present,  
13 suspected or unsuspected, matured or unmatured, fixed or contingent, apparent or concealed,  
14 based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to  
15 the date of execution hereof which she now has or which may hereafter accrue or otherwise be  
16 acquired, whether based on a tort, contract, or other theory of recovery. This release does not  
17 cover claims that cannot be waived by law. Plaintiff represents that she has not filed or  
18 pursued any pending action, lawsuit, claim, or proceeding (other than the Action) against any  
19 Releasee, with any local, state, or federal agency or authority.

20 **(C)** Plaintiff acknowledges that she may hereafter discover facts or law  
21 different from, or in addition to, the facts or law she knows or believes to exist with respect to  
22 a released claim. Plaintiff agrees, nonetheless, that this Agreement and the releases contained  
23 in it shall be and remain effective in all respects notwithstanding such different or additional  
24 facts or law regarding such released claims. Upon execution of this Agreement, Plaintiff shall  
25 be deemed to have fully, finally, and forever settled, released, and assumed the risk of any and  
26 all such released claims. Plaintiff also acknowledges and agrees that she may have claims  
27 related to unreimbursed business expenses that are presently unknown and that the release  
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1 contained in this Agreement is intended to and will fully, finally, and forever discharge all  
2 Released Claims, whether now asserted or unasserted, known or unknown, suspected or  
3 unsuspected, which now exist, or heretofore existed or may hereafter exist, which if known,  
4 might have affected her decision to enter into this release. Plaintiff also acknowledges and  
5 agrees that the release contained in this Agreement includes a waiver of all rights under  
6 Section 1542 of the California Civil Code as such rights relate to business reimbursements.  
7 No claims, causes of action, demands, debts, obligations, liabilities, or agreements (whether  
8 known or unknown, suspected or unsuspected, asserted or unasserted) included within the  
9 scope of the Released Claims are reserved. **California Civil Code Section 1542 reads as**  
10 **follows:**

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

16 Plaintiff acknowledges that she has read all of this Agreement, including the above Civil Code  
17 section, and that she fully understands both the Agreement and the Civil Code section. By  
18 executing this Agreement, Plaintiff, on behalf of herself only, expressly waives any benefits  
19 and rights granted pursuant to Civil Code section 1542 or any statute, rule, or principle of  
20 common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole  
21 or in part, to Civil Code Section 1542. Plaintiff acknowledges and agrees that this knowing  
22 and voluntary waiver is an essential and material term of this Agreement, and the Agreement  
23 would not have been entered into without such a waiver.

24 **4.2. Non-Admission of Liability.** By entering into this Agreement, Defendant in  
25 no way admits any violation of law or any liability whatsoever to Plaintiff and/or the  
26 Settlement Class Members, individually or collectively, all such liability being expressly  
27 denied. Likewise, by entering into this Agreement, Defendant in no way admits to the  
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1 suitability of this case for class action litigation other than for purposes of settlement. Rather,  
2 Defendant enters into this Agreement to avoid further protracted litigation and to resolve and  
3 settle all disputes with Plaintiff and the Settlement Class Members. The Parties understand  
4 and agree that this Agreement and all exhibits thereto are settlement documents and shall be  
5 inadmissible for any purpose in any proceeding, except an action or proceeding to approve,  
6 interpret, or enforce the terms of the Agreement. The Parties agree, however, that to the  
7 extent permitted by law, this Agreement may be pleaded as a full and complete defense to,  
8 and may be used as the basis for an injunction against any action, suit or other proceeding that  
9 may be instituted, prosecuted or attempted in breach of this Agreement.

10 **5. NO PRIOR ASSIGNMENTS OR UNDISCLOSED LIENS.** Plaintiff and Plaintiff's  
11 Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise  
12 disposed of, or purported to assign, transfer, convey, or otherwise dispose of any released  
13 claims or the Attorneys' Fees and Costs Award to be paid pursuant to this Agreement.  
14 Plaintiff and Plaintiff's Counsel further represent and warrant that there are not any liens or  
15 claims against any of the amounts being paid by Defendant as provided in this Agreement.  
16 Plaintiff and Plaintiff's Counsel agree to defend, indemnify, and hold Defendant harmless  
17 from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys'  
18 fees, resulting from a breach of these representations and/or from any lien or assignment.

19 **6. MISCELLANEOUS**

20 **6.1. Cooperation Between the Parties; Further Acts.** The Parties shall cooperate  
21 fully with each other and shall use their best efforts to obtain the Court's approval of this  
22 Agreement and all of its terms. Each of the Parties, upon the request of any other Party,  
23 agrees to perform such further acts and to execute and deliver such other documents as are  
24 reasonably necessary to carry out the provisions of this Agreement.

