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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHEILA DASHNAW *et al.*,  
Plaintiff,  
v.  
NEW BALANCE ATHLETICS, INC.,  
Defendant.

Case No.: 17cv159-L(JLB)

**CLASS ACTION**  
**ORDER GRANTING**  
**PLAINTIFF'S SECOND**  
**RENEWED MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**SETTLEMENT**

In this putative class action Plaintiffs allege consumer fraud relating to "made in USA" representations on certain New Balance athletic shoes in violation of California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.* (including violation of § 17533.7 relating to the sale of goods produced abroad); Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*; breach of express warranty; negligent misrepresentation; and unjust enrichment. Plaintiffs seek injunctive and declaratory relief, restitution or disgorgement of profits or unjust enrichment, and damages, including punitive damages. Defendant New Balance Athletics, Inc. ("New Balance") removed this action from State court. This Court

1 has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. §  
2 1332(d).

3 After an investigation, formal discovery, extensive motion briefing, including  
4 a motion for class certification and *Daubert* challenges to Plaintiffs' experts, the  
5 parties reached settlement in private mediation. Plaintiffs filed a motion for  
6 preliminary class action settlement approval. (Docs. no. 99, 103.) The motion was  
7 denied because Plaintiffs did not meet the requirements of Federal Rule of Civil  
8 Procedure 23. (Docs. no. 101, 105.) Pending before the Court is Plaintiffs' second  
9 amended motion seeking preliminary approval of the Amended Settlement  
10 Agreement signed December 7, 2018, which together with attached exhibits, sets  
11 forth the terms and conditions of the class settlement as currently proposed. (Doc.  
12 no. 106-1 ("Motion") and doc. no. 106-3 ("Settlement"), respectively.) Plaintiffs  
13 also seek class action certification for settlement purposes and approval of the  
14 proposed notice of class action settlement. Defendant does not oppose.

15 Having read and considered the Motion, including supporting declarations,  
16 exhibits and the Settlement, the Court finds and orders as follows:

17 1. The Court certifies for settlement purposes a Class comprised of:  
18 All persons who purchased any and all “Made in USA” Shoes from  
19 New Balance and/or its Authorized Retailers in California from  
20 December 27, 2012 up to and including January \_\_, 2019 (“Class  
21 Period”). “Made in USA’ Shoes” means the New Balance’s “Made in  
22 USA” labeled shoes purchased as new by Class Members during the  
23 Class Period, in California listed below:

ELIGIBLE NEW BALANCE SHOE MODELS	
601	ML996
M1140	ML997
M1290	MR1105
M1300	MR993
M1400	MW812
M1540	PM15
M1700	PM16
M2040	US574

**ELIGIBLE NEW BALANCE SHOE MODELS**

M3040	US576
M498	US990
M574	US993
M585	US998
M587	W1140
M770	W1290
M990	W1400
M991	W1540
M995	W3040
M996	W498
M997	W587
M9975	W990
M998	W998
MK706	WK706
ML1300	WR993
ML1978	WW812

Excluded from the Class are: (a) New Balance’s board members and employees, including its attorneys; (b) any persons who purchased the “Made in USA” Shoes for the purposes of resale (c) distributors or re-sellers of “Made in USA” Shoes; (d) the judge and magistrate judge and their immediate families presiding over this action; (e) governmental entities; and (f) persons or entities who or which exclude themselves from the Class as provided in the notice.

2. This action meets the class certification requirements of Federal Rule of Civil Procedure 23(a) and (b)(3). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also id.* at 620-27. The Class is sufficiently numerous. The parties estimate that at least several hundred thousand of individuals fit the definition of the Class. As alleged in the operative first amended complaint, all of Plaintiffs' claims are premised on the contention that the label on "Made in USA" Shoes misled the consumers to believe that the shoes were American-made, when a significant part of the materials and labor were derived from abroad. Furthermore, Plaintiffs claim that as a result of this allegedly false advertising, Defendant was able to overcharge California consumers for the shoes and induce purchases that otherwise would not have been made. At least with respect to the statutory consumer protection claims,

1 Plaintiffs are not required to prove individual reliance, so long as the alleged  
2 misrepresentation would mislead a reasonable consumer. *See Williams v. Gerber*  
3 *Prods Co.*, 553 F.3d 934, 938 (9th Cir. 2008) (am. Dec. 22, 2008); *see also*  
4 *Chapman v. Skype, Inc.*, 220 Cal. App. 4th 217, 230 (2013). In this regard, "it is  
5 necessary only to show that members of the public are likely to be deceived." *In re*  
6 *Tobacco II Cases*, 46 Cal.4th 298, 312 (2009) (internal quotation marks, brackets,  
7 ellipsis and citation omitted). Accordingly, the legal and factual issues are  
8 sufficiently uniform to meet the commonality and predominance requirements.  
9 Based on the allegations regarding products purchased, Plaintiffs' claims are typical  
10 of the Class. Plaintiffs and their counsel have demonstrated they can adequately  
11 represent the absent Class members. Finally, the Court finds that maintenance of  
12 this action as a class action is superior to individual litigation.

13         3. Plaintiffs Sheila Dashnaw, William Meier, and Sheryl Jones are  
14 appointed as representatives for the conditionally certified Class. Jason H. Kim of  
15 Scheneider Wallace Cottrell Konecky Wotkyns LLP and Aubry Wand of The Wand  
16 Law Firm, P.C., are appointed as counsel for the conditionally certified settlement  
17 Class ("Class Counsel") pursuant to Federal Rule of Civil Procedure 23(g).

18         4. Class Counsel is conditionally authorized to act on behalf of the Class  
19 members with respect to the acts or consents under the Settlement. Any member of  
20 the Class may enter an appearance through counsel of his or her own choosing and  
21 at his or her own expense. Any member of the Class who does not enter an  
22 appearance through counsel or appear on his or her own behalf will be represented  
23 by Class Counsel.

24         5. The Settlement provides for injunctive and monetary relief. The  
25 injunctive relief requires Defendant to more accurately disclose the domestic content  
26 of its shoes. The monetary relief portion of the Settlement provides for a fund of  
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1 approximately \$535,000 for payment of claims.<sup>1</sup> Each Class member can recover a  
2 maximum of \$10 per qualifying pair of shoes, up to \$50 for 5 or more pairs or \$100  
3 per household. In the event funds remain after all valid claims are paid, or any  
4 claim payment checks remain uncashed, the remainder will be distributed in equal  
5 parts to the Public Justice Foundation and Consumer Federation of California as *cy*  
6 *pres* recipients. On the other hand, if valid claims exceed the fund, the claim  
7 payments will be reduced pro rata. The \$10 per pair of shoes represents Plaintiffs'  
8 maximum recovery based on their experts' opinion, if they prevail on their theory  
9 that Defendant charged a \$10 premium based on the allegedly inaccurate "Made in  
10 USA" representation. In addition to disputing liability altogether, Defendant  
11 countered with its own expert opinions to dispute the \$10 premium. In order to  
12 receive \$10 per pair of shoes, approximately 5% of the Class members would have  
13 to submit valid claims. A more common, albeit "very low," claim rate is between 10  
14 and 15%. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1131 (9th Cir. 2017).  
15 If 10 to 15% of Class members submit valid claims, they will recover between \$3.62  
16 and \$5.43 per pair. When balanced against the cost and uncertainty associated with  
17 further litigation, the Court finds that the terms of the Settlement are within the  
18 range of possible approval as fair, reasonable and adequate under Federal Rule of  
19 Civil Procedure 23(e), and that there is a sufficient basis for notifying the Class of  
20 the Settlement. Accordingly, the Court grants preliminary approval of the  
21 Settlement.

22         6. The parties shall cooperate and comply with all of their respective  
23 obligations under the Settlement to the extent they must be performed pending final  
24 settlement approval.

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27 <sup>1</sup> Defendant will pay \$750,000 from which an estimated \$200,000 is to be paid  
28 to the Settlement Administrator, and \$15,000 for enhancement payments to  
Plaintiffs, subject to Court approval. In addition to the \$750,000, Defendant will  
pay up to \$650,000 to Class Counsel for fees and costs, subject to Court approval.

1           7.     Heffler Claims Group is appointed as Settlement Administrator. The  
2 Settlement Administrator shall comply with its duties as set forth in the Settlement  
3 and this Order.

