

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*” or “*Agreement*”) is entered into by and between plaintiffs Monica Rael and Alyssa Hedrick, individually, on behalf of themselves and all others similarly situated (“*Plaintiffs*”), on the one hand, and defendants RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc. (together, “*New York & Company*” or “*Defendants*”), on the other (collectively referred to as the “*Parties*” or singularly “*Party*”).

RECITALS

A. On February 11, 2016, Plaintiff Monica Rael filed a putative class action lawsuit against New York & Company in the United States District Court, Southern District of California, Case No. 3:16-cv-00369-BAS-JMA, asserting false and/or deceptive advertising claims based on allegations that New York & Company’s pricing advertisements of discounts on merchandise offered for sale at Defendants’ retail and outlet stores improperly leads consumers to believe that they are receiving a discount on their purchase, (the “*Rael Action*”). The case was assigned to the Honorable District Court Judge Cynthia Bashant and the Honorable Magistrate Judge Jan M. Adler.

B. On April 25, 2016, Plaintiff Rael filed a First Amended Complaint, adding a claim for damages pursuant to the CLRA.

C. On May 13, 2016, after discovering a scrivener’s error in identifying the item that Plaintiff Rael purchased, the Parties jointly moved in requesting that Plaintiff file a Second Amended Complaint, which the Court granted. The Second Amended Complaint was subsequently filed on May 17, 2016. Defendants filed a motion to dismiss the Second Amended Complaint, which the Court granted with leave to amend.

D. On January 23, 2017, Plaintiff Rael filed her Third Amended Complaint. Defendants moved to dismiss the Third Amended Complaint, which the Court denied. The Court allowed all claims for monetary relief to proceed.

E. On August 14, 2017, Defendants filed an Answer to Plaintiff Rael’s Third Amended Complaint.

F. On July 9, 2017, Plaintiff Alyssa Hedrick filed a related action in the United States District Court, Southern District of California, Case No. 3:17-cv-01153-BAS-JMA, also arising out of Defendants’ fraudulent discount pricing scheme, but as conducted specifically at the New York & Company outlet stores, (the “*Hedrick Action*”). The case was originally assigned to the Honorable District Judge Anthony J. Battaglia and the Honorable Jan M. Adler. Shortly thereafter, Plaintiff Hedrick’s case was transferred to the Honorable District Judge Cynthia Bashant pursuant to the low-number rule, finding the *Rael* and *Hedrick* Actions to be factually and legally related.

G. On September 1, 2017, Defendants filed an Answer to Plaintiff Hedrick’s Complaint.

H. Plaintiffs and New York & Company thereafter continued investigating the facts and analyzing the relevant legal issues in regards to the claims asserted in the Complaints and New York & Company's potential defenses.

I. The Parties participated in a full day mediation session in San Francisco, California before Hon. Edward A. Infante (ret.) (the "Mediator") of JAMS, Inc. on March 28, 2018.

J. As a result of the progress made at the mediation session and several subsequent discussions that were guided by the assistance of the Mediator, the Parties have reached a Settlement of the Federal Court Actions (defined below), the terms of which are set forth in this Settlement Agreement.

K. Plaintiffs and their Counsel believe that the claims asserted in the Complaint (defined below) have merit. New York & Company has denied and continues to deny any and all allegations of wrongdoing alleged in the Action (defined below) and believes the claims asserted by Plaintiffs are without merit. Nonetheless, the Parties have concluded that litigation could be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement in order to limit further expense, inconvenience, and uncertainty. The Parties also have considered the uncertainties of trial and the benefits to be obtained under the proposed Settlement and have considered the costs, risks, and delays associated with the prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiffs or New York & Company.

L. In furtherance of the settlement process, Plaintiffs voluntarily dismissed Plaintiff Rael's Third Amended Complaint and Plaintiff Hedrick's Complaint, without prejudice, pursuant to the Federal Rules of Civil Procedure 41(a)(1)(A)(ii), with the understanding and expectation that, once the Parties drafted and executed a formal settlement agreement embodying the terms of their agreement as communicated to the Mediator, Plaintiffs would refile the dismissed claims and the Parties would seek court approval of their class action settlement in the Superior Court of California, County of San Diego.

M. The Parties have jointly drafted this Settlement Agreement as the formal settlement agreement contemplated by the Parties when they reached agreement on settlement of the Action with the assistance of the Mediator. It is now the intention of the Parties and the objective of this Settlement Agreement to avoid the costs of trial and settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Action.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Plaintiffs, the Classes and New York & Company, agree to Settlement of the Action, subject to Court approval, under the following terms and conditions.

1. DEFINITIONS. In addition to the definitions included in the Recitals above, and in later sections of the Agreement, the following shall be defined terms for purposes of this Settlement

Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

1.1 As used herein, the term “**Action**” means the lawsuit style *Rael, Hedrick v. RTW Retailwinds, Inc. f/k/a New York & Company, Inc., et al.*, filed in the Superior Court of California, County of San Diego, following the dismissal of the Federal Court Actions.

1.2 As used herein, the term “**Authorized Claimant**” means any Class Member who either (i) receives notice via publication notice and timely submits a complete and sufficient Claim Form or (ii) receives direct notice via email or mail, according to the terms of this Settlement Agreement and does not validly request exclusion from the Class and proposed Settlement.

1.3 As used herein, the term “**Claim**” means a request made by a Class Member in order to receive a Settlement Voucher pursuant to the procedures stated in Section 3.6 below.

1.4 As used herein, the term “**Claim Response Deadline**” means the deadline by which Class Members must deliver Claim Forms. The Claim Response Deadline shall be seventy-five (75) calendar days after Defendants, through the Claims Administrator, issues Notice to the Class.

1.5 As used herein, the term “**Claim Form**” means the form a Class Member must complete and submit to receive a Settlement Voucher(s) under this Agreement if that Class Member did not receive direct notice of the Settlement via email or mail, and in turn, will not receive direct distribution of the Settlement Voucher(s). The Claim Form must be substantially similar to the form attached as **Exhibit F**.

1.6 As used herein, the term “**Claimant**” means any Class Member who submits a Claim Form under this Agreement.

1.7 As used herein, the term “**Claims Administrator**” means a third party claims administrator to be selected by New York & Company, and any successors to that entity, or another entity that New York & Company designates (with approval from Plaintiffs, whose approval shall not be unreasonably withheld), to administer the notice, claims, and Settlement relief distribution process provided for in the Settlement Agreement.

1.8 As used herein, the term “**Claims Administrator Costs**” means all costs incurred by the Claims Administrator, including the cost of providing notice to the Class and administering the Settlement.

1.9 As used herein, the terms “**Class**” and “**Class Members**” mean: All New York & Company customers who from February 11, 2012 to the date the Court enters the Preliminary Approval Order purchased at any New York & Company retail store located in the State of California, or from June 9, 2013 to the date the Court enters the Preliminary Approval Order purchased at any New York & Company outlet store located in the State of California, one or more New York & Company branded items at a purported discount from an “Our Price” or any other reference price. Excluded from the Class are New York & Company’s Counsel, New York & Company’s officers, directors and employees, and the judge presiding over the Action.

1.10 As used herein, the term “*Class Period*” means: For retail customers, February 11, 2012 through the date that the Court enters the Preliminary Approval Order. For outlet customers, June 9, 2013 through the date that the Court enters the Preliminary Approval Order.

1.11 As used herein, the term “*Class Released Claims*” means all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have, arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged or otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, including, but not limited to, any and all claims related in any way to the advertisement of prices or promotions by New York & Company or any of its subsidiaries or affiliates.

1.12 As used herein, the term “*Class Releasers*” means Plaintiffs and all Class Members who do not timely and sufficiently request to be excluded from the proposed settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives.

1.13 As used herein, the term “*Complaint*” means the Complaint Plaintiffs shall seek permission to file and file in the Action, asserting claims on behalf of themselves and the Class based on claims substantially similar to those in Plaintiff Rael’s Third Amended Complaint and Plaintiff Hedrick’s Complaint in the Federal Court Actions.

1.14 As used herein, the term “*Court*” means the Superior Court of California, County of San Diego.

1.15 As used herein, the term “*Defendants*” and “*New York & Company*” means RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc.

1.16 As used herein, the terms “*Defendants’ Counsel*” and “*New York & Company’s Counsel*” means the law firm of Steptoe & Johnson LLP.

1.17 As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, New York & Company’s Counsel, and the Court, to be provided to Class Members under Section 3.4 of this Settlement Agreement via electronic mail. The Email Notice must be substantially similar to the form attached as **Exhibit C**.

1.18 As used herein, the term “*Fairness Hearing*” means the hearing(s) to be held by the Court in the Action to consider and determine whether the proposed Settlement as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Settlement contained in this Settlement Agreement should be entered.