25 **6.2. Papers to Be Filed With the Court.** All papers to be filed with the Court by  
26 Defendant or Plaintiff's Counsel in connection with this Agreement shall be submitted to the  
27 other Party at least two days prior to filing.  
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1           **6.3. Documents and Discovery.** Within sixty days after the completion of the  
2 administration of the settlement, Plaintiff's Counsel shall return to Defendant confidential  
3 documents and confidential data produced by Defendant in connection with the Action or  
4 destroy said documents and data. Plaintiff's Counsel shall certify in writing to Defendant  
5 their good-faith efforts to comply with this provision.

6           **6.4. Entire Agreement.** This Agreement constitutes the entire agreement between  
7 the Parties with regard to the subject matter contained herein, and all prior and  
8 contemporaneous negotiations and understandings between the Parties shall be deemed  
9 merged into this Agreement.

10           **6.5. Binding Effect.** This Agreement shall be binding upon the Parties and, with  
11 respect to Plaintiff and the Settlement Class Members, their spouses, children, representatives,  
12 heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.

13           **6.6. Arm's-Length Transaction; Materiality of Terms.** The Parties have  
14 negotiated all the terms and conditions of this Agreement at arms' length. All terms and  
15 conditions of this Agreement in the exact form set forth in this Agreement are material to this  
16 Agreement and have been relied upon by the Parties in entering into this Agreement.

17           **6.7. Captions.** The captions or headings of the sections and paragraphs of this  
18 Agreement have been inserted for convenience of reference only and shall have no effect upon  
19 the construction or interpretation of any part of this Agreement.

20           **6.8. Construction.** The determination of the terms and conditions of this  
21 Agreement has been by mutual agreement of the Parties. Each party participated jointly in the  
22 drafting of this Agreement, and therefore the terms and conditions of this Agreement are not  
23 intended to be, and shall not be, construed against any party by virtue of draftsmanship.

24           **6.9. Continuing Jurisdiction.** The Court shall retain jurisdiction over the  
25 implementation of this Agreement as well as any and all matters arising out of, or related to,  
26 the implementation of this Agreement and of the settlement contemplated thereby. The Court  
27 shall not have jurisdiction to modify the terms of the Agreement.  
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1           **6.10. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the  
2 terms of this Agreement, whether purportedly made before or after the Court's approval of  
3 this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all  
4 Parties and then only to the extent set forth in such written waiver, modification or  
5 amendment, subject to any required Court approval. Any failure by any Party to insist upon  
6 the strict performance by the other Party of any of the provisions of this Agreement shall not  
7 be deemed a waiver of future performance of the same provisions or of any of the other  
8 provisions of this Agreement, and such Party, notwithstanding such failure, shall have the  
9 right thereafter to insist upon the specific performance of any and all of the provisions of this  
10 Agreement.

11           **6.11. When Agreement Becomes Effective; Counterparts.** This Agreement shall  
12 become effective upon its execution. The Parties may execute this Agreement in counterparts,  
13 and execution in counterparts shall have the same force and effect as if Plaintiff and  
14 Defendant had signed the same instrument.

15           **6.12. Facsimile or Scanned Signatures.** Any Party may execute this Agreement by  
16 signing on the designated signature block below and transmitting that signature page via  
17 facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made  
18 and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this  
19 Agreement shall be deemed an original signature for purposes of this Agreement and shall be  
20 binding upon the Party whose counsel so transmits the signature page.

21           **6.13. Exhibits Incorporated by Reference.** The terms of this Agreement include  
22 the terms set forth in any attached Exhibit, which are incorporated by this reference as though  
23 fully set forth herein. Any Exhibit to this Agreement is an integral part of the settlement.

24           **6.14. Interim Stay of Proceedings.** The Parties agree to refrain from further  
25 litigation of this matter, except such proceedings necessary to implement and obtain an order  
26 granting final approval of the terms of the Agreement. The Parties further agree that the  
27 mutual, voluntary cessation of litigation shall terminate if the motion for final approval of the  
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1 Agreement is denied by the Court.

2 **6.15. Governing Law.** All terms of this Agreement and Exhibits hereto shall be  
3 governed by and interpreted according to the laws of the State of California.

4 **6.16. Invalidity of Any Provision.** Before declaring any provision of this  
5 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest  
6 extent possible consistent with applicable precedents so as to render all provisions of this  
7 Agreement valid and enforceable.

8 **6.17. Waiver of Right to Be Excluded.** Plaintiff agrees to sign this Agreement, and  
9 by signing this Agreement, she is thereby bound by the terms herein. For good and valuable  
10 consideration, Plaintiff further agrees that she shall not submit a Request for Exclusion.

11 **6.18. No Solicitation of Opt-outs.** The Parties further represent and warrant that  
12 they have not and will not solicit, encourage or assist in any fashion any effort by any entity or  
13 person to object to the settlement set forth in this Agreement or to request exclusion from the  
14 Settlement Class.