4           8.     The Court approves the long form and the summary notice attached to  
5 the Settlement as Exhibits 2 and 7, respectively (doc. no. 106-3 at 47-68 and 99-  
6 102<sup>2</sup> (collectively "Notice")) with the changes indicated in Exhibits A and B to this  
7 Order, which are incorporated herein by reference. Deletions are indicated by  
8 strikethroughs, and additions are indicated in bold italicized font. Please note that  
9 Paragraphs 11 and 12 of the long form notice have been reversed. The parties must  
10 review the table of contents and all date and page references in the Notice to assure  
11 accuracy after revisions.

12           9.     Plaintiffs propose to disseminate the long form notice by direct email to  
13 the Class members whose addresses are known, issuing a press release to a  
14 California wire service, publishing the summary notice in the Los Angeles Times in  
15 print and online, advertising the Settlement online on the websites most likely to be  
16 frequented by the Class, including Facebook and Instagram, establishing a  
17 settlement website where the Class members can access the long form notice, and  
18 establishing a 24-hour toll free interactive voice response telephone line. (*See* Decl.  
19 of Jeanne C. Finegan (doc. no. 106-14 ("Finegan Decl.")) at 10-15; Settlement ¶  
20 IV.B.1.) The Court finds the foregoing notice program adequate, provided that (a)  
21 the website provides access to the complaint and amended complaint, all orders of  
22 this Court relating to settlement approval, Plaintiffs' pending motion with all  
23 supporting documents and exhibits, the Notice, and, at the time of filing with the  
24 Court, any motion for attorney's fees and costs of Class Counsel and enhancement  
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27 <sup>2</sup> Page numbers are assigned by the Electronic Filing System. The long form  
28 notice includes Appendices A through C (Release and Waiver of Claims, Claim  
Form and Exclusion Form).

1 payments to Plaintiffs, as well as any motion for final settlement approval with all  
2 supporting documents and exhibits; and (2) the telephone line allows putative Class  
3 members ultimately to reach a live person, or provide information on how to reach a  
4 live person, to answer questions. With these conditions, the proposed manner of  
5 distribution and form of the notice are approved. The notice satisfies due process  
6 requirements and requirements of Federal Rule of Civil Procedure 23(c)(2) and  
7 (e)(1), is the best notice practicable under the circumstances, and shall constitute due  
8 and sufficient notice to the Class.

9 10. No later than **February 13, 2019**, Class Counsel shall file a motion, if  
10 any, for attorney's fees and costs of Class Counsel and enhancement payments to  
11 Plaintiffs.

12 11. No later than **May 6, 2019**, the Class members shall submit their claims  
13 or requests for exclusion, if any, by following instructions in the long form notice.

14 12. Any Class member who chooses to be excluded will not be entitled to  
15 any monetary recovery under the Settlement, will not be bound by the Settlement,  
16 and will have no right to object to the Settlement or appeal the judgment, if any.

17 13. If the Settlement is ultimately approved, any Class members who did  
18 not choose to be excluded shall be bound by the Settlement, as well as all  
19 subsequent orders and judgment in this action. As provided in Paragraph 16 of the  
20 long form notice (Ex. A hereto), they will release certain claims as fully stated in the  
21 Release and Waiver of Claims ("Released Claims"). In addition, they shall be  
22 preliminarily enjoined pending final approval of the Settlement from filing,  
23 commencing, prosecuting, maintaining, intervening in, participating in, conducting,  
24 or continuing litigation as class members, putative class members, or otherwise  
25 against New Balance (or against any of its related parties or affiliates), and/or from  
26 receiving any benefits from, any lawsuit, administrative, or regulatory proceeding or  
27 order in any jurisdiction asserting any Released Claims.

1           14. No later than **May 13, 2019**, Plaintiffs shall file their motion for final  
2 approval of the Settlement. In addition to the required and customary filings, the  
3 motion papers shall include (1) any communications received from any government  
4 official in response to notice under 28 U.S.C. § 1715; and (2) the Claim  
5 Administrator's affidavit regarding compliance with its duties under the Settlement  
6 and this Order. The Claim Administrator's affidavit must include a report as  
7 outlined in the Finegan Declaration at Paragraphs 16 through 26, as well as copies  
8 of the long form and summary notice, press release, and internet ads used in the  
9 Notice dissemination process, the number of putative Class members submitting  
10 claims, objections or requests for exclusion (including any untimely or disputed  
11 claims, objections and exclusion requests); the number of Class members to whom a  
12 payment will be made; calculation on the estimated payment per pair of "Made in  
13 USA" Shoes; and the estimated amount of the *cy pres* award, if any.

14           15. The final approval hearing is set for **June 10, 2019 at 10:30 a.m.** in  
15 Courtroom 5B of the United States District Court for the Southern District of  
16 California, located at 221 West Broadway, San Diego, California 92101  
17 ("Hearing"), to determine all necessary matters concerning the Settlement, including  
18 whether to grant final certification to this action as a class action for settlement  
19 purposes, whether to approve the proposed Settlement as fair, adequate, and  
20 reasonable; and whether to grant the motion for attorney's fees and costs of Class  
21 Counsel and for enhancement payments to Plaintiffs.

22           16. Any member of the Class may appear at the Hearing in person or  
23 through counsel of his or her own choosing and at own expense. Any member of  
24 the Class who does not appear will be represented by Class Counsel.

25           17. Any member of the Class may object to the Settlement ("Objectors").  
26 Objectors may present evidence and/or file briefs, if any, relevant to the issues to be  
27 determined by the Court. Objectors are encouraged no later than **May 6, 2019** to  
28 comply with the instructions in the long form notice (Ex. A hereto). Any interested



1 party may file and serve a reply to objections, which shall not exceed ten (10) pages  
2 in length, no later than **May 30, 2019**. If a member of the Class intends to speak at  
3 the Hearing, he or she is encouraged no later than **June 3, 2019** to submit to the  
4 Settlement Administrator and file with the Court a Notice of Intent to Appear.

5 18. This Order shall not be construed as an admission, concession, or  
6 declaration by or against New Balance of any fault, wrongdoing, breach, or liability.  
7 Nor shall the Order be construed or used as an admission, concession, or declaration  
8 by or against Plaintiffs or the other Class members that their claims lack merit or  
9 that the relief requested is inappropriate, improper, or unavailable, or as a waiver by  
10 any party of any defenses or claims he, she, or it may have in this or any other action  
11 or proceeding.

12 19. Any motions for discovery filed by Class members pending final  
13 approval of the Settlement shall be directed to Magistrate Judge Jill L. Burkhardt,  
14 including any request by the parties to condition their response to a Confidentiality  
15 Agreement attached as Exhibit 10 the Settlement.

16 20. As of the date this Order is signed, all due dates associated with this  
17 action are vacated, except for those related to the administration of the Settlement.

18 21. If the Settlement does not become effective in accordance with its  
19 terms, or is not finally approved, or is terminated, canceled or fails to become  
20 effective for any reason, this Order may be vacated upon an appropriate motion filed  
21 no later than seven calendar days after the triggering event.

22 22. The Court reserves the right to adjourn or continue the date of the  
23 Hearing and all dates provided for in the Settlement without further notice, and may  
24 determine the matters on the briefs without a hearing.

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1           23.    The Court retains jurisdiction to consider any further applications  
2 related to the Settlement.

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4           **IT IS SO ORDERED.**

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6 Dated: January 24, 2019

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9 Hon. M. James Lorenz  
United States District Judge

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**EXHIBIT A**

*Dashnaw, et al. v. New Balance Athletics, Inc.*  
 United States District Court for the Southern District of California  
 Case No. 3:17-cv-00159-L-JLB

**CLASS ACTION SETTLEMENT CLASS NOTICE**

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

If you purchased any of the New Balance “Made in USA” labeled shoes listed below in California ~~from during the time period of December 27, 2012 through to~~ [Month Day, Year], the proposed settlement of a class action lawsuit may affect your rights. Read this Notice carefully because it explains decisions and actions you must take now.

***SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:***

<b>DO NOTHING</b>	You get no payment. You give up your rights.	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to get a payment.	The Claim Form, which is attached to this Notice, must be completed and submitted electronically or by mail no later than [Month Day, Year].
<b>EXCLUDE YOURSELF</b>	<i>Exclude yourself from the settlement.</i> You get no payment under the settlement. This is the only choice that will allows you to sue New Balance on your own about the claims discussed in this Notice.	The Exclusion Form, which is attached to this Notice, must be completed and submitted electronically or by mail no later than [Month Day, Year].
<b>OBJECT TO THE SETTLEMENT</b>	You can write to the Court <i>or appear at the Hearing to state about why you do not disagree with the settlement or any aspect part of the settlement it.</i>	<i>Even if you object, you can submit a Claim Form and get paid.</i> An objection may be in writing, filed with the Court, and mailed to the Settlement Administrator. You are encouraged to submit your objection on or before [Month Day, Year]. An objection may also be raised orally <i>in person</i> at the Fairness Hearing.

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1 **PART I. WHY DID I YOU HAVE RECEIVED THIS NOTICE**

2 **1. WHY DID I RECEIVE THIS NOTICE?**

3 You received this Notice because you may be a Class Member and may be able to receive  
4 payment under this class action settlement. This Notice explains the basic terms of the settlement  
5 and your options and rights as a potential Class Member. The Amended Settlement Agreement,  
6 and related documents, give greater detail regarding the terms of the settlement, and they can be  
7 viewed at the settlement website [www.shoesettlement.com](http://www.shoesettlement.com). **Instructions for obtaining copies are  
found in Part VIII below.**

8 **2. DESCRIPTION OF THIS LAWSUIT WHAT IS THIS LAWSUIT ABOUT AND WHY  
9 DID IT SETTLE?**

10 ***This is a class action titled The lawsuit, Sheila Dashnaw, et al. v. New Balance Athletics,***  
11 ***Inc., Case Number 3:17-cv-00159-L-JLB (S.D. Cal) (the "Action"). Plaintiffs Sheila Dashnaw,***  
12 ***William Meier, and Sheryl Jones ("Plaintiffs") allege that New Balance Athletics, Inc. ("New***  
13 ***Balance") violated California consumer protection laws by advertising that some of its shoes***  
14 ***are "Made in USA" when they are made from up to 30% non-domestic content. Plaintiffs also***  
15 ***allege that New Balance charged a premium for such shoes. concerns claims that New Balance***  
16 ***violated certain California state laws in connection with the marketing and sale of "Made in USA"***  
17 ***Shoes during the time period of December 27, 2012 until [Month Day, Year]. The plaintiffs in the***  
18 ***Action, through their attorneys, thoroughly investigated the facts and law relating to the issues in***  
19 ***the Action, and claim that New Balance labeled certain shoes as "Made in the USA" when the***  
20 ***domestic content did not meet the amounts required under California statutes for such a claim. In***  
21 ***their complaint, Plaintiffs request monetary relief and changes to New Balance's business***  
22 ***practices on their own behalf and on behalf of similarly situated persons. New Balance denies***  
23 ***any and all claims of wrongdoing.***

24 ***The Court has not ruled on the merits of Plaintiffs' claims or New Balance's defenses.***  
25 ***and without admitting any fault, wrongdoing or liability, has decided to settle this Action. Both***  
26 ***sides the plaintiffs and New Balance believe that the settlement is a better result than continuing***  
27 ***to litigate, fair, reasonable, and adequate and will provide substantial benefit to the Class. By***  
28 ***settling, New Balance does not admit any wrongdoing.***

***Because the parties decided to settle, the Court will not decide this Action. Instead, the***  
***Court has determined on a preliminary basis that certification of a class action is appropriate***  
***for purposes of settlement, and that the settlement is sufficient to warrant a notice to the Class.***

1 *The Court must still make a final determination, subject to any objections from the Class*  
 2 *Members, whether the settlement is fair, reasonable and adequate.*

3 *The Court appointed Plaintiffs as Class Representatives, and Plaintiffs' attorneys Jason*  
 4 *H. Kim of Schneider Wallace Cottrell Konecky Wotkyns LLP and Aubry Wand of The Wand*  
 5 *Law Firm, P.C. as Class Counsel to represent Class Members for purposes of the settlement.*

6 *Class Counsel can be reached at:*

7 *The Wand Law Firm, P.C.*  
 8 *Aubry Wand*  
 9 *400 Corporate Pointe, Suite 300*  
 10 *Culver City, CA 90230*  
 11 *Telephone: (310) 590-4503*

*Schneider Wallace Cottrell Konecky & Wotkyns LLP*  
*Jason H. Kim*  
*2000 Powell Street, Suite 1400*  
*Emeryville, CA 94608*  
*Telephone: (415) 421-7100*

12 *Email: newbalancesettlement@gmail.com*

13 *The local attorney for New Balance is Garrett K. Sakimae, Fish & Richardson P.C.,*  
 14 *12390 El Camino Real, San Diego, CA 92130; Telephone: (858) 678-5070.*

15 *The Court also appointed Heffler Claims Group as the Settlement Administrator for*  
 16 *purposes of the settlement. The Settlement Administrator can be reached at Heffler Claims*  
 17 *Group, Re: Dashnaw, et al. v. New Balance Athletics, Inc., P.O. Box 42220, Philadelphia, PA*  
 18 *19101-2220, as well as by calling toll free (844) 271-4789 or visiting [www.shoesettlement.com](http://www.shoesettlement.com).*

19 **3. AM I A MEMBER OF THE CLASS?**

20 The Class includes all persons who bought any of the “Made in USA” Shoes listed in the  
 21 table below from New Balance and/or its Authorized Retailers in California from December 27,  
 22 2012 through [Month Day, Year].

ELIGIBLE NEW BALANCE SHOE MODELS	
601	ML996
M1140	ML997
M1290	MR1105
M1300	MR993
M1400	MW812
M1540	PM15
M1700	PM16
M2040	US574
M3040	US576
M498	US990
M574	US993
M585	US998
M587	W1140



ELIGIBLE NEW BALANCE SHOE MODELS	
M770	W1290
M990	W1400
M991	W1540
M995	W3040
M996	W498
M997	W587
M9975	W990
M998	W998
MK706	WK706
ML1300	WR993
ML1978	WW812

4. *IF I'M STILL NOT SURE IF I'M INCLUDED.*

If you *are not sure if* ~~do not understand whether or not~~ you are a Class Member, you can visit ~~our web site,~~ [www.shoesettlement.com](http://www.shoesettlement.com), call (844) 271-4789, or you can contact Class Counsel, listed *in Paragraph 2 above* ~~on page 9~~.

## PART II. WHAT ARE MY OPTIONS?

5. *WHAT DO I NEED TO DO NOW?*

**First**, you must decide whether you wish to remain in the Class *or* exclude yourself from the Class. If you exclude yourself from the Class, you will not be eligible to receive compensation under the settlement, or object to the settlement, but you will retain the right to sue New Balance *on your own* for the claims alleged in the Action. If you wish to exclude yourself from the Class, you must submit an Exclusion Form. *For instructions, see Part VII below.*

**Second**, if you remain in the Class *and wish to receive compensation under the settlement*, you must submit a Claim Form ~~in order to be eligible to receive payment under the settlement~~. *The benefits of the settlement are explained in Paragraph 8 below. If you disagree with the settlement,* you may also object to the settlement ~~by filing a written objection with the Court and/or request to appear and speak at the Court's Fairness Hearing~~. You can submit a Claim Form even if you object to the Settlement. *Instructions for submitting a Claim Form and objecting are found in Paragraphs 9 and 17 below.*

~~Details regarding these options are explained below.~~

6. *WHAT DO I GIVE UP IF I CHOOSE TO STAY IN THE CLASS?*

If you choose to *stay remain* in the Class, you will *release certain claims you may have against* ~~be deemed to give~~ New Balance and the Released Parties, *as summarized in Paragraph*

1 *16 below and fully stated in* the Release and Waiver of Claims set forth in **Appendix A** attached  
2 at hereto (see page 14 [page no.]). You will also be bound by ~~all~~ *the* Court *orders* actions and  
3 judgments *issued in this Action* entered. You will not be able to sue or otherwise proceed against  
4 New Balance ~~on any~~ *for certain* claims related to this *Action* lawsuit.