1.19 As used herein, the term “*Federal Court Actions*” means the lawsuits styled *Rael v. New York & Company, Inc., et al.*, Case No. 3:16-cv-00369-BAS-JMA (S.D. Cal.) and *Hedrick v. New York & Company, Inc., et al.*, Case No. 3:17-cv-001153-BAS-JMA (S.D. Cal.), which were voluntarily dismissed without prejudice.

1.20 As used herein, the terms “*Final Order*” and “*Order Granting Final Approval of Class Settlement*” mean the Court order granting final approval of the Settlement of this Action following the Fairness Hearing. The proposed Final Order that Plaintiffs submit to the Court for its approval must be substantially similar to the form attached as **Exhibit G**.

1.21 As used herein, the term “*Final Settlement Date*” means two Court days after the Final Order and Judgment become “final.” For the purposes of this section, “final” means after [i] thirty-one (31) calendar days after the entry of the Final Order and Judgment, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or [ii] in the event that an appeal or other effort to obtain review has been initiated, the date after any and all such appeals or other review(s) have been finally concluded in favor of the Final Order and Judgment, any mandates have been returned to the Court, and the Final Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

1.22 As used herein, the term “*Full Notice*” means the full legal notice of the proposed Settlement terms, as approved by Class Counsel, New York & Company’s Counsel, and the Court, to be provided to Class Members under Section 3.4 of this Settlement Agreement. The Full Notice must be substantially similar to the form attached as **Exhibit B**.

1.23 As used herein, the terms “*Judgment*” and “*Final Judgment*” mean a document labeled by the Court as such and that has the effect of a judgment. The proposed Judgment that Plaintiffs will submit to the Court for entry must be substantially similar to the form attached as **Exhibit H**.

1.24 As used herein, the term “*Mail Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, New York & Company’s Counsel, and the Court, to be provided to Class members under Section 3.4 of this Settlement Agreement via U.S. Mail. The Mail Notice must be substantially similar to the form attached as **Exhibit D**.

1.25 As used herein, the term “*Named Plaintiffs*” or “*Plaintiffs*” means Monica Rael and Alyssa Hedrick in their individual capacities only.

1.26 As used herein, the term “*Objection or Exclusion Response Deadline*” means the deadline by which Class Members must deliver objections or requests for exclusion. The Objection or Exclusion Response Deadline shall be no later than seventy-five (75) calendar days after issuance of Class Notices.

1.27 As used herein, the terms “*Plaintiffs’ Counsel*” and “*Class Counsel*” mean the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP.

1.28 As used herein, the terms “*Preliminary Approval Order*” or “*Preliminary Approval and Provisional Class Certification Order*” mean the order provisionally certifying the Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiffs submit to the Court for their approval must be substantially similar to the form attached as **Exhibit A**.

1.29 As used herein, the term “*Qualifying Purchase*” means a purchase of any New York & Company merchandise offered at a purported discount from an “Our Price” or other reference price at a New York & Company retail and/or outlet store located in the State of California during the Class Period.

1.30 As used herein, the term “*Released Parties*” means RTW Retailwinds, Inc., New York & Company, Inc., and New York & Company Stores, Inc. and each of their direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with it, or any of them.

1.31 As used herein, the term “*Settlement*” means the Settlement of the Action and related claims effectuated by this Settlement Agreement.

1.32 As used herein, the term “*Settlement Website*” means the website that shall be created for settlement administration purposes and administered by the Claims Administrator.

1.33 As used herein, the term “*Unknown Claims*” means with respect to the Class Released Claims only, Plaintiffs and the Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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.

As part of this agreement, Plaintiffs and the Class Members state that they fully understand that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Plaintiffs and the Class Members and the Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that the Settlement Agreement will remain effective despite any difference in facts. Further, Plaintiffs and the Class Members agree that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the Settlement would not have been accepted.

1.34 As used herein, the term “*Voucher*” means a voucher good for a purchase either in a New York & Company retail or outlet store in California for (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase of up to \$100 (\$25 maximum discount). The Vouchers will expire six (6) months after they are issued. The Vouchers are not stackable and may not be combined with any other coupon or promotional offer. Each Voucher must be used in a single purchase, and any portion of the Voucher not used in that purchase will be forfeited. However, the Vouchers may be used on items that are on sale or otherwise discounted. The Vouchers shall not be redeemable for cash, and will not be replaced if lost, stolen, or damaged. The Vouchers are transferrable.

2. SETTLEMENT TERMS.

2.1 Award to the Class. To each Authorized Claimant, New York & Company shall issue one Voucher. The Authorized Claimant will be able to elect at the time of purchase whether to redeem the voucher for (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase of up to \$100 (\$25 maximum discount).

The Authorized Claimant will have the ability to claim a second Voucher by submitting proof that the Authorized Claimant has made Qualifying Purchases totaling more than \$50.00. Acceptable proof of Qualifying Purchases include [i] receipt(s) clearly showing the date of purchase(s) and the total of the purchase(s), or [ii] transaction date from a credit or debit card statement clearly showing the date of purchase(s) and the total of the purchase(s). Copies of such documents must be attached to the Claim Form whether submitted electronically or by postal mail.

2.2 If the Court approves the Settlement of this Action, New York & Company, through the Claims Administrator, shall distribute to Authorized Claimants who submitted valid Claims the Vouchers to the email address or mailing address Authorized Claimants designated on their Claim Form within sixty (60) calendar days of the Final Settlement Date. Class Members who receive direct notice (the Class Members for whom New York & Company has valid email or mailing addresses), need not do anything in response to the Notice and will automatically receive a Voucher no later than (60) calendar days after the Final Settlement Date. New York & Company estimates that it has valid email and/or mailing addresses for approximately 640,000 Class Members.

2.3 Individual Settlement Award to Named Plaintiffs. The Parties acknowledge that Named Plaintiffs must petition the Court for approval of any award to Named Plaintiffs for incentive awards (the "Individual Settlement Awards"). Named Plaintiffs agree that they will not seek Individual Settlement Awards of greater than \$4,000 each. New York & Company agrees not to object to Named Plaintiffs' requests for Individual Settlement Awards of up to a maximum payment of \$4,000 for each Named Plaintiff. Named Plaintiffs further agree that, in any event, New York & Company will not be obligated to pay any Individual Settlement Award in excess of \$4,000 for each Named Plaintiff. If the Court approves the Settlement of this Action and Individual Settlement Awards to Named Plaintiffs, New York & Company agrees to pay the award approved by the Court up to \$4,000 for each Named Plaintiff within twenty (20) calendar days after both of the following events occur (a) the Final Settlement Date, and (b) Named Plaintiffs provide New York & Company with their Form W-9s. No interest shall be paid on the Individual Settlement Award.

2.4 Attorneys' Fees and Costs. The Parties acknowledge that Plaintiffs must petition the Court for approval of any award to Class Counsel for attorneys' fees and costs. Plaintiffs and Class Counsel agree that Class Counsel will not seek an award greater than \$600,000.00 (total) for fees and costs. New York & Company agrees not to object to Class Counsel's request for up to a maximum payment of \$600,000.00 (total) for attorneys' fees and costs. Plaintiffs and Class Counsel further agree that, in any event, New York & Company will not be obligated to pay any award to Class Counsel and any and all Additional Counsel (defined below) in excess of \$600,000.00 (total) for attorneys' fees and costs. If the Court approves the Settlement of this

Action and an award of attorneys' fees and costs to Class Counsel, unless the Court orders a different timetable, New York & Company agrees to pay the attorneys' fees and costs approved by the Court up to \$600,000.00 (total) to Class Counsel and any and all Additional Counsel upon the occurrence of both of the following events (a) the Final Settlement Date, and (b) Class Counsel delivery to New York & Company of the relevant Form W-9. Unless the Court orders a different timetable, any such payment shall be made within twenty (20) calendar days of the occurrence of the later of these events and shall be made to the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP. Carlson Lynch Sweet Kilpela & Carpenter, LLP shall have control over and responsibility to distribute any payment of fees and costs to any other attorney or law firm that may claim entitlement to fees and costs under this Settlement or as a result of the Action (each, and "Additional Counsel"). No interest shall be paid on the attorneys' fees and costs award.

2.5 Reduction in Plaintiffs' Individual Settlement Awards or Class Counsel's Attorneys' Fees. Plaintiffs' Individual Settlement Awards are to be paid separate and apart from the award to the Class. A reduction by the Court or by an appellate court of the Individual Settlement Awards sought by the Named Plaintiffs shall not affect any of the Parties' other rights and obligations under the Settlement Agreement.

2.6 No Tax Liability. Under no circumstances will New York & Company or New York & Company's Counsel have any liability for taxes or tax expenses under the Settlement. Plaintiffs and/or Class Counsel are responsible for any taxes on any recovery or award. Nothing in this Settlement, or statements made during the negotiation of its terms, shall constitute tax advice by New York & Company or New York & Company's Counsel.

2.7 Settlement Implementation Costs. New York & Company shall bear the costs of providing notice to the Class in the manner prescribed in Section 3.4 of this Settlement Agreement and the costs associated with independent administration of benefits by the Claims Administrator.