15 **6.19. No Media.** Plaintiff's counsel agrees that they shall not make any public  
16 statements about this settlement, including all forms of media, and shall decline to respond to  
17 any media inquiries about the settlement.

18 **6.20. Time Periods.** The time periods and dates provided in this Agreement with  
19 respect to giving of notices and hearings are subject to Court approval and modification by the  
20 Court or by written stipulation of Plaintiff's Counsel and Defendants' Counsel without further  
21 notice to the Settlement Class Members.

22 Dated: June \_\_, 2015

GUESS?, INC.

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By: \_\_\_\_\_

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Jason Miller  
General Counsel

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Dated: June \_\_, 2015

SEYFARTH SHAW LLP

By: \_\_\_\_\_  
Andrew M. Paley  
John T. Anthony III  
Attorneys for Defendant  
GUESS?, INC.


Dated: June \_\_, 2015

PLAINTIFF KRYSTE'AU FULCHER

By: \_\_\_\_\_  
Kryste'au Fulcher

Dated: June 18, 2015

CLARK & TREGLIO

By: \_\_\_\_\_  
  
R. Craig Clark  
James M. Treglio  
Attorneys for Plaintiff and Settlement Class

Dated: June \_\_, 2015

UNITED EMPLOYEES LAW GROUP

By: \_\_\_\_\_  
Walter Haines  
Attorneys for Plaintiff and Settlement Class

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Dated: June \_\_, 2015

SEYFARTH SHAW LLP

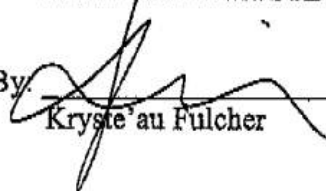
By: \_\_\_\_\_

Andrew M. Paley  
John T. Anthony III  
Attorneys for Defendant  
GUESS?, INC.

Dated: June \_\_, 2015

PLAINTIFF KRYSTE'AU FULCHER

By: \_\_\_\_\_

  
Kryste'au Fulcher

Dated: June \_\_, 2015

CLARK & TREGLIO

By: \_\_\_\_\_

R. Craig Clark  
James M. Treglio  
Attorneys for Plaintiff and Settlement Class

Dated: June \_\_, 2015

UNITED EMPLOYEES LAW GROUP

By: \_\_\_\_\_

Walter Haines  
Attorneys for Plaintiff and Settlement Class



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Dated: June \_\_, 2015

SEYFARTH SHAW LLP

By: \_\_\_\_\_

Andrew M. Paley  
John T. Anthony III  
Attorneys for Defendant  
GUESS?, INC.

Dated: June \_\_, 2015

PLAINTIFF KRYSTE'AU FULCHER

By: \_\_\_\_\_

Kryste'au Fulcher

Dated: June \_\_, 2015


CLARK & TREGLIO

By: \_\_\_\_\_

R. Craig Clark  
James M. Treglio  
Attorneys for Plaintiff and Settlement Class

Dated: June **15** 2015

UNITED EMPLOYEES LAW GROUP

By:  \_\_\_\_\_

Walter Haines  
Attorneys for Plaintiff and Settlement Class

# **Exhibit A**

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

*Kryste'au Fulcher v. Guess?, Inc.*  
*Case Number BC516351*

**NOTICE OF CLASS ACTION SETTLEMENT**

**PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS**

**TO: ALL PERSONS WHO ARE CURRENT OR FORMER EMPLOYEES OF GUESS?, INC. WHO WORKED IN CALIFORNIA RETAIL STORE LOCATIONS AT ANY TIME DURING THE PERIOD COMMENCING JULY 26, 2009, TO [INSERT DATE OF PRELIMINARY APPROVAL].**

**1. *Why Have I Received This Notice?***

This Notice was sent to you to inform you that the Superior Court for the County of Los Angeles has preliminarily approved the terms of a class action settlement in a lawsuit filed against Guess?, Inc. ("Guess?") by a former employee seeking to recover alleged unreimbursed business expenses. Guess?'s records indicate that you may be a Settlement Class Member. The settlement will resolve all Settlement Class Members' claims described below during the Settlement Class Period of July 26, 2009 through [INSERT DATE OF PRELIMINARY APPROVAL].

A Preliminary Approval Hearing was held on June 8, 2015 at 10:00 a.m., in the Superior Court of the State of California, County of Los Angeles. The Court conditionally certified the Settlement Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Fairness Hearing concerning the proposed settlement on October 9, 2015 at 9:00 a.m., in Department 308 of the Superior Court of the State of California, County of Los Angeles, located at 600 S. Commonwealth Ave. Los Angeles, CA 90005.