5 **7. WHAT IF I DO NOTHING?**

6 If you are a Class Member and do nothing, you will *stay in the Class*. *You will give up*  
7 *certain rights as indicted in Paragraph 6 above, but you will not* get any payment from the  
8 settlement. ~~but will be bound by the settlement's release and waiver of claims.~~ You must  
9 complete and *timely* submit a Claim Form ~~on or before the deadline, which is [Month Day, Year],~~  
10 in order to *receive any* be considered for payment under the settlement. *Instructions for*  
11 *submitting a Claim Form are found in Paragraph 9 below.*

12 Unless you exclude yourself from the Class, if the settlement is approved all of the Court's  
13 orders will apply to you and you won't be able to start a lawsuit, continue with a lawsuit, or be  
14 part of any other lawsuit against New Balance about the claims in this lawsuit, regardless of  
15 whether you submit a Claim Form.

16 **PART III. SETTLEMENT BENEFITS – WHAT YOU CAN GET**

17 **8. WHAT CAN I GET FROM THE SETTLEMENT?**

18 **Monetary Compensation**

19 The settlement will provide a fund of \$750,000 that, subject to Court approval, will be  
20 used to pay (i) valid and approved Claims submitted by Class Members ~~pursuant to the Claim~~  
21 ~~Process~~; (ii) the costs and expenses associated with ~~this~~ Notice and claims administration in an  
22 estimated amount of \$200,000; and (iii) *enhancement* ~~service award~~ payments of up to \$5,000 to  
23 each of three ~~named~~ Plaintiffs for their efforts and assistance in this Action on behalf of the  
24 Class. The \$750,000 fund will not be used to pay New Balance's attorneys' fees and costs or  
25 Class Counsels' attorneys' fees and costs. If the ~~foregoing~~ payments are approved by the Court, it  
26 is estimated that \$535,000 will be available to *pay* ~~satisfy~~ the claims of Class Members.

27 The maximum award amount per pair of qualified "Made in USA" shoes purchased is \$10,  
28 with a maximum of up to five purchases per person (i.e., \$50) and \$100 per household. However,  
if the total value of all approved Claims submitted by Class Members exceeds the estimated  
amount of \$535,000, each eligible Class Member's award will be reduced on a pro rata basis. In  
other words, it could be that your award will be reduced by several dollars, depending on the  
number of qualified claims submitted.

1            **Changes to Business Practices**

2            In addition to ~~the foregoing~~ monetary compensation, New Balance has agreed to make  
3 ~~certain~~ changes in their marketing and sale of “Made in USA” shoes to **more accurately state**  
4 ~~make the disclosures regarding~~ the domestic content of its shoes ~~more prominent~~, including but  
not limited to, the following:

5            (1) Going forward the hangtag ~~that~~ affixed to the “Made in USA” Shoes will no longer  
6 include the phrase “Made in the USA” on the front of the tag. On the back, in clear  
7 readable font, the hangtag will include the following sentence, or words to similar  
8 effect, “New Balance ‘made’ is a premium collection that contains domestic value of  
70% or greater” unless and until a change in either federal or California law obviates  
the need for such clarification

9            (2) Going forward shoe boxes for the “Made in USA” Shoes will not include the phrase  
10 “Made in the USA” on the outside top panel of the box. New Balance may indicate  
11 that the shoes are made in the United States on the side(s) of the shoe box if, on the end  
12 and/or side of the shoe box, in clear readable font, it states the following sentence, or  
words to similar effect, “New Balance ‘made’ is a premium collection that contains  
domestic value of 70% or greater” unless and until a change in either federal or  
California law obviates the need for such clarification.

13 ~~Additional~~ Please see the Settlement Agreement for further information **about** regarding all of the  
14 changes **to business practices** New Balance ~~will~~ **must** implement **under the settlement is included**  
15 **in the Amended Settlement Agreement. Instructions for obtaining a copy are found in Part**  
16 **VIII below.**

17            **9. HOW CAN I MAKE A CLAIM?**

18            To receive a payment under the settlement, you **must** send in a Claim Form. A Claim  
19 Form and directions are attached as **Appendix B** to this Class Notice ~~at~~ (see page 17) [page no.].  
20 You may also obtain and print a Claim Form ~~and other relevant documents by visiting at~~  
21 www.shoesettlement.com. Please read the instructions and certification carefully, and fill out the  
form completely and accurately. Claim ~~F~~forms can be submitted electronically at  
22 www.shoesettlement.com or by mail to **Heffler Claims Group, Re: Dashnaw, et al. v. New**  
23 **Balance Athletics, Inc., P.O. Box 42220, Philadelphia, PA 19101-2220** no later than [Month Day,  
24 Year].

25            **10. WHAT IS THE CLAIM PROCESS?**

26 ~~Heffler Claims Group, The Class Action~~ Settlement Administrator, will review each  
27 Claim Form. You may be asked to verify your purchase of “Made in USA” Shoes, by providing  
28 receipt(s) or other documentation. **Failure to** ~~If you do not respond to these a~~ requests, it may  
result in the denial of your Claim. You will have thirty-five (35) days from the date of the

1 Settlement Administrator's request to respond. *If you submit a valid claim, you will receive*  
2 *payment in the form of a check.*

3 **11. WHEN WILL I GET MY PAYMENT, IF ANY?**

4 You will receive payment in the form of a check if you submit a Claim Form by no later  
5 than [Month Day, Year] and the Claims Administrator determines that you have you have  
6 submitted a qualified claim. *The Court must give final approval to the proposed settlement*  
7 *before any payments can be made. The hearing to decide whether to finally approve the*  
8 *settlement is set for [Month Day, Year] (the "Hearing").* The payment of *valid* approved Claims  
9 *will shall* begin 14 business days after the settlement is final and approved *and the judgment is*  
10 *final*, including any *relevant* appeals that must be resolved in favor of the settlement (the "Final  
11 Settlement Date"). *Resolving appeals, if any are filed, takes time, sometimes more than a year.*  
12 *Finally, there remains a possibility that this settlement may be terminated for other reasons, as*  
13 *explained in the Amended Settlement Agreement. Instructions for obtaining a copy are found*  
14 *in Part VIII below.* The payment process shall *must* be completed within 180 days of the Final  
15 Settlement Date.

16 The Court will hold a Fairness Hearing on [Month Day, Year] at [TIME] to decide whether  
17 or not to approve the proposed settlement. The Court must finally approve the proposed settlement  
18 before any payments can be made. The Court will grant final approval only if it finds that the  
19 proposed settlement is fair, reasonable, and adequate. In addition, the Court's order may be subject  
20 to appeals, and resolving them takes time, sometimes more than a year. Finally, there remains a  
21 possibility that this settlement may be terminated for other reasons.

22 **12. WHAT HAPPENS AFTER ALL CLAIMS ARE PROCESSED AND IF THERE ARE**  
23 **FUNDS REMAINING?**

24 If there are any funds remaining after all claims are processed, those funds *will shall* be  
25 awarded *ex parte* and distributed in equal amounts *in equal parts* to Public Justice Foundation  
26 and/or Consumer Federation of California, both of which are non-profit organizations *for*  
27 *protection of consumer rights* that seeks to protect the rights of consumers. Any such funds paid  
28 to Public Justice Foundation and/or Consumer Federation of California will be used by them only  
for the purposes of protecting consumers from false advertising. No remaining funds will be  
returned to New Balance.

**PART IV. THE LAWYERS REPRESENTING THE CLASS**

1           **13. DO I HAVE A LAWYER IN THIS CASE?**

2           The Court has *appointed Class Counsel to represent Class Members for purposes of the*  
3 *settlement. Class Counsel is authorized to act on behalf of the Class Members with respect to*  
4 *the settlement.* ~~in this lawsuit. If you have any questions, you may contact Class Counsel at:~~

5           ~~The Wand Law Firm, P.C.  
6           Aubry Wand  
7           400 Corporate Pointe, Suite 300  
8           Culver City, CA 90230  
9           Telephone: (310) 590-4503~~

                  Schneider Wallace Cottrell Konecky & Wotkyns LLP  
                  Jason H. Kim  
                  2000 Powell Street, Suite 1400  
                  Emeryville, CA 94608  
                  Telephone: (415) 421-7100

                  Email: [newbalancesettlement@gmail.com](mailto:newbalancesettlement@gmail.com)

10          You have the right to retain *and make an appearance through* your own *attorney* lawyer to  
11 represent you in this *Action* ~~ease~~ *at your own expense, or represent yourself without an attorney.*  
12 but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her  
13 fees and expenses. You also have the right to represent yourself before the Court without a lawyer.  
14 *Any Class Member who does not enter an appearance through an attorney or on his or her own*  
15 *behalf will automatically be represented by Class Counsel.*