2.8 Release as to All Class Members. Upon entry of the Judgment, Class Releasers shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Class Released Claims (including Unknown Claims) against all Released Parties.

2.9 Release by Named Plaintiffs. In addition to the releases made by the Class Members set forth in Section 2.8 above, effective upon entry of the Judgment, Named Plaintiffs will make the additional following general release of all claims, known or unknown. Upon entry of the Judgment, the Named Plaintiffs, and each of their successors, assigns, legatees, heirs, and personal representatives release and forever discharge the Released Parties, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

In addition, Named Plaintiffs, and each of Named Plaintiffs' successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted

by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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.

Named Plaintiffs fully understand that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Named Plaintiffs and Plaintiffs' Counsel to be true and expressly accepts and assumes the risk of this possible difference in facts and agrees that the Settlement Agreement will remain effective despite any difference in facts. Further, Named Plaintiffs agree that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the Settlement would not have been accepted.

2.10 No Admission of Liability or Wrongdoing. This Settlement Agreement reflects the Parties' compromise and Settlement of disputed claims. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including New York & Company, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. New York & Company has denied and continues to deny each of the claims and contentions alleged by Plaintiffs in the Action. New York & Company has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Cooperation to Obtain Court Approval. The Parties will jointly take all reasonable steps necessary to secure the Court's Approval of the Settlement and this Settlement Agreement.

3.2 File Complaint. No later than thirty (30) calendar days after execution of the Settlement Agreement and after Plaintiffs voluntarily dismiss the Federal Court Actions without prejudice, Plaintiffs will file the Complaint (the "Complaint"), in the Action asserting claims on behalf of themselves and the Class based on claims substantially similar to those in Plaintiff Rael's Third Amended Complaint and Plaintiff Hedrick's Complaint filed in the Federal Court Actions.

3.3 Preliminary Approval and Provisional Class Certification. Plaintiffs shall file their motion for preliminary approval of the Settlement Agreement as soon as feasibly possible. The motion for preliminary approval of the class action settlement and provisional class certification must request the Court to:

- (a) preliminarily approve this Settlement Agreement;

- (b) preliminarily approve the form, manner, and content of the Full Notice, Email Notice, Mail Notice, Publication Notice, and Claim Form described in Sections 3.4 and 3.6 of this Settlement Agreement, and attached as **Exhibits B - F**;
- (c) set the date and time of the Fairness Hearing;
- (d) provisionally certify the Class under California Rules of Court, Rule 3.769(d) for settlement purposes only;
- (e) stay all proceedings in the Action against New York & Company until the Court renders a final decision on approval of the Settlement and sets a briefing schedule for the papers in support of the Final Order;
- (f) conditionally appoint Named Plaintiffs as the class representatives for settlement purposes only; and
- (g) conditionally appoint the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP as Class Counsel for settlement purposes only.

The proposed Preliminary Approval and Provisional Class Certification Order must be substantially similar to the form attached as **Exhibit A**. Class Counsel must draft the motion papers and give New York & Company's Counsel drafts of the motion and proposed order to review before the motion's filing and service date/deadline.

3.4 Class Notice. Subject to the Court entering the Preliminary Approval Order, the Parties agree that New York & Company and its retained Claims Administrator will provide the Class notice within thirty (30) calendar days after entry of the Preliminary Approval order:

- (a) **Settlement Website.** The claims administrator will post the Full Notice on an Internet website ("Internet Posting") specifically created for the settlement of this Action. The Full Notice will be substantially similar to the form attached as **Exhibit B**. The Internet Posting will also contain the Claim Form, Complaint, Settlement Agreement, and Preliminary Approval Order. Within seven (7) court days of when Class Counsel files a motion for attorneys' fees and costs, the Internet Posting will also post the fees and costs motion. The Internet Posting shall be operative starting on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Internet Posting shall remain active at least until the Final Settlement Date.
- (b) **Email Notice.** New York & Company shall use reasonable efforts to identify those New York & Company customers who may be Class Members and for whom it has a valid email address. Through the Claims Administrator, for those Class Members for whom New York & Company has a valid email address, New York & Company will send an Email Notice to such Class Members. The Email Notice will be substantially similar to the form attached as **Exhibit C**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. New York & Company, through the Claims Administrator, will provide the Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order.

- (c) **Mail Notice.** New York & Company shall use reasonable efforts to identify those New York & Company customers who may be Class Members and for whom it has a valid mailing address. Through the Claims Administrator, for those Class Members for whom New York & Company has a valid mailing address, New York & Company will send a Mail Notice via the U.S. Postal Service to such Class Members. The Mail Notice will be substantially similar to the form attached as **Exhibit D**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. New York & Company, through the Claims Administrator, will provide the Mail Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order.
- (d) **Publication Notice.** Unless otherwise ordered by the Court, within thirty (30) calendar days after entry of the Preliminary Approval Order, New York & Company will publish a ¼ page settlement notice (“Publication Notice”) in the USA Today (California edition). The text of the Publication Notice will be substantially similar to the form attached as **Exhibit E**.

3.5 Proof of Notice. No later than ten (10) calendar days before the Fairness Hearing, New York & Company and the Claims Administrator will serve upon Class Counsel a declaration confirming that notice to the Class has been provided in accordance with Section 3.4 of this Settlement Agreement.

3.6 Claims Procedure. Class Members who do not receive direct notice, (those Class Members for whom New York & Company does not already have a valid email or mailing address), must submit complete, valid and sufficient Claim Forms on or before the Claim Response Deadline in order to be included in the distribution of the Vouchers. Class Members shall also be required to provide proof of Qualifying Purchase(s) as described in Section 2.1 above if that Class Member is seeking to receive more than one (1) Voucher. **Class Members who receive direct notice are not required to submit a Claim Form in order to receive a Voucher and will automatically receive a Voucher.** If the Class Member who receives direct notice does not object to the Settlement or request to exclude himself or herself from the Settlement, the Class Member will receive via email or mail a Voucher no later than sixty (60) calendar days after the Final Settlement Date. Any Class Member who did not receive direct notice and who fails to submit a valid and timely Claim Form will not receive any benefits under this Settlement Agreement. The Claim Form may be submitted electronically or by postal mail. The delivery date is deemed to be the date [i] the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. mail, or [ii] in the case of submission electronically through the Settlement Website, the date the Claims Administrator receives the Claim Form, as evidenced by the transmission receipt.

3.7 Right to Verify. The Claims Administrator and/or New York & Company may review all submitted Claim Forms and proof of Qualifying Purchase(s) for completeness, validity, accuracy, and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any claim. In addition, the Claims

Administrator and/or New York & Company may verify that: [i] the information set forth in or attached to a submitted Claim Form is accurate; and [ii] the Claimant is a Class Member.

3.8 Disputed Claims. If the Parties dispute a Claim Form's timeliness or validity, the Parties must meet and confer in good faith to resolve the dispute. New York & Company's records shall have a strong presumption of accuracy, which may be rebutted by clear and convincing evidence.

3.9 Objections. Any Class Member who has not submitted a timely written exclusion request pursuant to Section 3.10 of this Settlement Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, must file written objections with the Court, with copies delivered to the Claims Administrator, Class Counsel, and New York & Company's Counsel no later than the Objection or Exclusion Response Deadline.

- (a) The delivery date of any written objection is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Claims Administrator, Class Counsel, and New York & Company's Counsel.
- (b) Any written objections must contain: **(1)** the name and case number of the Action; **(2)** the Class Member's full name, address, and telephone number; **(3)** the words "Notice of Objection" or "Formal Objection"; **(4)** in clear and concise terms, the legal and factual arguments supporting the objection; **(5)** facts supporting the person's status as a Class Member (e.g., the date and location of his/her relevant purchases and description of item(s) purchased); **(6)** the Class Member's signature and the date; and **(7)** the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge."
- (c) Any Class Member who submits a written objection, as described in this section, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." If an objecting Class Member intends to speak at the Fairness Hearing in support of the objection, the Class Member's objection must state this intention. If the objecting Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail

address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony. Only Class Members who submit timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs.

3.10 Exclusion from the Class. Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. To make this election, Class Members must send a signed letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than the Objection or Exclusion Response Deadline. The Claims Administrator must serve on Class Counsel and New York & Company's Counsel a list of Class Members who have timely and validly excluded themselves from the Class no later than seven (7) calendar days before the filing date for Plaintiff's motion in support of the Final Order and Judgment.

3.11 Final Order and Judgment. Before the Fairness Hearing, Plaintiffs must apply for Court approval of a proposed Final Order and Judgment, substantially similar to the forms attached as **Exhibits G** and **H**, respectively. Subject to the Court's approval, the Final Order and Judgment shall, among other things:

- (a) finally approve the Settlement Agreement as fair, reasonable and adequate;
- (b) finally certify the Class for settlement purposes only, pursuant to California Code of Civil Procedure § 382;
- (c) find that the notice and the notice dissemination methodology complied with the Settlement Agreement, California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the California Constitution and United States Constitution;
- (d) issue orders related to the relief provided for in the Settlement Agreement, including distribution of the Vouchers, payment of Plaintiffs' Individual Settlement Awards, and payment of Class Counsel's fees and costs;
- (e) incorporate the releases set forth in the Settlement Agreement;
- (f) dismiss the Action with prejudice; and
- (a) retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Agreement and/or the Final Order and Judgment, and for any other necessary purpose.