**2. *What Is This Case About?***

Plaintiff Kryste'au Fulcher, on behalf of herself and all other persons who are now or were employed by Guess? in California retail store locations between July 26, 2009, and [DATE OF PRELIMINARY APPROVAL ORDER], filed an action against Guess? in the Superior Court for the State of California, County of Los Angeles, Case Number BC516351 on July 26, 2013 (the "Action"). Plaintiff alleges that Guess? violated various provisions of the California Labor Code and the California Business and Professions Code by allegedly failing to reimburse employees for business expenses, including but not limited to mileage.

Guess? denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action.

### **3. *Am I A Settlement Class Member?***

You are a Settlement Class Member if you worked for Guess? in a retail store location in California from July 26, 2009, to **[DATE OF PRELIMINARY APPROVAL ORDER]**.

### **4. *How Does This Class Action Settlement Work?***

In this lawsuit, Plaintiff sued on behalf of other employees who allegedly have similar claims. Plaintiff and these other employees comprise a “Settlement Class” and are “Settlement Class Members.” The settlement of this lawsuit resolves the business expense reimbursement claims of all Settlement Class Members, except for those who exclude themselves from the Settlement Class. Settlement Class Members who do not exclude themselves are eligible to receive a portion of the Net Settlement Amount based on the number of weeks they worked in a Settlement Class position during the Settlement Class Period, if they submit a claim form. Persons who choose to exclude themselves from the Settlement Class will not receive a payment from the Net Settlement Amount in this case, but they will preserve any claims they might have against Guess? arising out of the facts alleged in the complaint.

The Court has not decided in favor of Plaintiff or Guess?. Instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial, and the people affected will receive compensation quickly. Plaintiff and her attorneys think the settlement is in the best interests of the Settlement Class.

Guess? denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiff or the Settlement Class. Guess? is settling the lawsuit as a compromise.

The Court file has the settlement documents which explain the settlement in greater detail. The Court must review the terms of the settlement and determine if it is fair and reasonable to the Settlement Class.

**5. Who Are the Attorneys Representing the Parties?**

<b>Attorneys for Plaintiff and the Settlement Class</b>	<b>Attorneys for Guess?</b>
<p data-bbox="358 333 732 558"><b>CLARK &amp; TREGLIO</b> R. Craig Clark James M. Treglio 205 West Date Street San Diego, California 92101 Telephone: (619) 239-1321 Facsimile: (888) 273-4554</p> <p data-bbox="272 590 821 779"><b>UNITED EMPLOYEES LAW GROUP</b> Walter Haines 5500 Bolsa Avenue, #201 Huntington Beach, California 92649 Telephone: (562) 256-1047 Facsimile: (562) 256-1006</p>	<p data-bbox="980 333 1458 558"><b>SEYFARTH SHAW LLP</b> Andrew M. Paley John T. Anthony III 2029 Century Park, East Suite 3500 Los Angeles, California 90067 Telephone: (310) 277-7200 Facsimile: (310) 201-5219</p>

The Court has decided that Clark & Treglio and United Employees Law Group are qualified to represent you and all other Settlement Class Members.

You do not need to hire your own attorney because Plaintiff's Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

**6. What Are My Options?**

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

- **STAY IN THE CLASS:** If you do nothing, you stay in this lawsuit, and if the Court grants final approval of the settlement, you have the right to submit a claim form and receive a proportional share of the Net Settlement Amount based on the number of weeks you worked in a relevant position during the Settlement Class Period. In exchange, you give up the right to sue Guess? for the claims resolved through this settlement, including all claims for unreimbursed business expenses, even if you do not submit a claim form or even if you do not cash your settlement check. **You must timely submit a claim form in order to receive any money as part of this settlement.**
- **OPT OUT:** If you "opt out," you remove yourself from this lawsuit. If the Court grants final approval of the settlement, you will not receive a settlement check but you will

**retain any rights you might have to sue Guess? for the claims resolved through this settlement.**

- **OBJECT:** **You may file a legal objection to the proposed settlement.** If you would like to object, you must not opt out of this case.

#### **7. *How Do I Opt Out or Exclude Myself From This Settlement?***

If you do not want to take part in the settlement, you must sign, postmark, and mail a written Request for Exclusion to the Settlement Administrator. The written request must: (a) state your name, address, telephone number, and the last four digits of your Social Security Number; (b) state that “I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the Class Settlement Amount. I understand that if I am excluded from the Settlement Class, I may bring a separate action, but I might lose my separate action or win and recover nothing or less than what I would have recovered under the class monetary provisions in this case”; (c) be addressed to the Settlement Administrator at **[INSERT ADDRESS FOR SETTLEMENT ADMINISTRATOR]**; (d) be signed by you; and (e) be postmarked no later than September 8, 2015.

The Final Judgment entered following approval of the settlement by the Court will bind all Settlement Class Members who do not request exclusion from the class action settlement. Any Settlement Class Member who does not request exclusion may, if they desire, enter an appearance in the lawsuit through his or her own lawyer at his or her own expense.