16           **14. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES IN THE ACTION BE PAID?**

17          Class Counsel have prosecuted this case on a completely contingent fee and have not been  
18 paid anything to date for their services. No later [Month Day, Year], Class Counsel will *file a*  
19 *motion for* submit a request to the Court for payment of attorneys' fees and costs not to exceed  
20 \$650,000 and for *enhancement payments* service awards of up to \$5,000 to each of the three  
21 Named Plaintiffs for their assistance in prosecuting this Action. *Any attorney fees and costs and*  
22 *enhancement payments approved by the Court will be paid by New Balance and will not reduce*  
23 *the settlement relief available to Class Members.* You *have the right to review the motion before*  
24 *you decide whether to exclude yourself from the Class or object to the settlement. Instructions*  
25 *for obtaining a copy of the motion are found in Part VIII below.* ~~can view this request at the~~  
26 ~~settlement website [www.shoesettlement.com](http://www.shoesettlement.com). Any fees and costs awarded by the Court will be~~  
27 ~~paid by New Balance and will not reduce the settlement relief available to Class Members.~~

28           **PART V. EXCLUDING YOURSELF FROM THE SETTLEMENT**

                  If you don't want a payment from this settlement, *or but* you want to keep *your* the right to  
sue or continue to sue New Balance on your own about the legal *claims* issues in this *Action* ease,  
then you must exclude yourself *from* or "opt-out" of the Class. Excluding yourself is telling the

1 Court that you don't want to be a part of the Class. If you exclude yourself, you **will not be able**  
2 have no basis to object to the settlement or appear at the Fairness Hearing because it no longer  
3 affects you.

4 **15. HOW DO I GET OUT OF OR EXCLUDE MYSELF FROM THE SETTLEMENT**  
5 **CLASS?**

6 If you want to be excluded from the Class, you must submit an Exclusion Form to the  
7 Class Action Settlement Administrator. An Exclusion Form is attached to this Class Notice as  
8 Appendix C (see at page 24 [page no.]). Exclusion Forms can also be found at  
9 www.shoesettlement.com. Exclusion Forms can be submitted **electronically** online at  
10 www.shoesettlement.com or by mail to **Heffler Claims Group, Re: Dashnaw, et al. v. New**  
11 **Balance Athletics, Inc.**, P.O. Box 42220, Philadelphia, PA 19101-2220. Exclusion Forms must be  
12 submitted by no later than [MONTH DAY, YEAR]. However, If your **Exclusion Form** request  
13 for exclusion is **late or deficient**, **it will not be effective to exclude** you will still be a part of the  
14 Class, you will be bound by the settlement and all other orders and judgments in this lawsuit, and  
15 you will not be able to participate in any other lawsuits based on the claims in this **Action** case.

16 **16. IF I DON'T EXCLUDE MYSELF, CAN I SUE NEW BALANCE LATER?**

17 **If you exclude yourself, you can sue New Balance for any claims you may have against**  
18 **it.**

19 **No. If you do not exclude yourself, your right to sue New Balance later will be limited.**  
20 **Upon final approval of** If the Court approves the proposed settlement and you do not exclude  
21 yourself from the Class, you **will release (give up) the Released Claims as fully stated in**  
22 **Appendix A attached at page [page no.]. In summary, Released Claims are** all claims that have  
23 been or could have been asserted in this lawsuit **Action and any claim based on the identical**  
24 **factual predicate as this Action, i.e., relating to your "Made in USA" Shoes statement on the**  
25 **shoes listed Paragraph 3 above. In addition, a**As part of this settlement, all Class Members  
26 and/or their representatives who do not **timely** exclude themselves from the Class are hereby  
27 **preliminarily** barred and enjoined **pending final approval of the settlement** from filing,  
28 commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing  
litigation as class members, putative class members, or otherwise against New Balance (or against  
any of its related parties or affiliates), and/or from receiving any benefits from, any lawsuit,  
administrative, or regulatory proceeding or order in any jurisdiction asserting any Released Claims  
as stated in **Appendix A** below.

1 Upon final approval of the settlement, Plaintiffs and New Balance will ask the Court to  
2 enter a permanent ruling forbidding all Class Members and/or their representatives and/or  
3 personnel from engaging in the activities described above. All Class Members will be bound by  
4 this order.

## 5 PART VI. OBJECTING TO THE SETTLEMENT

*If you exclude yourself, you have no right to object to the settlement.*

6 *If you do not exclude yourself, and you are dissatisfied with the settlement or any part of*  
7 *it, you have the right to **object** tell the Court that you do not agree with the settlement or any or*  
8 *all of its terms. Objecting is a way of telling the Court that you don't like something about the*  
9 *settlement. **Even if you object, if you submitted a valid claim, you will still receive compensation***  
10 *under the settlement. In other words, you can object to the settlement and submit a Claim*  
11 *Form. You can only object if you stay in the Class. If you object to the settlement, you still remain*  
12 *a member of the Class and you will still be eligible to submit a Claim Form. **In addition,** you*  
13 *will also be bound by any **the orders and judgment** subsequent rulings in this **Action** ease and you*  
14 *will **give up the Released Claims as summarized in Paragraph 16 above** not be able to file or*  
15 *participate in any other lawsuit or proceeding based upon or relating to the claims alleged in the*  
16 *Action.*

### 17 17. HOW CAN I OBJECT TO THE PROPOSED SETTLEMENT?

18 *Any Class Member may appear at the Hearing and object to the settlement*  
19 *("Objectors"). Objectors may choose to present evidence and/or file briefs relevant to the issues*  
20 *to be heard and determined by the Court. Objectors are encouraged to submit any briefs and/or*  
21 *supporting evidence to the Settlement Administrator electronically at [www.shoesettlement.com](http://www.shoesettlement.com)*  
22 *or by mail to Heffler Claims Group, Re: Dashnaw, et al. v. New Balance Athletics, Inc., P.O.*  
23 *Box 42220, Philadelphia, PA 19101-2220 no later than [Month Day, Year], and file them with*  
24 *the Clerk of the Court at United States District Court for the Southern District of California,*  
25 *333 West Broadway, Suite 420, San Diego, California 92101.*

26 *If you file a written objection, it should state: (1) your full legal name, address, and*  
27 *telephone number; (2) the words "Notice of Objection;" (3) proof of purchase of "Made in*  
28 *USA" Shoes as specified in the Claim Form, Option B, see Appendix B, attached at page [page*  
*no.]; (4) the arguments supporting the objection in clear and concise terms; (5) any witness(es)*  
*you intend to call to testify at the Hearing; (6) your signature; and (7) attach true and correct*  
*copies of any exhibit(s) you intend to offer at the Hearing. You must reference the case name*

1 *Dashnaw et al. v. New Balance Athletics, Inc., and number 17cv159-L-JLB. Any interested*  
2 *party may file a reply to objections no later than [MONTH, DAY, YEAR].*

3 ~~To object, you must provide a written statement saying you object to *Sheila Dashnaw, et*~~  
4 ~~*al. v. New Balance Athletics, Inc., Case Number 3:17-cv-00159-L-JLB (S.D. Cal.). Your written*~~  
5 ~~objection must also include:~~

- 6 (1) your name;
- 7 (2) your address;
- 8 (3) your telephone number;
- 9 (4) proof of purchase of “Made in USA” Shoes, such as a cash register receipt, a  
10 credit card receipt, or a credit card statement that sufficiently indicates the purchase  
11 of the “Made in USA” Shoes;
- 12 (5) a written statement of your objection(s), including any legal support and/or  
13 supporting evidence you wish to introduce;
- 14 (6) a statement of whether you intend to appear at the Fairness Hearing;
- 15 (7) your signature; and
- 16 (8) the case name and case number: *Sheila Dashnaw, et al. v. New Balance*  
17 *Athletics, Inc., Case Number 3:17-cv-00159-L-JLB (S.D. Cal.)*

18 ~~———— Your written objection must be filed with the Court **and** a copy must be sent to the Claims~~  
19 ~~Administrator at [www.shoesettlement.com](http://www.shoesettlement.com) or by mail to *Dashnaw, et al. v. New Balance Athletics,*~~  
20 ~~*Inc., PO Box 42220, Philadelphia, PA 19101-2220.*~~