Class Counsel must also draft the motion papers and give New York & Company's Counsel drafts of the motion and proposed order to review before the motion's filing and service date/deadline.

3.12 Judgment and Enforcement. The Parties agree that should the Court grant final approval of the proposed Settlement and enter Judgment, the Judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

4. Nullification of Settlement Agreement.

4.1 New York & Company's Right to Revoke. New York & Company has the right in its sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to the Fairness Hearing if: (a) the Court makes an order inconsistent with any of the terms of this Settlement (except for an order reducing the Class Counsel award or the Plaintiffs' Individual Settlement Awards); or (b) any court following the signing of this Settlement Agreement but before the Fairness Hearing, certifies, whether on a conditional basis or not, a class, collective, or representative action involving a claim described in the Action by potential class members covered by this Settlement; or (c) more than one hundred (100) Class Members timely and validly opt out of the Settlement; or (d) Plaintiffs breach the Settlement Agreement.

4.2 Effect of Agreement if Settlement Is Not Approved. This Settlement Agreement was entered into only for the purpose of Settlement. In the event that Section 4.1 is invoked by New York & Company, the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective positions *status quo ante*, and as if this Agreement was never executed. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of Plaintiffs as class representatives, and conditional appointment of Plaintiffs' Counsel as Class Counsel; (b) Plaintiffs will voluntarily dismiss this case and re-file the Complaint in the United States District Court for the Southern District of California; and (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, New York & Company shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

5. ADDITIONAL PROVISIONS.

5.1 Change of Time Periods. All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

5.2 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement in

arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations, including a full-day mediation session conducted with the assistance of JAMS Mediator, Hon. Edward A. Infante (Ret.), including subsequent communication between the Parties and the Mediator in the months that followed.

5.3 Real Parties in Interest. In executing this Settlement Agreement, the Parties warrant and represent that except as provided herein, neither the claims or causes of action released herein nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

5.4 Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

5.5 Binding on Successors. This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.6 Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

5.7 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

5.8 Entire Agreement. This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

5.9 Construction and Interpretation. Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

5.10 Headings and Formatting of Definitions. The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

5.11 Exhibits. The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and Settlement and are hereby incorporated and made a part of this Settlement Agreement as though fully set forth in the Settlement Agreement.

5.12 Modifications and Amendments. No amendment, change, or modification of this Settlement Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

5.13 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

5.14 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

5.15 Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

5.16 Execution Date. This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

5.17 Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement.

5.18 Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

5.19 Recitals. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

5.20 Inadmissibility. This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

5.21 No Conflict Intended. Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

5.22 Disposal of the Class List. Within six (6) months after the Final Settlement Date and completion of the administration, or in the event the Settlement is terminated pursuant to Section 4, after providing New York & Company’s Counsel at least ten (10) calendar days advance notice of its invocation of this section, all originals, copies, documents, transcriptions, iterations, or drafts of the contact information for Class Members or any portion thereof shall be returned to New York & Company by the Claims Administrator.

5.23 Notices. Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to New York & Company to the attention of New York & Company’s Counsel, and if to Class Members to the attention of Class Counsel on their behalf.

| CLASS COUNSEL | NEW YORK & COMPANY’S COUNSEL |
|--|---|
| Todd D. Carpenter, Esq. CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP 1350 Columbia Street Suite 603 San Diego, California 92101 | Stephanie Sheridan, Esq. STEPTOE & JOHNSON LLP Steuart Tower 1 Market St. #1800 San Francisco, CA 94105 |

5.24 List of Exhibits: The following exhibits are attached to this Settlement Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Mail Notice
- Exhibit E: Publication Notice
- Exhibit F: Claim Form
- Exhibit G: [Proposed] Order Granting Final Approval of Class Settlement
- Exhibit H: [Proposed] Final Judgment

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED.

Dated: _____

 MONICA RAEL

Dated: _____

ALYSSA HEDRICK

Dated: _____

RTW RETAILWINDS, INC.
f/k/a NEW YORK & COMPANY, INC.

By: Sheamus Toal
Its: EVP, COO & CFO

Dated: _____

NEW YORK & COMPANY STORES, INC.

By: Sheamus Toal
Its: EVP, COO & CFO

EXHIBIT A
[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION
ORDER

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MONICA RAEL and ALYSSA HEDRICK,
and on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

RTW RETAILWINDS, INC. f/k/a NEW
YORK & COMPANY, INC., a Delaware
corporation, NEW YORK & COMPANY
STORES, INC., a New York corporation, and
DOES 1-50, inclusive,

Defendants.

Case No.

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND PROVISIONAL CLASS
CERTIFICATION**

On _____ (month) ____ (day), 2018, this Court heard Plaintiffs Monica Rael and Alyssa Hedrick’s motion for preliminary approval of class settlement and provisional class certification. This Court reviewed the motion, including the Settlement Agreement and Release (“Settlement Agreement”). Based on this review and the findings below, the Court finds good cause to grant the motion.¹

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

1 **FINDINGS:**

2 1. The Settlement Agreement appears to be the product of serious, informed, non-
3 collusive negotiations with defendants RTW Retailwinds, Inc. f/k/a New York & Company, Inc.
4 and New York & Company Stores, Inc. (together, “New York & Company”) and falls within the
5 range of possible approval as fair, reasonable and adequate.

6 2. The Full Notice, Email Notice, Mail Notice, and Claim Form (attached to the
7 Settlement Agreement), (a) constitute the best such forms and notice practicable under the
8 circumstances; (b) the method for providing notice to Class Members set forth in the Agreement
9 constitutes valid, due, and sufficient notice to all members of the Class; and (c) the notices and
10 notice plan set forth in the Agreement comply fully with the requirements of California Code of
11 Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the California and United
12 States Constitutions, and other applicable law.

13 3. For settlement purposes only, the Class is so numerous that joinder of all Class
14 Members is impracticable.

15 4. For settlement purposes only, Plaintiffs’ claims are typical of the Class’s claims.

16 5. For settlement purposes only, there are questions of law and fact common to the
17 Class, which predominate over any questions affecting only individual Class Members.

18 6. For settlement purposes only, Class Certification is superior to other available
19 methods for the fair and efficient adjudication of the controversy.

20 **IT IS ORDERED THAT:**

21 **1. Settlement Approval.** The Settlement Agreement, including the Full Notice,
22 Email Notice, Mail Notice, Publication Notice, and Claim Form, attached to the Settlement
23 Agreement as Exhibits B-F are preliminarily approved.

24 **2. Provision of Class Notice.** New York & Company will notify Class Members of
25 the Settlement in the manner specified under Section 3.4 of the Settlement Agreement.

26 **3. Claim for a Voucher or Vouchers.** Class Members who do not receive direct
27 notice via email or mail and who want to receive a Voucher under the Settlement Agreement,
28 must accurately complete and deliver a Claim Form to the Claims Administrator, along with any

1 required supporting proofs of purchase, if necessary, no later than seventy-five (75) calendar days
2 after Defendant, through the Claims Administrator, issues Notice to the Class. Class Members
3 for whom New York & Company has a valid email or mailing address need not do anything to
4 receive a Voucher.

5 **4. Objection to Settlement.** Class Members who have not submitted a timely
6 written exclusion request pursuant to Paragraph 6 below and who want to object to the Settlement
7 Agreement must file written objections with the Court and deliver copies to the Claims
8 Administrator, Class Counsel, and New York & Company’s Counsel no later than seventy-five
9 (75) calendar days after Defendant, through the Claims Administrator, issues Notice to the Class.
10 The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as
11 evidenced by the postmark. The objection must include: **(1)** the name and case number of the
12 Action; **(2)** the Class Member’s full name, address, and telephone number; **(3)** the words “Notice
13 of Objection” or “Formal Objection”; **(4)** in clear and concise terms, the legal and factual
14 arguments supporting the objection; **(5)** facts supporting the person’s status as a Class Member
15 (e.g., the date and location of his/her relevant purchases and description of the item(s) purchased);
16 **(6)** the Class Member’s signature and the date; and **(7)** the following language immediately above
17 the Class Member’s signature and date: “I declare under penalty of perjury under the laws of the
18 State of California that the foregoing statements regarding class membership are true and correct
19 to the best of my knowledge.” Any Class Member who submits a written objection, as described
20 in this section, has the option to appear at the Fairness Hearing, either in person or through
21 personal counsel hired at the Class Member’s expense, to object to the fairness, reasonableness,
22 or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of
23 attorneys’ fees. Class Members, or their attorneys, intending to make an appearance at the
24 Fairness Hearing, however, must include on a timely and valid objection a statement substantially
25 similar to “Notice of Intention to Appear.” If the objecting Class Member intends to appear at the
26 Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the
27 objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone
28 number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Class

1 Member intends to request the Court allow the Class Member to call witnesses at the Fairness
2 Hearing, such request must be made in the Class Member's written objection, which must also
3 contain a list of any such witnesses and a summary of each witness's expected testimony. Only
4 Class Members who submit timely objections containing Notices of Intention to Appear may
5 speak at the Fairness Hearing.