If you submit a request by September 8, 2015 to opt out of the settlement that complies with the above requirements, you will no longer be a member of the Settlement Class, you will not participate in this settlement, and you will receive no benefit from this settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have against Guess?, and you will be free to pursue them, at your own cost, if you choose to do so.

#### **8. *How Do I Object To The Settlement?***

If you are a member of the Settlement Class who does not opt out of the settlement, you may object to the settlement, to Plaintiff’s Counsel’s proposed fees and costs, or to the proposed Class Representative Incentive Payment, personally or through an attorney, by submitting your written objection to Settlement Administrator at **[INSERT ADDRESS FOR SETTLEMENT ADMINISTRATOR]** via First-Class U.S. Mail, postage prepaid. Your objection must state your full name, address, and telephone number. It must also be signed by you and clearly state the basis for your objection. An objector who wants to appear at the Fairness Hearing must state their intention to do so at the time he or she submits his or her written objection(s).

To be valid and effective, any objections must be postmarked by September 8, 2015. Late objections will not be considered.

Objecting to the settlement terms, to Plaintiff's Counsel's fees and costs, or to the Class Representative Incentive Payment will not remove you from the Settlement Class. A Settlement Class Member who submits an objection remains bound by the Agreement. To remove yourself from the Settlement Class, you must state your desire to be excluded from the settlement altogether in accordance with the procedures outlined above in this Notice.

#### **9. *How Does This Settlement Affect My Rights?***

If you do not opt out or exclude yourself from the settlement, you will release the claims resolved in the Agreement, whether or not you submit a claim form. This means you will not be able to sue, continue to sue, or be part of any other lawsuit against Guess? that involves the same legal claims as those resolved through this settlement. **To receive a settlement check, you must timely submit a claim form. Your claim form must be postmarked by September 8, 2015. Late claim forms will not be considered.**

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court, a notice of which will be posted on the website of Clark & Treglio, located at [www.clarktreglio.com](http://www.clarktreglio.com). This Final Judgment following approval of the settlement by the Court will bind you and all Settlement Class Members who do not request to be excluded from the settlement. If you do not exclude yourself from the settlement and the settlement is approved, you will be forever barred from asserting any of the claims identified below arising out of or relating to the lawsuit (known as "Released Claims").

By operation of the entry of the Final Judgment and final approval, and except as to such rights or claims as may be created by this Agreement, Plaintiff and each individual Participating Settlement Class Member, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, guardians, will forever and fully release Defendant and any of its owners, stockholders, predecessors, successors, assignors, assigns, agents, vendors, directors, officers, employees, representatives, attorneys, attorneys-in-fact, insurers, parent companies, divisions, subsidiaries (whether or not wholly owned), affiliates, insurers, benefit plans, plan fiduciaries and/or administrators, the plan sponsors, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Action (collectively, the "Releasees") from any and all claims, rights, demands, liabilities, and causes of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal, state, or other applicable law, which any such Settlement Class Member has or might have, known or unknown, of any kind whatsoever, that are based upon or arise out of Defendant's alleged failure to reimburse business expenses, as alleged in the Action, whether or not those claims were specifically asserted therein, up until the date of preliminary approval of this Agreement. As to Plaintiff and Participating Class Members who submit a valid claim form, the release shall also include a release of all claims pursuant to the Employment Retirement Income Security Act ("ERISA") arising out of or relating to the unreimbursed business expenses claims in the Action, the claims resolved through this Agreement, and/or the payments made pursuant to this Agreement ("Released Claims"). This release does not include any claims that cannot be waived as a matter of law, but Plaintiff and the Settlement Class Members agree that they will not accept any monetary recovery from any proceedings relating to such claims.

Only Plaintiff acknowledges that she may hereafter discover facts or law different from, or in addition to, the facts or law she knows or believes to exist with respect to a released claim. Plaintiff agree, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law regarding such released claims. Upon execution of this Agreement, Plaintiff shall be deemed to have fully, finally, and forever settled, released, and assumed the risk of any and all such released claims. Plaintiff also acknowledges and agrees that they each may have claims for unreimbursed business expenses that are presently unknown and that the release contained in this Agreement is intended to and will fully, finally, and forever discharge all Released Claims, whether now asserted or unasserted, known or unknown, suspected or unsuspected, which now exist, or heretofore existed or may hereafter exist, which if known, might have affected her decision to enter into this release. Plaintiff also acknowledges and agrees that the release contained in this Agreement includes a waiver of all rights under Section 1542 of the California Civil Code as such rights relate to business reimbursements. No claims, causes of action, demands, debts, obligations, liabilities, or agreements (whether known or unknown, suspected or unsuspected, asserted or unasserted) included within the scope of the Released Claims are reserved. **California Civil Code Section 1542 reads as follows:**

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

A full description of the claims being released is set forth in the Agreement on file with the Court.