21 ~~———— In order to facilitate consideration by the Court, you are encouraged to submit your~~  
22 ~~objection by no later than **[Month Day, Year]**.~~

23 ~~———— If you file an objection, but the Court approves the settlement as proposed, you can still~~  
24 ~~complete a Claim Form to be eligible for payment under the settlement. In other words, you can~~  
25 ~~simultaneously object to the settlement and submit a Claim Form.~~

## 26 **PART VII. THE COURT’S FAIRNESS FINAL APPROVAL HEARING**

27 On **[Month Day, Year]**, at **[TIME]**, the Court will hold a Fairness Hearing at the United  
28 States District Court for the Southern District of California, before the Honorable M. James  
Lorenz, in Courtroom 5B, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, San Diego,  
California 92101. At the *H*earing, the Court will consider *all necessary matters concerning the*  
*proposed settlement, including* whether to grant final certification to *this Action as a class action*  
~~the Class~~ for settlement purposes, whether to approve the proposed settlement as fair, reasonable,  
and adequate, and *whether to grant the motion for attorney’s fees and costs of Class Counsel*



1 ~~and for enhancement payments to the Plaintiffs will make a final ruling on all related settlement~~  
2 ~~issues. The Court will also decide whether to award attorneys' fees and costs, as well as Class~~  
3 ~~Representative awards to the named plaintiffs.~~

4 **18. DO I HAVE TO COME TO THE HEARING?**

5 No. Class Counsel will *appear on behalf of all Class Members to* answer *any* questions  
6 the Court may have at the ~~Fairness Hearing~~. But you are welcome to *attend in person or through*  
7 *your own attorney* ~~come~~ at your own expense. Please note that the Court *may* ~~has the right to~~  
8 change the date and/or time of the ~~Fairness Hearing~~ *and/or the matter may be submitted on the*  
9 *briefs* without further notice. If you are planning to attend ~~the hearing~~, you should confirm the  
date and time before going to the Court.

10 **19. WHAT DO I HAVE TO DO TO SPEAK AT THE ~~FAIRNESS HEARING?~~**

11 If you are a member of the Class, and you (or your attorney) want to appear and speak at  
12 the ~~Fairness Hearing~~, you (or your attorney) are encouraged to file a Notice of Intention to Appear  
13 ~~at the Fairness Hearing~~ with the Clerk of the Court *at the address listed in Paragraph 17 above*,  
14 and deliver *it to the Settlement Administrator* ~~that Notice to Heffler Claims Group~~ at the address  
listed *in Paragraph 2* above, by no later than **[Month Day, Year]**.

15 If you file an objection and/or orally object at the ~~Fairness Hearing~~, you can still complete  
16 a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions  
17 discussed in this Notice and in the Settlement Agreement.

18 **PART VIII. GETTING ADDITIONAL INFORMATION**

19 This Notice ~~and the accompanying documents~~ summarizes the proposed settlement *and*  
20 *does not cover all of its terms*. More details are contained in the Settlement Agreement. The full  
21 Settlement Agreement is on file with the Clerk of the Court. For a more detailed statement of the  
22 matters involved in this case, you may review the complaint and the other papers and Court orders  
23 on file in the Clerk's office at any time. *The Amended Settlement Agreement and all documents*  
24 *filed in this Action are available for review by visiting the office of the Clerk of Court for the*  
25 *United States District Court for the Southern District of California at 333 West Broadway, Suite*  
26 *420, San Diego, California 92101* during normal business hours, Monday through Friday, 7:00  
27 a.m. to 6:00 p.m. PST, *or accessing the files through the Court's Public Access to Court*  
28 *Electronic Records (PACER) system at <https://pacer.login.uscourts.gov/csologin/login.jsf>*. You  
can also visit [www.shoesettlement.com](http://www.shoesettlement.com), *or contact* ~~each~~ the Settlement Administrator at (844) 271-  
4789, ~~or contact~~ Class Counsel (listed on page 9 **[page no.]**) to view the Settlement Agreement and

1 ~~obtain additional information about the settlement.~~ *Their contact information is found in*  
2 *Paragraph 2 above.*

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4 **PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT**

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APPENDIX A

Release and Waiver of Claims

1. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Order and Final Judgment.
2. “Released Parties” means New Balance, its past, present, and future parents *entities* (including but not limited to New Balance, Inc., and any intermediary and/or ultimate parents *entities*), officers, directors, employees, stockholders, agents, attorneys, administrators, successors, suppliers, distributors, reorganized successors, spin-offs, assigns, holding companies, related companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions, predecessors, and Authorized Retailers of “Made in USA” Shoes for resale.
3. In consideration of the Settlement benefits described in this Agreement, Plaintiffs and the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from – and shall not now or hereafter institute, maintain or assert on their own behalf, on behalf of the Class, or on behalf of any other person or entity – the claims asserted in *either the initial or the first amended class action complaint filed* ~~any of the Complaints~~ in this ~~Action~~ and/or any claim based on the ~~same~~ *identical* factual predicate as any of the claims asserted in ~~any of the Complaints~~ in this ~~Action~~. For the avoidance of doubt, the Parties intend this class release to extend to the furthest extent allowed by *Hesse v. Sprint Corporation*, 598 F.3d 581 (9th Cir. 2010). Released Claims do not include any claims that cannot be released as a matter of law.
4. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members

1 submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive  
2 owners of all claims that they personally are releasing under the Settlement and that they have  
3 not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered  
4 any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action,  
5 including without limitation, any claim for benefits, proceeds or value under the Action, and that  
6 such Class Member(s) are not aware of anyone other than themselves claiming any interest, in  
7 whole or in part, in the Action or in any benefits, proceeds or values under the Action.

8 5. Without in any way limiting its scope, and, except to the extent otherwise specified in the  
9 Agreement, this Release covers by example and without limitation, any and all claims for  
10 attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other  
11 fees, costs, and/or disbursements incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class  
12 Members.

13 6. In addition to the Released Claims, the Named Plaintiffs only agree to a general release, which  
14 includes a release of any unknown claims that they did not know or suspect to exist in their favor  
15 at the time of the general release, which, if known, might have affected their Settlement with, and  
16 general release of, the Released Parties. With respect to the general release, the Named Plaintiffs  
17 only stipulate and agree that, upon the execution of this Agreement, and by operation of the Final  
18 Judgment, they shall be deemed to have expressly waived and relinquished, to the fullest extent  
19 permitted by law, the provisions, rights and benefits of Section 1542 of the Civil Code of the State  
20 of California, which provides that:

21 "a general release does not extend to claims which the creditor does not know or  
22 suspect to exist in his or her favor at the time of executing the release, which if  
23 known by him or her must have materially affected his or her settlement with the  
debtor."

24 Named Plaintiffs only hereby agree that the provisions of all such principles of law or similar  
25 federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived,  
relinquished and released.

26 7. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including  
27 participation in any of the processes detailed therein.  
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8. Plaintiffs and Defendant hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

APPENDIX B

*Dashnaw, et al. v. New Balance Athletics, Inc.*  
 United States District Court for the Southern District of California  
 Case No. 3:17-cv-00159-L-JLB

**CLAIM FORM**

Use this Claim Form if you bought at least one pair of eligible New Balance “Made in USA” shoes in California ~~between from~~ *between* December 27, 2012 ~~to and~~ *and* [Month Day, Year]. The eligible New Balance shoes are listed *at the end of this form* below. Please refer to this list before filling out this form.

~~All Claim Forms must be submitted electronically at [www.shoesettlement.com](http://www.shoesettlement.com) or by mail to *Dashnaw, et al. v. New Balance Athletics, Inc.*, P.O. Box 42220, Philadelphia, PA 19101-2220, by no later than [Month Day, Year].~~

*Submit this Claim Form to the Settlement Administrator online at [www.shoesettlement.com](http://www.shoesettlement.com) or by first class U.S. mail to the address below no later than [month day, year].*

***Heffler Claims Group***  
***Re: Dashnaw v. New Balance Athletics, Inc.***  
***P.O. Box 42220***  
***Philadelphia, PA 19101-220***

Payment amounts to eligible Class Members ~~may~~ *will* vary depending upon the number of *Claim Forms* and amounts claimed by all Class Members and other adjustments and deductions as specified in the *proposed s*Settlement Agreement. The maximum award amount per pair of “Made in USA” shoes purchased—up to five (5) purchases per person—is \$10. If your claim is approved, ~~the Claim Amount~~ *it* will be paid by check.