6 **5. Failure to Object to Settlement.** Class Members who fail to object to the
7 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their
8 right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a
9 subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement;
10 and (3) not be entitled to speak at the Fairness Hearing.

11 **6. Requesting Exclusion.** Class Members who want to be excluded from the
12 Settlement must send a signed letter or postcard to the Claims Administrator stating: (a) the name
13 and case number of the Action; (b) the full name, address, and telephone number of the person
14 requesting exclusion; and (c) a statement that the person does not wish to participate in the
15 Settlement, postmarked no later than seventy-five (75) calendar days after Defendant, through the
16 Claims Administrator, issues Notices to the Class.

17 **7. Provisional Certification.** The Class is provisionally certified as all New York &
18 Company customers who from February 11, 2012 to the date the Court enters the Preliminary
19 Approval Order purchased at any New York & Company retail store located in the State of
20 California, or from June 9, 2013 to the date the Court enters the Preliminary Approval Order
21 purchased at any New York & Company outlet store located in the State of California, one or
22 more New York & Company branded items at a purported discount from an "Our Price" or any
23 other reference price. Excluded from the Class are New York & Company's Counsel, New York
24 & Company's officers, directors and employees, and the judge presiding over the Action.

25 **8. Conditional Appointment of Class Representatives and Class Counsel.**
26 Plaintiffs Monica Rael and Alyssa Hedrick are conditionally appointed as the Class
27 Representatives to implement the Parties' settlement in accordance with the Settlement
28 Agreement. The law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP is conditionally

1 appointed as Class Counsel. Plaintiffs and Class Counsel must fairly and adequately protect the
2 Class's interests.

3 **9. Termination.** If the Settlement Agreement terminates for any reason, the
4 following will occur: (a) Class Certification will be automatically vacated; (b) Plaintiffs will stop
5 functioning as Class Representatives; (c) Class Counsel will stop functioning as Class Counsel;
6 and (d) this Action will revert to its previous status in all respects as it existed immediately before
7 the Parties executed the Settlement Agreement, including that Plaintiffs will voluntarily dismiss
8 this action and re-file their Complaint in the United States District Court for the Southern District
9 of California. This Order will not waive or otherwise impact the Parties' rights or arguments.

10 **10. No Admissions.** Nothing in this Order is, or may be construed as, an admission or
11 concession on any point of fact or law by or against any Party.

12 **11. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
13 deadlines, are stayed and suspended until further notice from the Court, except for such actions as
14 are necessary to implement the Settlement Agreement and this Order.

15 **13. Further Procedures.** Counsel for the Parties are hereby authorized to agree to
16 utilize all reasonable procedures in connection with the administration of the Settlement which
17 are not materially inconsistent with either this Order or the terms of the Agreement.

18 **14. Fairness Hearing.** On _____ (month) ____ (day), 2019, at _____,
19 this Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be
20 finally approved as fair, reasonable, and adequate. Based on the date of this Order and the date of
21 the Fairness Hearing, the following are the certain associated dates in this Settlement:

| Event | Timing |
|--|---|
| Last day for Defendants, through KCC, to send Email Notice, Mail Notice, start operating Settlement Website, and begin to provide Publication Notice | 30 days after entry of this Order. |
| Last day for Plaintiffs to file fee petition | 105 days after entry of this Order |
| Last day for Class Members to submit a | 75 days after issuance of Class Notices |

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| Claim, request exclusion, or object to the Settlement | |
| Last day for Parties to file briefs in support of the Final Order and Judgment | 10 days before Fairness Hearing |

This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website but other than the website posting New York & Company will not be required to provide any additional notice to Class Members.

DATED: _____

SUPERIOR COURT JUDGE

EXHIBIT B
FULL NOTICE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

**MONICA RAEL and ALYSSA HEDRICK, and
on behalf of themselves and all others
similarly situated,**

v.

**RTW RETAILWINDS, INC. f/k/a NEW YORK
& COMPANY, INC. and NEW YORK &
COMPANY STORES, INC.**

No. _____

IF YOU SHOPPED AT ANY CALIFORNIA NEW YORK & COMPANY RETAIL
STORE BETWEEN FEBRUARY 11, 2012 AND [MONTH] [DAY], [YEAR], OR ANY
CALIFORNIA NEW YORK & COMPANY OUTLET STORE BETWEEN JUNE 9,
2013 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE ONE
OR MORE **\$7.50 VOUCHERS** USABLE AT NEW YORK & COMPANY STORES ON
FUTURE PURCHASES

A STATE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A settlement (“Settlement”) has been proposed in the class action lawsuit referenced above pending in the Superior Court of California, County of San Diego (“Action”). If the Court gives final approval to the Settlement, RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc. (together, “New York & Company”) will provide, for each Class Member who either (i) receives direct notice via email or mail or (ii) properly and timely completes and submits a Claim Form, one (1) Voucher good for a purchase either in a New York & Company retail store or outlet store in California, for either (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase up to \$100 (\$25 maximum discount), subject to the additional conditions explained later in this notice.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

| | | |
|------------------------------------|--|--------------------|
| SUBMIT A CLAIM FORM | Unless you received direct notice of this Settlement via email or mail, you must submit a Claim Form to receive a Voucher. Visit the Settlement website located at _____ to obtain a Claim Form. | Deadline: _____ |
|------------------------------------|--|--------------------|

| | | |
|-------------------------------------|--|---------------------------------|
| EXCLUDE YOURSELF | If you exclude yourself from the Settlement, you will not receive a Voucher under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against New York & Company regarding the allegations in the Action ever again. | Deadline: _____ |
| OBJECT | You may write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved. Submitting an objection does not exclude you from the Settlement. | Deadline: _____ |
| GO TO THE "FAIRNESS HEARING" | The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and costs of the lawyers who brought the Action, and the Representative Plaintiffs' request for service awards for bringing the Action. You may, but are not required to, speak at the Fairness Hearing about any objection you filed to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a "Notice of Intention to Appear" indicating your intent to do so. | Hearing Date and Time: _____ |
| DO NOTHING | If you received direct notice of this Settlement via email or mail, and you do not object to or request to exclude yourself from the Settlement, you will automatically receive a Voucher via email or U.S. mail no later than sixty (60) days after the Final Settlement Date. | N/A |

- These rights and options—and the deadlines to exercise them—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

BACKGROUND INFORMATION..... ##

| | | |
|---|--|-----------|
| 1. | Why did I get this notice? | |
| 2. | What is this lawsuit about? | |
| 3. | Why is this a class action? | |
| 4. | Why is there a Settlement? | |
| 5. | How do I know if I am part of the Settlement? | |
| 6. | I'm still not sure if I am included. | |
| THE PROPOSED SETTLEMENT | | ## |
| 7. | What relief does the Settlement provide to the Class Members? | |
| HOW TO REQUEST A SETTLEMENT VOUCHER – SUBMITTING A CLAIM FORM..... | | ## |
| 8. | How can I get a Voucher or Vouchers? | |
| 9. | When will I get my Voucher or Vouchers? | |
| THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS..... | | ## |
| 10. | Do I have a lawyer in this case? | |
| 11. | How will the lawyers be paid? | |
| 12. | Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action? | |
| DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS..... | | ## |
| 13. | What am I giving up to obtain relief under the Settlement? | |
| HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT | | ## |
| 14. | How do I exclude myself from the Settlement? | |
| HOW TO OBJECT TO THE SETTLEMENT | | ## |
| 15. | How do I tell the Court that I disagree with the Settlement? | |
| 16. | What is the difference between excluding myself and objecting to the Settlement? | |
| FAIRNESS HEARING..... | | ## |
| 17. | What is the Fairness Hearing? | |
| 18. | When and where is the Fairness Hearing? | |
| 19. | May I speak at the hearing? | |
| ADDITIONAL INFORMATION | | ## |
| 20. | How do I get more information? | |

21. What if my address or other information has changed or changes after I submit a Claim Form?

1. *Why did I get this notice?*

You received this Notice because a Settlement has been reached in this Action. According to New York & Company's available records you might be a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. *What is this lawsuit about?*

Plaintiffs Monica Rael and Alyssa Hedrick (the "Representative Plaintiffs") filed a lawsuit against New York & Company on behalf of themselves and all others similarly situated. The lawsuit alleges that New York & Company deceived consumers through its advertising of pricing discounts in its retail and outlet stores.

