

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JENNIFER HASEMANN and DEBBIE HOTH,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

GERBER PRODUCTS CO.,

Defendant.

Civil Action No. 1:15-cv-02995-EK-RER

WENDY MANEMEIT, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

GERBER PRODUCTS CO.,

Defendant.

Civil Action No. 2:17-cv-00093-EK-RER

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

**EXHIBIT LIST**

<b>Exhibit A</b>	<b>Proposed Preliminary Approval Order</b>
<b>Exhibit B</b>	<b>Summary Notice of Class Action Settlement</b>
<b>Exhibit C</b>	<b>Long Form Notice of Class Action Settlement</b>
<b>Exhibit D</b>	<b>Claim Form</b>
<b>Exhibit E</b>	<b>Proposed Final Approval Order and Judgment</b>
<b>Exhibit F</b>	<b>Parties' Agreement Pursuant to Paragraph 14(d) of the Settlement Agreement (<i>in camera</i>)</b>

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

1. This Class Action Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by, between, and among Jennifer Hasemann and Wendy Manemeit (together, “Plaintiffs”), on behalf of themselves and the Settlement Class as defined below, and Defendant Gerber Products Company (“Defendant”). Plaintiffs and Defendant (collectively, the “Parties”) enter into this Settlement Agreement to enforce a full and final settlement and dismissal of the above-captioned cases.

2. **Definitions.** For purposes of this Settlement Agreement, the terms below are defined as follows:

a. The term “Claim” means a claim by a Settlement Class Member submitted via a Claim Form to the Settlement Administrator.

b. The term “Claimant” means a Settlement Class Member who timely submits a Claim Form to the Settlement Administrator.

c. The term “Claim Form” means the form approved by the Parties and the Court for use by Settlement Class Members to submit a Claim pursuant to the Settlement Agreement, substantially in the form attached as Exhibit D.

d. The term “Claim Period” means the time period of eighty-four (84) days following the Notice Date.

e. The term “Class Counsel” means all attorneys of record for Plaintiffs in the cases comprising the Litigation.

f. The term “Class Period” means the time period from October 10, 2011, to April 23, 2016.

g. The term “Co-Lead Class Counsel” means Brett Cebulash of Taus Cebulash & Landau LLP; Michael Reese of Reese LLP; Shanon J. Carson of Berger Montague PC; and Jean Martin of Morgan & Morgan Complex Litigation Group.

h. The term “Court” means the United States District Court for the Eastern District of New York.

i. The term “Defendant” means Gerber Products Co. and its predecessors, parent and sister companies, successors, subsidiaries, affiliates, agents, insurers, and assigns.

j. The term “Defense Counsel” means Gibson, Dunn & Crutcher LLP and Kelley Drye & Warren LLP.

k. The term “Effective Date” means (a) if no objection is raised to the proposed Settlement at the Final Approval Hearing, the date on which the Final Approval Order and Judgment are entered; or (b) if any objections are raised to the proposed Settlement at the Final Approval Hearing and not withdrawn prior to the Final Judgment, the latest of (i) the expiration of

the time for filing or notice of any appeal from the Final Approval Order and Judgment, (ii) the date of final affirmance of any appeal of the Final Approval Order and Judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the Final Approval Order and Judgment and, if certiorari is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant, or (iv) the date of final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Judgment.

l. The term “Eligible Claimant” means a Claimant who has submitted a valid and timely Claim as determined by the Settlement Administrator. To be timely, a Claim must be submitted during the Claim Period.

m. The term “Final Approval Hearing” means the hearing set by the Court to consider final approval of the Settlement.

n. The term “Final Approval Order and Judgment” means the Court’s Final Approval Order and Final Judgment, substantially in the form of Exhibit E, finally approving the terms of this Settlement Agreement, and entering judgment pursuant to Federal Rule of Civil Procedure 58(a) and dismissing the Litigation with prejudice.

o. The term “Geographic Area” means the State of New York and the State of Florida.

p. The term “GSG” means Gerber Good Start Gentle infant formula.

q. The term “Litigation” means *Hasemann, et al. v. Gerber Products Co.*, No. 1:15-cv-02995-EK-RER (E.D.N.Y.), and *Manemeit v. Gerber Products Co.*, No. 2:17-cv-00093-EK-RER (E.D.N.Y.).