CLAIM INFORMATION	
CLASS MEMBER INFORMATION	
Name:	
Mailing Address:	
City:	Number and Street
State:	Zip Code:
Telephone Number:	E-Mail Address:

**Option A:** If you only purchased *one pair* of “Made in USA” shoes ~~from~~ *between* December 27, 2012 ~~and to~~ *and* [Month Day, Year], select Option A. If you select Option A, you are **not** initially required to submit proof of purchase.

**Option B:** If you purchased *more than one pair* of “Made in USA” shoes ~~from~~ *between* December 27, 2012 *and to* [Month Day, Year], you may submit a claim for **up to five (5) pairs**. If you want to submit a claim for more than one pair, select Option B. If you select Option B, you are required to *a* submit proofs of purchase.

*You must select either Option A or Option B*

[ ] Option A: Submit your claim without proof of purchase and receive up to \$10.

<i>Option A: PURCHASE INFORMATION – NEW BALANCE SHOES</i>		
<i>Eligible New Balance Shoe Model</i>	<i>Location Purchased (store/website), City, State</i>	<i>Date of Purchase mm/dd/yyyy</i>
		___ / ___ / ___ ___

[ ] Option B: Submit your claim by completing the purchase information *below* ~~on the next page~~ and include a valid proof of purchase for each eligible New Balance Shoe model, up to a total of 5 pairs. Please include one of the following for each:

- a receipt,
- photograph of the eligible New Balance Shoes,
- a photocopy of the purchase order ~~or~~ your credit *card* statement.

If you do not include proof of purchase your claim may be deemed invalid at the discretion of the Settlement Administrator.

<i>Option B: PURCHASE INFORMATION – NEW BALANCE SHOES</i>			
<i>Eligible New Balance Shoe Models</i>	<i>Quantity Purchased</i>	<i>Location Purchased (store/website), City, State</i>	<i>Date of Purchase mm/dd/yyyy</i>
			___ / ___ / ___ ___
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			___ / ___ / ___ ___
			___ / ___ / ___ ___
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1 Please note: The Class Action Settlement Administrator may, at its discretion, request proof  
 2 of purchase to validate your claim even if you choose Option A. The Class Action Settlement  
 3 Administrator may also request additional proof of purchase if you choose Option B. If  
 4 requested, you must provide proof of purchase within 35 days of such a request or your claim  
 will *could* be reduced or denied and you may not appeal the reduction or denial.

5 **AFFIRMATION**

6 I declare or affirm, under penalty of perjury, that the information in this Celaim  
 Fform is true and correct to the best of my knowledge and that I purchased the  
 7 applicable product(s) claimed above between December 27, 2012 and [Month Day,  
 8 Year]. I understand that the decision of the Class Action Settlement Administrator is  
 final and binding. I understand that my Celaim Fform may be subject to audit,  
 verification, and Court review.

9 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

10  
 11 Questions? Visit [www.shoesettlement.com](http://www.shoesettlement.com) or call (844) 271-4789.

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ELIGIBLE NEW BALANCE SHOE MODELS	
601	ML996
M1140	ML997
M1290	MR1105
M1300	MR993
M1400	MW812
M1540	PM15
M1700	PM16
M2040	US574
M3040	US576
M498	US990
M574	US993
M585	US998
M587	W1140
M770	W1290
M990	W1400
M991	W1540
M995	W3040
M996	W498
M997	W587
M9975	W990
M998	W998
MK706	WK706
ML1300	WR993
ML1978	WW812

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APPENDIX C

*Dashnaw, et al. v. New Balance Athletics, Inc.*  
United States District Court for the Southern District of California  
Case No. 3:17-cv-00159-L-JLB

EXCLUSION FORM

If you do **not** want to participate in the *proposed* settlement, you must sign and fill out this form accurately and in its entirety, and you must submit *it* this form to the *Settlement* Claims Administrator online at [www.shoesettlement.com](http://www.shoesettlement.com) or mail this form by first class U.S. mail to the address below. ~~This Exclusion Form must be submitted by no later than [month day, year].~~

Heffler Claims Group  
Re: *Dashnaw v. New Balance Athletics, Inc.*  
P.O. Box 42220  
Philadelphia, PA 19101-220

**IT IS MY DECISION TO BE EXCLUDED FROM THE CLASS AND NOT TO RECEIVE ANY MONEY UNDER THE *PROPOSED* SETTLEMENT.**

~~I confirm that~~ I purchased one or more of the “Made in USA” Shoes listed in the table below from New Balance and/or its authorized retailers *between* during the time period of December 27, 2012 *and* until [MONTH DAY, YEAR]. ~~I confirm that~~ I have received notice of the proposed settlement in this action. I have decided to be excluded from the Class. ~~and~~ I understand that by submitting this Exclusion Form, I will be forever barred from *ineligible to* receiving any money under the *proposed* Settlement, and will not be bound by the *proposed* Settlement.

ELIGIBLE NEW BALANCE SHOE MODELS	
601	ML996
M1140	ML997
M1290	MR1105
M1300	MR993
M1400	MW812
M1540	PM15
M1700	PM16
M2040	US574
M3040	US576
M498	US990

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<b>ELIGIBLE NEW BALANCE SHOE MODELS</b>	
M574	US993
M585	US998
M587	W1140
M770	W1290
M990	W1400
M991	W1540
M995	W3040
M996	W498
M997	W587
M9975	W990
M998	W998
MK706	WK706
ML1300	WR993
ML1978	WW812

DATED: \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(City, State, Zip) \_\_\_\_\_ (Type or Print Name)

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**EXHIBIT B**

1 *Dashnaw, et al. v. New Balance Athletics, Inc.*  
2 United States District Court for the Southern District of California  
3 Case No. 3:17-cv-00159-L-JLB

4 **SUMMARY CLASS ACTION SETTLEMENT NOTICE**

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

6  
7 If you purchased New Balance “Made in USA” labeled shoes, ~~your rights may be affected~~  
8 ~~by a proposed class action settlement~~ *may affect your rights. Read this notice carefully because it*  
9 *explains decisions and actions you must take now.*

10 **ARE YOU AFFECTED?**

11 You may be a ~~c~~Class ~~m~~Member if you purchased at least one pair of eligible New Balance shoe models  
12 labeled as “Made in USA” from December 27, 2012 ~~until~~ *through* [MONTH DAY, YEAR]. *A list of*  
13 *eligible shoe models can be found at [www.shoesettlement.com](http://www.shoesettlement.com).*

14 ~~A list of eligible shoe models can be found at [www.shoesettlement.com](http://www.shoesettlement.com).~~

15 **WHAT IS THIS CASE ABOUT?**

16 ~~This~~ lawsuit claims that New Balance violated certain ~~state~~ *consumer protection* laws ~~regarding the in~~  
17 *the* marketing, *labeling*, and sale of its “Made in USA” Shoes. New Balance denies it did anything  
18 wrong. The ~~C~~ourt did not decide which side was right. Instead, the parties ~~have~~ decided to settle.

19 **WHAT DOES THIS SETTLEMENT PROVIDE?**

20 **Monetary Compensation**

21 The settlement will provide a fund of \$750,000 that, subject to ~~C~~ourt approval, will be used to pay (i)  
22 valid and approved ~~C~~laims submitted by ~~C~~lass ~~M~~members ~~pursuant to the Claim Process~~; (ii) the costs  
23 and expenses associated with ~~this~~ Notice and claims administration ~~in an estimated amount of~~  
24 \$200,000; and (iii) *enhancement* service award payments of up to \$5,000 to each of three named  
25 plaintiffs for their ~~efforts and~~ assistance in this ~~Action~~ *lawsuit* on behalf of the ~~C~~lass. If these  
26 ~~foregoing~~ payments are approved by the ~~C~~ourt, it is estimated that \$535,000 will be available to satisfy  
27 the claims of ~~C~~lass ~~M~~members. *The maximum p*Payments to each ~~C~~lass ~~M~~member *is* ~~could be up to~~  
28 \$10 for each pair of *qualifying* “Made in USA” ~~S~~shoes purchased, with a maximum of \$50 per person

1 and \$100 per household, ~~but~~ ~~the~~ ~~amount~~ ~~may~~ ~~decrease~~ *pro rata, if the total number of valid claims*  
2 *exceeds \$535,000* depending upon the number of claims submitted by all Class Members.