New York & Company denies each and every one of the allegations of deceptive or unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. New York & Company further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Representative Plaintiffs' claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called "Representative Plaintiff(s)" (in this Action, Monica Rael and Alyssa Hedrick) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The companies sued in this case, RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company

Stores, Inc., are called the Defendants.

4. *Why is there a Settlement?*

The Representative Plaintiffs have made claims against New York & Company. New York & Company denies that it has done anything wrong or unlawful and admits no liability. The Court has **not** decided which side is right. Both sides agreed to settle the case to avoid the time and expensive of litigation.

5. *How do I know if I am part of the Settlement?*

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All New York & Company customers who from February 11, 2012 to the date the Court enters the Preliminary Approval Order purchased at any New York & Company retail store located in the State of California, or from June 9, 2013 to the date the Court enters the Preliminary Approval Order purchased at any New York & Company outlet store located in the State of California, one or more New York & Company branded items at a purported discount from an "Our Price" or any other reference price. Excluded from the Class are New York & Company's Counsel, New York & Company's officers, directors and employees, and the judge presiding over the Action.

6. *I'm still not sure if I am included.*

If you are still not sure whether you are included, you can write the Claims Administrator for free help. The email address of the Claims Administrator is _____ and the U.S. postal (mailing) address is _____.

7. *What relief does the Settlement provide to the Class Members?*

New York & Company has agreed to provide (i) Class Members who received direct notice of this Settlement via email or mail and who do not timely request exclusion from or object to the Settlement and (ii) Class Members who timely and validly complete a claim form, a Voucher good for purchase either in a New York & Company retail or outlet store in California. The Voucher can either be redeemed for either (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase up to \$100 (\$25 maximum discount). Class Members may elect which benefit they wish to receive at the time of purchase.

Vouchers will not be stackable with each other and may not be combined with any other coupon or offer. Each Voucher must be used in a single purchase, and any portion of the Voucher not used in that purchase will be forfeited. The Vouchers

may be used on items that are on sale. The Vouchers shall not be redeemable for cash, and will not be replaced if lost, stolen or damaged. The Vouchers will be transferable and will expire in six months.

8. *How can I get a Voucher or Vouchers?*

If you received direct notice of the Settlement by email or mail notice, you need not do anything to receive a Voucher.

To qualify for a Voucher if you did not receive direct notice by email or mail, you must send in a Claim Form, and, if you are seeking to claim up to two (2) Vouchers, provide proof of Qualifying Purchase demonstrating purchases totaling or more. Acceptable proof of Qualifying Purchases include [i] receipt(s) clearly showing the date of purchase(s) and the total of the purchase(s), [ii] transaction date from a credit or debit card statement clearly showing the date of purchase(s) and the total of the purchase(s). Copies of such documents must be attached to the Claim Form whether submitted electronically or by postal mail.

A Claim Form is available by clicking [HERE](#) or on the Internet at the website _____. The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by _____ or submit it online on or before 11:59 p.m. (Pacific) on _____.

9. *When will I get my Voucher or Vouchers?*

As described in Sections 17 and 18, the Court will hold a hearing on _____ at _____, to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at _____. *Please be patient.*

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

The Court has ordered that the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

New York & Company has agreed to pay Class Counsel's attorneys' fees and costs up to \$600,000, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs. Please see paragraphs 2.4 and 2.5 of the Settlement Agreement, available [HERE](#), for additional details.

12. Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?

The Representative Plaintiffs will request a service award of up to \$4,000 each for their service as class representatives and their efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Class Representatives.

13. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against New York & Company. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against New York & Company regarding the claims in the Action. The Settlement Agreement, available on the Internet at the website _____ contains the full terms of the release.

14. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a signed letter or postcard stating: **(a)** the name and case number of the Action; **(b)** your full name, address, and telephone number; and **(c)** a statement that you do not wish to participate in the Settlement, postmarked no later than _____ to the Claims Administrator at:

Rael v. New York & Company Settlement
c/o _____

If you timely request exclusion from the Class, you will be excluded from the Class, you will not receive a Voucher under the Settlement, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against New York & Company based on the conduct complained of in the Action.

15. How do I tell the Court that I disagree with the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and costs, and service awards to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must file with the Court a written objection and submit copies to the Claims Administrator, Class Counsel, and New York & Company's Counsel at the addresses set forth below no later than (*i.e.*, postmarked by) _____.

Rael v. New York & Company Settlement

c/o _____

Any written objections must contain: (1) the name and case number of the Action; (2) the Class Member's full name, address, and telephone number; (3) the words "Notice of Objection" or "Formal Objection"; (4) in clear and concise terms, the legal and factual arguments supporting the objection; (5) facts supporting the person's status as a Class Member (e.g., the date and location of his/her relevant purchases and description of the item(s) purchased); (6) the Class Member's signature and the date; and (7) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge." You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid objection a statement substantially similar to "Notice of Intention to Appear".

If you intend to appear at the Fairness Hearing through counsel, you must also

identify the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony.

16. *What is the difference between excluding myself and objecting to the Settlement?*

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

17. *What is the Fairness Hearing?*

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service awards to the Representative Plaintiffs. You may attend, but you do not have to.

18. *When and where is the Fairness Hearing?*

On _____, 2019 at _____ pacific, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable _____ in Courtroom ___ of the Superior Court for the State of California, County of San Diego located at the Hall of Justice, 330 West Broadway, San Diego, CA 92101. The hearing may be postponed to a different date or time or location without notice. Please check _____ for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

19. *May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. As described above in Section 15, you

may speak at the Fairness Hearing only if (a) you have timely submitted an objection, and (b) you have timely and validly provided a Notice of Intent to Appear.

If you have requested exclusion from the Settlement, you may not speak at the hearing.

20. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, and the operative complaint filed in the Action, please visit the Settlement website located at: _____. Alternatively, you may contact the Claims Administrator at the email address _____ or the U.S. postal (mailing) address: _____.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit <https://roa.sdccourt.ca.gov/roa/> or the Clerk's office at 330 West Broadway, San Diego, CA 92101. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. What if my address or other information has changed or changes after I submit a Claim Form?

It is your responsibility to inform the Claims Administrator of your updated information. You may do so at the address below:

Rael v. New York & Company Settlement

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Dated: _____

By: Order of Superior Court of California

HONORABLE _____
SUPERIOR COURT JUDGE

EXHIBIT C
EMAIL NOTICE

To: _____

From: _____

Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

IF YOU SHOPPED AT ANY CALIFORNIA NEW YORK & COMPANY RETAIL STORE BETWEEN FEBRUARY 11, 2012 AND [MONTH] [DAY], [YEAR], OR ANY CALIFORNIA NEW YORK & COMPANY OUTLET STORE BETWEEN JUNE 9, 2013 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE ONE OR MORE **\$7.50 VOUCHERS** USABLE AT NEW YORK & COMPANY STORES ON FUTURE PURCHASES

Why did I get this notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the Superior Court of California, County of San Diego (“Court”) titled *Rael, et al. v. RTW Retailwinds, Inc. f/k/a New York & Company, Inc., et al.* (“Action”). According to available records, you might be a “Class Member.” The purpose of this Email Notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc. (together, “New York & Company” or “Defendants”) by plaintiffs Monica Rael and Alyssa Hedrick alleging New York & Company engaged in deceptive advertising by advertising purportedly improper discounts on merchandise. New York & Company denies wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to New York & Company customers and resolve the case.**

Am I a Class Member? You are a “Class Member” if between February 11, 2012 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company retail store in California, or if between June 9, 2013 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company outlet store in California. Qualifying purchases are purchases of merchandise offered at a purported discount from an “Our Price” or other reference price. New York & Company’s Counsel, New York & Company’s officers, directors and employees, and the judge presiding over the Action are excluded from the class.

What relief does the Settlement provide? If you are a Class Member, you are eligible to receive a Voucher good for purchase either in a New York & Company retail or outlet store for either (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase up to \$100 (\$25 maximum discount). **To receive a Voucher, you need not do anything in response to this email notice.** You will automatically receive a Voucher via email at the termination of the Settlement proceedings.

What are my other options? If you don’t want to be legally bound by the Settlement, you must exclude yourself by _____, or you won’t be able to sue New York & Company about the legal claims in the Action ever again. If you exclude yourself,

you cannot receive a Voucher from this Settlement. If you stay in the Settlement, you may object to it by _____. The detailed notice available at _____ explains how to request exclusion or object. The Court will hold a hearing on _____ at _____ to consider whether to approve the Settlement and a request by the lawyers representing all Class Members (Carlson Lynch Sweet Kilpela & Carpenter, LLP) for \$600,000 in attorneys' fees and costs, and for the class representatives' (Monica Rael and Alyssa Hedrick) request for \$4,000 each for their service. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit _____. You may also write to the Claims Administrator at the email address _____ or the postal address _____.