r. The term “Notice Date” means the date on which the Settlement Administrator initiates the Notice Plan approved by the Court in its Preliminary Approval Order and shall not be later than 30 days after the entry of the Court’s Preliminary Approval Order.

s. The term “Notice Plan” means the plan of providing notice of the Settlement Agreement to the Settlement Class, as approved by the Court in its Preliminary Approval Order.

t. The term “Objection and Opt-Out Deadline” means the date 60 days after the Notice Date.

u. The term “Parties” means Plaintiffs and Defendant.

v. The term “Plaintiffs” means Jennifer Hasemann and Wendy Manemeit.

w. The term “Preliminary Approval Order” means the Court’s Order granting preliminary approval of the Parties’ Settlement Agreement, providing for notice to the Settlement Class, and other related matters, substantially in the form of Exhibit A.

x. The term “Proof of Purchase” means documentation that demonstrates the proof of purchase of GSG by a Settlement Class Member during the Class Period, including: copies of receipts, invoices, direct-purchase records, payment-card records, and records that have been obtained via subpoenas issued to retailers in the Litigation that show the purchaser identity, date of purchase, itemized number of units purchased, specific product purchased, and purchase amount.

y. The term “Releasing Parties” means Plaintiffs and the Settlement Class and each of their heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

z. The term “Released Parties” means Defendant and all of its present and former parent companies, subsidiaries, shareholders, affiliates, officers, directors, employees, agents, attorneys, insurers, successors, and retailers, and any and all other entities or persons upstream and downstream in the production/distribution channels.

aa. The term “Settlement Administrator” means Angeion Group, LLC, which shall effectuate and administer the Notice Plan, the exclusion process for opt-outs, the Claim process, and distribution(s) to Eligible Claimants, and which firm is independent of Plaintiffs, Class Counsel, Defendant, and Defense Counsel. Angeion previously was selected in the Litigation to provide class notice. The Settlement Administrator shall take all reasonable steps to identify and reject fraudulent claims, including the use, at Defendant’s expense, of ClaimScore.

bb. The terms “Settlement Class” or “Settlement Class Members” mean all persons who purchased, other than for resale, GSG in the State of New York or State of Florida between October 10, 2011 and April 23, 2016, as previously certified by the Court on March 31, 2019. The term “New York Settlement Class Members” means all Settlement Class Members who purchased GSG in the State of New York during the Class Period. The term “Florida Settlement Class Members” means all Settlement Class Members who purchased GSG in the State of Florida during the Class Period. The Settlement Class definition excludes the judge or magistrate assigned to this case; Defendant; any entity in which Defendant has a controlling interest; Defendant’s officers, directors, legal representatives, successors, and assigns; persons who purchased Good Start infant formula for the purpose of resale; and any government or government entity participating in the WIC program. The term “purchased” does not include formula received by a person via the WIC program.

cc. “Settlement Payment” means a payment issued by the Settlement Administrator to an Eligible Claimant pursuant to the terms of the Settlement Agreement. The Settlement Administrator will endeavor to make Settlement Payments available electronically using reasonable available methods, except for those Eligible Claimants who request a paper check.

3. **Released Claims.** Upon the Effective Date, the Releasing Parties shall release and discharge the Released Parties from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal,

state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Releasing Parties ever had, now have, may have, or hereafter can, shall, or may ever have against the Released Parties, that result from, arise out of, are based on, or relate to the marketing, advertising, and/or labeling of Gerber Good Start Gentle infant formula, including all claims that were and/or could have been alleged in the Litigation against Defendant. This release excludes claims for personal injuries.

a. After entering into this Settlement Agreement, Plaintiffs and Settlement Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the claims released by this Settlement Agreement. The Released Claims include known and unknown claims relating to the Litigation, and this Settlement Agreement is expressly intended to cover and include all such injuries or damages, including all rights of action thereunder. Plaintiffs and Settlement Class Members hereby expressly, knowingly, and voluntarily waive any and all provisions, rights, and benefits conferred by any statute, rule, and legal doctrine similar, comparable, or equivalent to the following:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

b. In connection with such waiver and relinquishment, Plaintiffs and the Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, foreseen or unforeseen, that they have against the Released Parties. Upon the Effective Date: (a) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and the Settlement Class Members stipulate to be and shall be permanently barred and enjoined by court order from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any and all Released Claims.