### 3 **Changes to Business Practices**

4 Under the settlement, New Balance is ~~also agreeing to~~ *must change the way it labels* engage in certain  
5 ~~notice practices relating to its shoes labeled as~~ "Made in USA."

### 6 **HOW DO YOU ASK FOR A PAYMENT?**

7 To get ~~money~~ *a payment under the settlement*, eligible ~~Class Members~~ *you must submit* a *claim* form  
8 that includes information about *your* ~~their~~ purchase of *qualifying* "Made in USA" shoes. This is called  
9 a ~~Claim Form~~. Claim ~~F~~forms can be found at [www.shoesettlement.com](http://www.shoesettlement.com).

10 Claim ~~F~~forms must be submitted to ~~Heffler Claims Group, the Claims Administrator,~~ by no later than  
11 **[MONTH DAY, YEAR]**. ~~Claim Forms can be submitted online at~~ [www.shoesettlement.com](http://www.shoesettlement.com) or by mail  
12 to *Heffler Claims Group, Re: Dashnaw, et al. v. New Balance Athletics, Inc.*, P.O. Box 42220,  
13 Philadelphia, PA 19101-2220.

### 14 **WHAT ARE YOUR OPTIONS?**

15 If you *purchased a qualifying pair of shoes* ~~are a Class Member~~, you may (1) do nothing; (2) *send in*  
16 *your claim*; (3) exclude yourself; ~~(3) send in a Claim Form~~ and/or (4) object to the settlement.

17 If you do nothing, you will not be eligible to receive *any payment from* ~~compensation under~~ the  
18 settlement, *however*, ~~but~~ you will be bound by the settlement's release and waiver of claims  
19 *summarized below in the paragraph titled "What Do You Give up If You Stay in the Class?"*

20 *If you want to receive a payment from the settlement, you must send in your claim as instructed*  
21 *above. You will be bound by the settlement's release and waiver of claims summarized below in the*  
22 *paragraph titled "What Do You Give up If You Stay in the Class?"*

23 If you don't want to be bound by the settlement, you must submit a form that states you want to be  
24 excluded from *this class action lawsuit* ~~the settlement~~. This is called an ~~Exclusion Form~~. If you exclude  
25 yourself, you *will not* ~~can't~~ get a payment *from the settlement*, but you *will* preserve *all* ~~the~~ rights to sue  
26 New Balance *on your own* ~~for these claims~~.

27 Exclusion ~~F~~forms can be found at [www.shoesettlement.com](http://www.shoesettlement.com). ~~They~~ ~~Exclusion Forms~~ must be submitted  
28 by no later than **[MONTH DAY, YEAR]**. ~~Exclusion Forms can be submitted online at~~  
[www.shoesettlement.com](http://www.shoesettlement.com) or by mail to *Heffler Claims Group, Re: Dashnaw, et al. v. New Balance*  
*Athletics, Inc.*, P.O. Box 42220, Philadelphia, PA 19101-2220.

1 *If you do not exclude yourself, you may object to the settlement or any part of it. Even if you object,*  
2 *you can still receive payment from the settlement, if you timely submit your claim. If you wish to*  
3 *object, you should file your objection with the court and submit it online at [www.shoesettlement.com](http://www.shoesettlement.com)*  
4 *or by mail to Heffler Claims Group, Re: Dashnaw, et al. v. New Balance Athletics, Inc., P.O. Box*  
5 *42220, Philadelphia, PA 19101-2220 no later than [MONTH, DAY, YEAR]. For instructions about*  
6 *how to object, refer to the section below titled "How Can You Get More Information?"*

7 **WHAT DO YOU GIVE UP IF YOU STAY IN THE CLASS?**

8 If you stay in the Class, you may submit a Claim Form and/or object to the settlement. Objections must  
9 be filed with the Court and they must also be submitted to the Claims Administrator at  
10 [www.shoesettlement.com](http://www.shoesettlement.com) or by mail to *Dashnaw, et al. v. New Balance Athletics, Inc.*, PO Box 42220,  
11 Philadelphia, PA 19101-2220.

12 If you *do not exclude yourself* remain a Class Member by doing nothing, submitting a Claim Form, or  
13 objecting to the Settlement, you will *give up your right to sue New Balance on your own for any*  
14 *claims based on the qualifying shoe purchases.* be agreeing to the following release as to New  
15 Balance Athletics, Inc. and its past, present and future parents (including but not limited to New  
16 Balance, Inc., and any intermediary and/or ultimate parents), or against any of *and* its related parties or  
17 affiliates:

18 ~~In consideration of the Settlement benefits described in this Agreement, Plaintiffs and the~~  
19 ~~other members of the Class, on behalf of themselves, their heirs, guardians, assigns,~~  
20 ~~executors, administrators, predecessors, and/or successors, will fully, finally and forever~~  
21 ~~release, relinquish, acquit, and discharge the Released Parties from and shall not now or~~  
22 ~~hereafter institute, maintain or assert on their own behalf, on behalf of the Class, or on behalf~~  
23 ~~of any other person or entity the claims asserted in any of the Complaints in this action and/or~~  
24 ~~any claim based on the same factual predicate as any of the claims asserted in any of the~~  
25 ~~Complaints in this action.~~

26 *The complete Release and Waiver of Claims provision is included in the Amended Settlement*  
27 *Agreement. For instructions to access it, refer to the section below, titled "How Can You Get More*  
28 *Information?"*

**LEGAL REPRESENTATION**

1 *The court has appointed Jason H. Kim of Schneider Wallace Cottrell Konecky Wotkyns LLP and*  
2 *Aubry Wand of The Wand Law Firm, P.C. to represent the class for purposes of the settlement. You*  
3 *have the right to retain your own attorney to represent you in this lawsuit at your own expense, or*  
4 *represent yourself without an attorney. Any class member who does not enter an appearance through*  
5 *an attorney or on his or her own behalf will automatically be represented by class counsel.*

6 **THE COURT WILL HOLD A HEARING** in this case on **[MONTH DAY, YEAR]** at **[TIME]** in the  
7 Edward J. Schwartz Federal Courthouse, *United States District Court for the Southern District of*  
8 *California, before the Honorable M. James Lorenz*, in Courtroom 5B, *Edward J. Schwartz U.S.*  
9 *Courthouse*, located at 221 West Broadway, San Diego, California 92101. ~~to~~ *The court will consider*  
10 *certification of this lawsuit as a class action for settlement purposes, whether to approve the proposed*  
11 *settlement as fair, reasonable, and adequate, and whether to grant the motion for attorney's fees and*  
12 *costs final approval of the settlement, payment of attorneys' fees and expenses of up to \$650,000 to*  
13 *lawyers* ~~€~~ *class counsel, and enhancement payments of up to \$5,000 for to each of the three named*  
14 *plaintiffs for their assistance in this lawsuit on behalf of the class. The motion(s) by Class Counsel for*  
15 *attorneys' these fees and, costs and enhancement payments service awards will be available for review*  
16 *before you decide whether to exclude yourself or object on the Settlement website after they are filed.*

17 *For instructions how to access it, refer to the section below, titled "How Can You Get More*  
18 *Information?"* ~~The Court has appointed Jason H. Kim of Schneider Wallace Cottrell Konecky Wotkyns~~  
19 ~~LLP and Aubry Wand of The Wand Law Firm, P.C. to represent the Class.—~~ You may appear at the  
20 hearing, but you don't have to. *If you do not appear, you will be represented by class counsel.*

21 *The court may change the date and/or time of the hearing and/or the matter may be submitted on the*  
22 *briefs without further notice. If you are planning to attend, you should confirm the date and time in*  
23 *advance.*

## 24 **HOW CAN YOU GET MORE INFORMATION?**

25 For more information, *and to obtain copies of the full-length notice of the class action settlement, the*  
26 *Amended Settlement Agreement and other documents filed in this lawsuit*, you can visit the settlement  
27 website [www.shoesettlement.com](http://www.shoesettlement.com), call *toll free* (844) 271-4789, write to *Heffler Claims Group, Re:*  
28 *Dashnaw, et al. v. New Balance Athletics, Inc.*, P.O. Box 42220, Philadelphia, PA 19101-2220, or  
contact *the* ~~€~~ *class* ~~€~~ *counsel* at the information listed on the settlement website.