EXHIBIT D
MAIL NOTICE

NOTICE OF CLASS ACTION SETTLEMENT

Superior Court of California, County of San Diego
Monica Rael, et al. v. RTW Retailwinds, Inc. f/k/a New York & Company, Inc., et al.
Case No: _____

IF YOU SHOPPED AT ANY CALIFORNIA NEW YORK & COMPANY RETAIL STORE BETWEEN FEBRUARY 11, 2012 AND [MONTH] [DAY], [YEAR], OR ANY CALIFORNIA NEW YORK & COMPANY OUTLET STORE BETWEEN JUNE 9, 2013 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE ONE OR MORE **\$7.50 VOUCHERS** USABLE AT NEW YORK & COMPANY STORES ON FUTURE PURCHASES

Legal Notice: A state court authorized this Notice. This is not solicitation from a lawyer.

Why did I get this notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the Superior Court of California, County of San Diego (“Court”) titled *Rael, et al. v. RTW Retailwinds, Inc. f/k/a New York & Company, Inc., et al.* (“Action”). According to available records, you might be a “Class Member.” The purpose of this Mail Notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc. (“New York & Company” or “Defendants”) by plaintiffs Monica Rael and Alyssa Hedrick alleging New York & Company engaged in deceptive advertising by advertising purportedly improper discounts on merchandise. New York & Company denies wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to New York & Company customers and resolve the case.**

Am I a Class Member? You are a “Class Member” if between February 11, 2012 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company retail store in California, or if between June 9, 2013 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company outlet store in California. Qualifying purchases are purchases of merchandise offered at a purported discount from an “Our Price” or other reference price. New York & Company’s Counsel, New York & Company’s officers, directors and employees, and the judge presiding over the Action are excluded from the class.

What relief does the Settlement provide? If you are a Class Member, you are eligible to receive a Voucher good for purchase either in a New York & Company retail or outlet store for either (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase up to \$100 (\$25 maximum discount). **To receive a Voucher, you need not do anything in response to this notice.** You will automatically receive a Voucher via mail at the termination of the Settlement proceedings.

What are my other options? If you don't want to be legally bound by the Settlement, you must exclude yourself by _____, or you won't be able to sue New York & Company about the legal claims in the Action ever again. If you exclude yourself, you cannot receive a Voucher from this Settlement. If you stay in the Settlement, you may object to it by _____. The detailed notice available at _____ explains how to request exclusion or object. The Court will hold a hearing on _____ at _____ to consider whether to approve the Settlement and a request by the lawyers representing all Class Members (Carlson Lynch Sweet Kilpela & Carpenter, LLP) for \$600,000 in attorneys' fees and costs, and for the class representatives' (Monica Rael and Alyssa Hedrick) request for \$4,000 each for their service. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit _____. You may also write to the Claims Administrator at the email address _____ or the postal address _____.

EXHIBIT E
PUBLICATION NOTICE

**THIS NOTICE ADVISES YOU OF A PROPOSED CLASS ACTION
SETTLEMENT WITH NEW YORK & COMPANY, INC.
THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS -- PLEASE READ IT
CAREFULLY**

A settlement was given preliminary approval in a class action lawsuit pending in the California Superior Court for the County of San Diego entitled *Monica Rael, et al. v. RTW Retailwinds, Inc. f/k/a New York & Company, Inc., et al.*, Case No: _____ (the "Action"). The Settlement will resolve the Action involving Plaintiffs' claims that Defendant engaged in deceptive advertising by advertising purportedly improper discounts on merchandise. Defendant denies any wrongdoing, but has agreed to settle to avoid the expense of ongoing litigation. The Court did not decide which side was right.

For additional information regarding this settlement, the Full Settlement Notice is available at www._____.com.

You are a "Class Member" if between February 11, 2012 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company retail store in California, or if between June 9, 2013 and [Month] [Day], [Year], you made a qualifying purchase at a New York & Company outlet store in California. Qualifying purchases are purchases of merchandise offered at a purported discount from an "Our Price" or other reference price. New York & Company's Counsel, New York & Company's officers, directors and employees, and the judge presiding over the Action are excluded from the class.

If you are a Class Member, you are eligible to receive a Voucher good for purchase either in a New York & Company retail or outlet store for either (i) \$7.50 off a purchase (no minimum purchase) or (ii) 25% off a purchase up to \$100 (\$25 maximum discount).

If you don't want to be legally bound by the Settlement, you must exclude yourself by _____, or you won't be able to sue New York & Company about the legal claims in the Action ever again. If you exclude yourself, you cannot receive a Voucher from this Settlement. If you stay in the Settlement, you may object to it by _____. The detailed notice available at _____ explains how to request exclusion or object.

**EXHIBIT F
CLAIM FORM**

NEW YORK & COMPANY
SETTLEMENT CLAIM FORM

YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN _____. *You must accurately complete all required portions of this Claim Form and submit the Claim Form under penalty of perjury.*

PERSONAL INFORMATION. Please legibly print or type the following information requested below. *This information will be used to deliver your Voucher and communicate with you if any problems arise with your claim.*

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, and ZIP code: _____

Email Address: _____

Telephone Number: (_____) _____

CONFIRMATION OF CLASS MEMBERSHIP. Please check all that apply:

- I declare under penalty of perjury that, between February 11, 2012 and [Month] [Day], [Year], I purchased New York & Company merchandise at a New York & Company **retail** store in the State of California that was offered at a purported discount from an “Our Price” or other reference price, and I am not New York & Company’s Counsel, New York & Company’s officers, directors and employees, or the judge presiding over the Action.
- I declare under penalty of perjury that, between June 9, 2013 and [Month] [Day], [Year], I purchased New York & Company merchandise at a New York & Company **outlet** store in the State of California that was offered at a purported discount from an “Our Price” or other reference price, and I am not New York & Company’s Counsel, New York & Company’s officers, directors and employees, or the judge presiding over the Action.
- I declare that during the time periods above (retail stores: 2/11/12-[date], outlet: 6/9/13-[date]), I purchased \$50 or more products from New York & Company stores in California. Thus, I am entitled to a second Voucher. ***In order to receive a second Settlement Voucher, you are required to provide with this Claim Form proof of qualifying purchases.*** Acceptable proof of your purchases include Acceptable proof of Qualifying Purchases include [i] receipt(s) clearly showing the date of purchase(s) and the total of the purchase(s), or [ii] transaction date from a credit or debit card statement clearly showing the date of purchase(s) and the total of the purchase(s). The proof of purchase must include sufficient information to allow New York & Company to verify the purchase(s).

Please provide information about the purchases that you are claiming above:

| Approximate Month and Year of Purchase | Approximate Location (City and State) of Purchase | Description of Item Purchased |
|--|---|-------------------------------|
| | | |
| | | |
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Proofs of purchase may be uploaded **here**, or mailed with a completed Claim Form to _____.
The Claims Administrator and/or New York & Company may verify your Claim Form.

EMAIL ADDRESS FOR VOUCHER DELIVERY. Please confirm the email address to which you would like the Settlement Voucher delivered.

[Note to the Claims Administrator: insert the email address that was provided earlier in the form, for reference, in the blank space below.]

Would you like your Voucher delivered to _____? Yes No

If “no,” please provide the email address to which you would like the Settlement Voucher delivered: _____.

If you do not have an email address, please call _____ to arrange to receive a Settlement Voucher via postal mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: _____

Signature: _____

EXHIBIT G
[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

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SUPERIOR COURT OF SAN DIEGO
COUNTY OF SAN DIEGO

MONICA RAEL and ALYSSA HEDRICK,
and on behalf of themselves and all others
similarly situated,
Plaintiffs,

v.

RTW RETAILWINDS, INC. f/k/a NEW
YORK & COMPANY, INC., a Delaware
corporation, NEW YORK & COMPANY
STORES, INC., a New York corporation, and
DOES 1-50, inclusive,
Defendants.

Case No.

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS SETTLEMENT**

On _____ (month) ____ (day), this Court heard plaintiffs’ Monica Rael and Alyssa Hedrick’s motion for final approval of the class action settlement. This Court reviewed: (a) the motion and the supporting papers, including, the Settlement Agreement and Release (“Settlement Agreement”);¹ (b) any objections filed with or presented to the Court; (c) the Parties’ responses to any objections; and (d) counsels’ arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, and therefore approves it.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

1 2. The Court also finds that extensive arm's-length negotiations have taken place, in
2 good faith, between Class Counsel and New York & Company's Counsel resulting in the
3 Settlement Agreement. Parts of these negotiations were presided over by the experienced
4 mediator Hon. Edward A. Infante (Ret.).

5 3. The Settlement Agreement provides substantial value to the Class in the form of
6 Vouchers.

7 4. Defendants RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New
8 York & Company Stores, Inc. provided notice to Class Members in compliance with the
9 Settlement Agreement, due process, and California Rules of Court, rules 3.766 and 3.769(f). The
10 notices: (i) fully and accurately informed Class Members about the lawsuit and settlement; (ii)
11 provided sufficient information so that Class Members could decide whether to accept the
12 benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided
13 procedures for Class Members to submit written objections to the proposed settlement, to appear
14 at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date,
15 and place of the final fairness hearing.