#### **10. *What Are the Key Terms of the Settlement?***

Under the terms of the Settlement Agreement, Guess?, Inc. will pay up to a maximum of \$70,000 to cover: (1) Individual Settlement Payments to Participating Settlement Class Members who submit a timely claim form; (2) Settlement Administration Costs (estimated to be \$ 10,000); (3) a Class Representative Incentive Payment to Plaintiff for time spent on behalf of the Settlement Class (requested to be \$500); and (4) the Attorneys' Fees and Costs Award (fees and cost reimbursement requested to be \$23,100).

After deducting the Settlement Administration Costs, Class Representative Incentive Payment, and the Attorneys' Fees and Costs Award, the remaining Net Settlement Amount shall be distributed to Participating Settlement Class Members who submit a timely claim form. The Settlement Administrator will divide the total number of weeks worked each Participating Settlement Class Member worked in a relevant position during the Settlement Class Period by the total number of weeks all Settlement Class Members worked in a relevant position during the Settlement Class Period, that figure will then be multiplied by the Net Settlement Amount.

**Each Participating Settlement Class Member must submit a timely claim form to be entitled to receive an Individual Settlement Payment.**

**Guess?'s records indicate that the total number of weeks you have worked in a covered position during the Settlement Class Period is: **[INSERT NUMBER OF WEEKS]**.**



**If you believe this number of weeks is incorrect, please call the Settlement Administrator at [INSERT PHONE NUMBER]. Please be prepared to submit documentation to the Settlement Administrator to substantiate your claim. Any evidence supporting the Settlement Class Member's claim must be submitted by September 8, 2015.**

100% of all Individual Settlement Payments to Settlement Class Members are for the settlement of claims for reimbursements for business expenses, interest and penalties and shall be paid without withholding and reported to the IRS and the payee, to the extent required by law, under the payee's name and Social Security Number on an IRS Form 1099.

**11. *How Will the Attorneys for the Settlement Class Be Paid?***

The attorneys for the class representative and the Settlement Class will be paid from the Class Settlement Amount. The actual amount awarded shall be determined by the Court. Plaintiff's Counsel are requesting 33.3% of the \$70,000 Class Settlement Amount (*i.e.*, \$23,100) in attorneys' fees and costs.

**12. *How Will the Class Representative Be Compensated?***

Plaintiff's Counsel is asking the Court to award Plaintiff Kryste'au Fulcher \$500 in recognition of her service to the Settlement Class.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may call Plaintiff's Counsel at (619) 239-1321 or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Fulcher Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court.

**PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT OR DEFENDANT'S REPRESENTATIVES FOR INFORMATION ABOUT THIS SETTLEMENT.**

## CLAIM FORM

**TO RECEIVE A MONETARY PAYMENT AS PART OF THIS SETTLEMENT YOU MUST COMPLETE AND SIGN THIS CLAIM FORM.**

**YOU MUST MAIL THIS COMPLETED AND SIGNED CLAIM FORM BY U.S. MAIL, POSTMARKED ON OR BEFORE SEPTEMBER 8, 2015 TO THE ADDRESS BELOW:**

Guess?/Fulcher Class Action Settlement Claims Administrator  
c/o Phoenix Settlement Administrators  
[INSERT ADDRESS]  
[INSERT ADDRESS]

*You can verify that your claim form was received in a timely manner by checking the status of your claim form on the Settlement Administrator's website, at [insert website URL], or by calling toll free to [insert 800-number]. If you choose to do so, you can send the claim form to the Settlement Administrator via certified mail.*

**Please Print (or Type) Clearly in Blue or Black Ink**

1. Enter your name and current address in the fields below:

Name: \_\_\_\_\_  
                    First                                      Middle                                      Last

Name at the time of employment with Guess?, Inc. if different than above:

\_\_\_\_\_  
First                                      Middle                                      Last

Current Address: \_\_\_\_\_  
Street Address

\_\_\_\_\_  
City                                      State                                      Zip

(    )                                      -                                      (    )                                      -                                      \_\_\_\_\_

Phone Number                                      Secondary Phone Number

2. Last 4 digits of your Social Security Number): xxx-xx-\_\_\_\_\_.

3. I hereby affirm, under penalty of perjury under the laws of the State of California, that the information I have provided in this Claim Form is true and correct to the best of my knowledge.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

# **Exhibit B**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES - CENTRAL DISTRICT- CENTRAL CIVIL WEST**

KRYSTE'AU FULCHER an individual, on  
behalf of himself, and those similarly situated  
and on behalf of the general public

Plaintiff,

v

GUESS ?, Inc., a Delaware Corporation doing  
business in California and DOE 1-10,

Defendants.