16 5. The Parties adequately performed their obligations under the Settlement
17 Agreement.

18 6. For the reasons stated in the Preliminary Approval of Class Settlement and
19 Provisional Class Certification Order, and having found nothing in any submitted objections that
20 would disturb these previous findings, this Court finds and determines that the proposed Class, as
21 defined below, meets all of the legal requirements for class certification, for settlement purposes
22 only, under California Code of Civil Procedure § 382.

23 7. An award of \$600,000 in attorneys' fees and costs to Class Counsel is fair and
24 reasonable in light of the nature of this case, Class Counsel's experience and efforts in
25 prosecuting this Action, and the benefits obtained for the Class.

26 8. Incentive awards to plaintiffs Monica Rael and Alyssa Hedrick of \$4,000 each is
27 fair and reasonable in light of: (a) Plaintiffs' risks (including financial, professional, and
28 emotional) in commencing this action as the Class Representatives; (b) the time and effort spent

1 by Plaintiffs in litigating this action as the Class Representatives; and (c) Plaintiffs' public interest
2 service.

3
4 **IT IS ORDERED THAT:**

5 1. **Class Members.** The Class Members are defined as:

6 All New York & Company customers who from February 11, 2012 to the
7 date the Court enters the Preliminary Approval Order purchased at any
8 New York & Company retail store located in the State of California, or
9 from June 9, 2013 to the date the Court enters the Preliminary Approval
10 Order purchased at any New York & Company outlet store located in the
11 State of California, one or more New York & Company branded items at a
purported discount from an "Our Price" or any other reference price.
Excluded from the Class are New York & Company's Counsel, New York
& Company's officers, directors and employees, and the judge presiding
over the Action.

12 2. **Binding Effect of Order.** This order applies to all claims or causes of action
13 settled under the Settlement Agreement, and binds all Class Members, including those who did
14 not properly request exclusion under Paragraph 6 of the Preliminary Approval of Class Settlement
15 and Provisional Class Certification Order. This order does not bind persons who submitted
16 timely and valid Requests for Exclusion. Attached as Exhibit 1 is a list of persons who properly
17 requested to be excluded from the settlement.

18 3. **Release.** Plaintiffs and all Class Members who did not properly request exclusion
19 are: (1) deemed to have released and discharged New York & Company from all claims arising
20 out of or asserted in this Action and claims released under the Settlement Agreement; and (2)
21 barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or
22 indirectly, these claims. The full terms of the release described in this paragraph are set forth in
23 Sections 2.9 and 2.10 of the Settlement Agreement and are specifically incorporated herein by
24 this reference.

25 4. **Class Relief.** New York & Company will issue a Voucher to each (i) Class
26 Member who receives direct notice via email or mail and who does not timely request to exclude
27 from or object to the Settlement; and (ii) Class Member who submitted a valid and timely Claim
28 Form according to the terms and timeline stated in the Settlement Agreement.

EXHIBIT H
[PROPOSED] FINAL JUDGMENT

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MONICA RAEL and ALYSSA HEDRICK,
and on behalf of themselves and all others
similarly situated,
Plaintiffs,
v.
RTW RETAILWINDS, INC. f/k/a NEW
YORK & COMPANY, INC., a Delaware
corporation, NEW YORK & COMPANY
STORES, INC., a New York corporation, and
DOES 1-50, inclusive,
Defendants.

Case No.
[PROPOSED] FINAL JUDGMENT

The Court hereby issues its Final Judgment disposing of all claims based upon the Settlement Agreement entered between Monica Rael and Alyssa Hedrick (“Plaintiffs”) and RTW Retailwinds, Inc. f/k/a New York & Company, Inc. and New York & Company Stores, Inc. (together, “New York & Company” or “Defendants”) and the Court’s Order Granting Final Approval of Class Settlement.

IT IS ORDERED AND ADJUDGED THAT:

In the Order Granting Final Approval of Class Settlement, the Court granted final certification, for purposes of settlement only, of a class defined as: All New York & Company customers who from February 11, 2012 to the date the Court enters the Preliminary Approval Order purchased at any New York & Company retail store located in the State of California, or

1 from June 9, 2013 to the date the Court enters the Preliminary Approval Order purchased at any
2 New York & Company outlet store located in the State of California, one or more New York &
3 Company branded items at a purported discount from an “Our Price” or any other reference price.
4 Excluded from the Class are New York & Company’s Counsel, New York & Company’s
5 officers, directors and employees, and the judge presiding over the Action.

6 1.

7 2. All persons who satisfy the class definition above are “Class Members.”
8 However, persons who timely submitted valid requests for exclusion are not Class Members. The
9 list of excluded persons is attached hereto as Exhibit 1.

10 3. In the Order Granting Final Approval of Class Settlement, the Court found that
11 notice of the Settlement Agreement and Release (“Settlement Agreement”) was provided to Class
12 Members by either email or mail for Class Members whom New York & Company had a valid
13 email or mail address, and a publication advertisement in compliance with Section 3.3 of the
14 Settlement Agreement, California Rules of Court, rules 3.766 and 3.769(f), and due process.

15 4. Plaintiffs Monica Rael and Alyssa Hedrick are awarded \$ _____ each as
16 individual settlement awards.

17 5. Class Counsel (Carlson Lynch Sweet Kilpela & Carpenter, LLP) is awarded
18 \$ _____ in attorneys’ fees and costs.

19 6. To each Class Member who either (i) received direct notice via email or mail and
20 did not timely request exclusion from or objected to the Settlement, or (ii) submitted a timely and
21 valid Claim Form (an “Authorized Claimant”), New York & Company shall issue a Voucher,
22 pursuant to Section 2.2 of the Settlement Agreement, which are incorporated herein.

23 7. All Class Members who did not validly and timely request to be excluded from the
24 Settlement, and each of their respective successors, assigns, legatees, heirs, and personal
25 representatives, shall waive and forfeit, and be deemed to have fully, finally and forever
26 released and discharged all manner of action, causes of action, claims, demands, rights, suits,
27 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses,
28 costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or

1 equity, fixed or contingent, which they have or may have, arising out of or relating to any of the
2 acts, omissions or other conduct that have or could have been alleged or otherwise referred to in
3 the Complaint, or any preceding version thereof filed in the Action, including, but not limited to,
4 any and all claims related in any way to the advertisement of prices by New York & Company or
5 any of its subsidiaries or affiliates (including Unknown Claims) (collectively “Class Released
6 Claims”) against New York & Company and each of its direct or indirect parents, wholly or
7 majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns,
8 partners, privities, and any of their present and former directors, officers, employees,
9 shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by,
10 through, under or in concert with it, or any of them (collectively “Released Parties”).

11 As used in this release, the term “Unknown Claims” means with respect to the Class
12 Released Claims only, Plaintiffs and the Class Members expressly waive and relinquish, to the
13 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
14 California Civil Code, or any other similar provision under federal or state law, which provides:

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

20 As part of this agreement, Plaintiffs and the Class Members state that they fully
21 understand that the facts on which the Settlement Agreement is to be executed may be different
22 from the facts now believed by Plaintiffs and the Class Members and the Class Counsel to be true
23 and expressly accept and assume the risk of this possible difference in facts and agree that the
24 Settlement Agreement will remain effective despite any difference in facts. Further, Plaintiffs
25 and the Class Members agree that this waiver is an essential and material term of this release and
26 the Settlement that underlies it and that without such waiver the Settlement would not have been
27 accepted.

28 8. In addition to the releases made by the Class Members set forth above, Monica
Rael and Alyssa Hedrick make the additional following general release of all claims, known or

1 unknown. Monica Rael and Alyssa Hedrick and their successors, assigns, legatees, heirs, and
2 personal representatives release and forever discharge the Released Parties, from all manner of
3 action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
4 promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of
5 any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

6 In addition, Monica Rael and Alyssa Hedrick and their successors, assigns, legatees, heirs,
7 and personal representatives, expressly waive and relinquish, to the fullest extent permitted by
8 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
9 similar provision under federal or state law, which provides:

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

15 Monica Rael and Alyssa Hedrick understand that the facts on which the Settlement
16 Agreement is to be executed may be different from the facts now believed by Plaintiffs and their
17 Counsel to be true and expressly accept and assume the risk of this possible difference in facts
18 and agree that the Settlement Agreement will remain effective despite any difference in facts.
19 Further, Monica Rael and Alyssa Hedrick agree that this waiver is an essential and material term
20 of this release and the Settlement that underlies it and that without such waiver the Settlement
21 would not have been accepted.

22 9. All Class Members are bound by this Final Judgment, by the Order Granting Final
23 Approval of Class Settlement, and by the terms of the Settlement Agreement.

24 NOW, THEREFORE, the Court, finding that no reason exists for delay, hereby directs the
25 Clerk to enter this Final Judgment forthwith.

26 DATED: _____

27 SUPERIOR COURT JUDGE