Case No.: BC516351

Assigned to: Hon. Jane L. Johnson

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

Hearing: June 8, 2015  
Time: 10:00 a.m.  
Dept.: 308

Complaint Filed: July 26, 2013

1 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, which included a  
2 request for provisional certification of the proposed Settlement Class, approval of the form and  
3 manner of notice to the Settlement Class, approval of the procedures and deadlines for asserting  
4 objections to or opting out of the proposed settlement, and a final approval hearing, was filed with  
5 the Court on January 14, 2015. The Court has considered the Class Action Settlement Agreement  
6 and Release of Claims, and all subsequently filed amended versions of said agreement (hereinafter  
7 "Agreement"), the preliminarily approved version attached hereto as **Exhibit 1**, and all other  
8 papers filed in this action.

9 NOW, THEREFORE, IT IS HEREBY ORDERED:

10 1. This Order incorporates by reference the definitions in the Agreement. To the  
11 extent defined in the Agreement, all defined terms contained herein shall have the same meanings  
12 as set forth in the Agreement.

13 2. The Court hereby preliminarily approves the Agreement. The Court finds that the  
14 proposed settlement is within the range of reasonableness of a settlement that could ultimately be  
15 given final approval by this Court. The Court further finds that the settlement has been reached  
16 through arms-length bargaining.

17 3. The following Settlement Class is hereby provisionally certified, for settlement  
18 purposes only, pursuant to California Code of Civil Procedure section 382: All persons who are  
19 current or former employees of Guess?, Inc. who worked in a California retail store locations at  
20 any time during the period commencing July 26, 2009 until \_\_\_\_\_, 2015 [date of  
21 preliminary approval of class action settlement].

22 4. Plaintiff Kryste'au Fulcher is appointed as the Settlement Class representative, and  
23 her counsel are appointed counsel for the Settlement Class.

24 5. A Fairness Hearing shall be held before this Court, located in Department 308 at the  
25 Central Civil West Courthouse, 600 S. Commonwealth Avenue, Los Angeles, California, 90005,  
26 on October 9, 2015, at 9:00 a.m. to determine all necessary matters concerning the Agreement,  
27 including whether the proposed settlement of the action on the terms and conditions provided for  
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1 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court.  
2 At that time, a hearing on Plaintiff's Counsel's motion for the Attorneys' Fees and Costs Award  
3 and Class Representative Incentive Payment shall also be held.

4 6. The Court hereby approves, as to form and content, the Notice of Class Action  
5 Settlement to be sent to Settlement Class Members, which is attached as an exhibit to the  
6 Agreement. The Court finds that distribution of the Notices to Settlement Class Members  
7 substantially in the manner and form set forth in the Agreement and this Order meets the  
8 requirements of due process and shall constitute due and sufficient notice to all parties entitled  
9 thereto.

10 7. Defendant shall provide the Settlement Class List to the Settlement Administrator  
11 within 14 business days of the entry of this Order. Phoenix Settlement Administrators is approved  
12 as the Settlement Administrator, and the Settlement Administration Costs shall be paid as set forth  
13 in the Agreement.

14 8. The Court hereby directs the Settlement Administrator to distribute the approved  
15 Notice of Class Action Settlement to Settlement Class Members using the procedures set forth in  
16 the Agreement, within 10 business days of receiving the Settlement Class List.

17 9. Any Settlement Class Member may choose to opt out of and be excluded from the  
18 Settlement Class as provided in the Agreement and Notice by following the instructions for  
19 requesting exclusion. Requests to be excluded must be postmarked within sixty (60) calendar  
20 days after mailing of the Notice; Settlement Class Members to whom Notice is remailed because  
21 of the return of the original mailing will have until fifteen (15) calendar days from that remailing,  
22 if that date is after sixty (60) days from the initial mailing. Any person who timely and properly  
23 opts out of the settlement will not be bound by the Agreement or have any right to object, appeal  
24 or comment thereon. Any exclusion request must be signed by each such Settlement Class  
25 Member opting out and must otherwise comply with the requirements delineated in the Agreement  
26 and Notice. Settlement Class Members who have not requested exclusion by submitting a valid  
27 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement,  
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1 and the Final Judgment.

2 10. Any Settlement Class Member may object to the Agreement or express his or her  
3 views regarding the Agreement, and may present evidence and file briefs or other papers that may  
4 be proper and relevant to the issues to be heard and determined by the Court as provided in the  
5 Notice. Any objections must be postmarked within sixty (60) calendar days after mailing of the  
6 Notice; Settlement Class Members to whom Notice is remailed because of the return of the  
7 original mailing will have until fifteen (15) calendar days from that remailing, if that date is after  
8 sixty (60) days from the initial mailing. No Settlement Class Member, however, shall be heard or  
9 entitled to object, and no papers or briefs submitted by any such person shall be received or  
10 considered by the Court, unless on or before the Notice response deadline the Settlement Class  
11 Member, or his or her counsel, properly filed their objections with the Settlement Administrator as  
12 provided in the Agreement and Notice. Any Settlement Class Member who does not make his or  
13 her objection in the manner provided for in the Agreement and Notice shall be deemed to have  
14 waived such objection and shall forever be foreclosed from making any objection to the  
15 Agreement. Settlement Class Members who submit an objection may be deposed by Plaintiff's  
16 Counsel and Defendant's Counsel and may be required to answer written discovery propounded  
17 by Plaintiff's Counsel or Defendant's Counsel on an expedited basis.

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1           11.     The motion for final approval shall be filed by Plaintiff no later than sixteen (16)  
2 calendar days before the Final Fairness and Approval Hearing.

3           12.     Pending the Fairness Hearing, all proceedings in this action, other than proceedings  
4 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this  
5 Order, are stayed.

6           13.     The Court orders the following Implementation Schedule for further proceedings:

Event	Date
Last day for Defendant to provide Class Member information to administrator.	June 26, 2015 (14 days after Preliminary Approval)
Notice Date: Last day for settlement administrator to mail class notice and claim form to Class Members.	July 10, 2015 (10 days after Defendant provides Class Member information to administrator)
Close of Claims Period: last day for class members to submit objections, requests for exclusion, and claim forms.	September 8, 2015 (60 days after Notice Date)
Last day for class counsel to file motion for awards of attorney's fees and costs, and class representative's incentive award.	September 17, 2015 (16 days before the Final Fairness and Approval Hearing)
Last day for Plaintiff to respond to objections.	September 30, 2015 (7 days before the Final Fairness and Approval Hearing)
Last day for Plaintiff to file motion and supporting documents for final approval of class action settlement.	September 17, 2015 (16 days before the Final Fairness and Approval Hearing)
Final Fairness and Approval Hearing.	October 9, 2015, at 9:00 a.m. (approximately 120 days after Preliminary Approval)

7           14.     The Court reserves the right to adjourn or continue the date of the Fairness Hearing  
8 and all dates provided for in the Agreement without further notice to the Settlement Class, and  
9 retains jurisdiction to consider all further applications arising out of or connected with the  
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1 Agreement.

2 15. If, for any reason, the Agreement is not finally approved or does not become  
3 effective, this Order Granting Preliminary Approval shall be deemed vacated and shall have no  
4 force or effect whatsoever, and the Action shall proceed as if no settlement has been attempted.

5 IT IS SO ORDERED.

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8 DATED: \_\_\_\_\_

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Hon. Jane L. Johnson  
Judge of the Los Angeles Superior Court

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**PROOF OF SERVICE**

*Kryste'au Fulcher v. Guess? Inc.*

Los Angeles Superior Court Case No. BC516351

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 205 W Date Street, San Diego CA 92101. On June 22, 2015, I served the document(s) described as:

**(1) SECOND AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

on the following interested parties and in the manner as follows:

SEYFARTH SHAW LLP  
Andrew M. Paley  
John T. Anthony  
2029 Century Park East, Suite 3500  
Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
Facsimile: (310) 201-5219

- BY U.S. MAIL:** I am readily familiar with Clark & Treglio's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.
- BY PERSONAL SERVICE:** by causing the document(s) listed above to be delivered by hand to the addressee(s):
- BY FACSIMILE:** by causing to be transmitted via facsimile the document(s) listed above to the addressee(s) at the facsimile number(s) set forth above.
- BY OVERNIGHT DELIVERY:** by enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY ELECTRONIC SERVICE:** I caused such document(s) to be electronically served using CaseAnywhere, which will send notification of such filing and copies of the document(s) to the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 22, 2015, at San Diego, California.

  
Erica Moore

## Wasko, Denise

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**From:** service@caseanywhere.com  
**Sent:** Monday, June 22, 2015 2:35 PM  
**To:** Wasko, Denise  
**Subject:** Document - Second Amended Class Action Settlement Agreement and Release of Claims - Served in Fulcher, et. al. v. Guess? Inc., Case No. BC516351



The following document has been served in **Fulcher, et. al. v. Guess? Inc.**, Case No. BC516351:

**Document Served by:** Clark & Treglio

**Number of Documents in Transaction:** 1

**Representing:** Kryste'au Fulcher, an individual, on behalf of herself, and those similarly situated and on behalf of the general public

**Service Date:** 6/22/15

**Time of Service:** 2:33 PM (PST)

**Document Title:** [Second Amended Class Action Settlement Agreement and Release of Claims](#)

**Page Range:** 31 - 99

To access this record, click on the document link. You will be directed to the Case Anywhere log in page. After entering your username and password, you will be taken to the requested document. If you have saved your log in information by selecting the "Remember me at this computer" option, you will be automatically logged in and directed to the record. Please allow time for larger documents to open.

Please contact us by phone at (800) 884-3163 or (310) 209-8596 or by email at [support@caseanywhere.com](mailto:support@caseanywhere.com) if you have any questions.