c. Settlement Class Members expressly agree that this Release and the Final Approval Order and Judgment, are, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Release. Settlement Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or other proceeding against the Released Parties with respect to the claims, causes of action, and/or any other matters subject to this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Litigation, Settlement Class Members shall promptly cause their claims in any such suit, action, or proceeding to be dismissed with prejudice. If a Settlement Class Member commences, files, initiates, or institutes any legal action or other proceeding for any Released Claim against any Released Party in any federal or

state court, arbitral tribunal, or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with prejudice; and (2) any refusal or failure to immediately dismiss such claims shall provide a basis for that Released Party to seek an injunction or other appropriate relief.

d. Class Counsel shall reasonably cooperate with the Released Parties to ensure that the release set forth in the Final Approval Order and Judgment is given its full force and effect (including by seeking the inclusion of the releases in the Final Approval Order and Judgment) and to ensure that Releasing Parties comply with their obligations set forth in this Settlement Agreement.

4. **Settlement Relief.** Settlement Class Members may submit a Claim Form during the Claim Period to qualify for the following relief:

a. **Florida Base Payment.** Each Florida Settlement Class Member who attests on their Claim Form under penalty of perjury to purchasing GSG during the Class Period, and who: (i) provides reasonable proof of their residency (as defined below in Paragraph 4(f)) in the State of Florida during the Class Period, (ii) identifies on their Claim Form the name and birthdate of the infant for whom they purchased GSG, and the infant's relationship to the Claimant, and (iii) specifies the number of units that they purchased on their Claim Form, shall be entitled to a Florida Base Payment amount of \$3.00 per unit claimed, up to a maximum limit of 5 units.

b. **New York Base Payment.** Each New York Settlement Class Member who attests on their Claim Form under penalty of perjury to purchasing GSG during the Class Period, and who: (i) provides reasonable proof of their residency (as defined below in Paragraph 4(f)) in the State of New York during the Class Period, (ii) identifies on their Claim Form the name and birthdate of the infant for whom they purchased GSG, and the infant's relationship to the Claimant, and (iii) specifies the number of units they purchased on their Claim Form, shall be entitled to a New York Base Payment amount of \$4.00 per unit claimed, up to a maximum limit of 5 units.

c. **Enhanced Proof of Purchase Payment.** As an alternative to receiving the Florida Base Payment or New York Base Payment, which do not require Proof of Purchase, all Settlement Class Members shall be entitled to submit a claim via their Claim Form for an Enhanced Proof of Purchase Payment of \$3.00 per unit of GSG purchased in the State of Florida, and \$4.00 per unit of GSG purchased in the State of New York, based on the presentment of Proof of Purchase in the Geographic Area during the Class Period, up to a maximum of 20 units. The maximum claimable amount is \$60 total for Florida Settlement Class Members and \$80 total for New York Settlement Class Members. The Settlement Administrator shall review such Proof of Purchase submitted and shall determine if a Claimant is entitled to an Enhanced Proof of Purchase Payment, subject to the Proof of Purchase requirements.

d. **Mixed Proof Claim Forms.** Settlement Class Members are entitled to apply for a Florida Base Payment and/or New York Base Payment, as applicable, and also to apply for an Enhanced Proof of Purchase Payment, in which case any units for which Proof of Purchase is provided will be counted first and valued by the Settlement Administrator as set forth in subparagraph (c) above, and then, if the amount of units with Proof of Purchase is below 5 units, additional units may be claimed without Proof of Purchase, up to a total maximum limit of 5 units (including the units for which Proof of Purchase was submitted), if the Claim Form meets the



requirements of subparagraphs (a) or (b) above, and will be valued as set forth in subparagraphs (a) or (b) above, as applicable.

e. The number of claimable units (inclusive of all units claimed through Florida Base Payments, New York Base Payments, and Enhanced Proof of Purchase Payments) may not exceed the following numbers of units estimated to have been sold in New York and Florida during the class period by Plaintiffs' expert: New York: 663,856; Florida: 5,610,628.

f. For determining Claimant eligibility, "reasonable proof of residency" shall be satisfied if a Claimant's residence (1) is currently within the Geographic Area, and (2) was within the Geographic Area during the Class Period. If a Claimant's current residence is not within the Geographic Area, a Claimant must provide documentary proof of having resided in the Geographic Area during the Class Period. Such documentary proof may include, for example, a driver's license, copy of a lease, mortgage, utility bill, credit card statement, deed, pay stub, insurance bill, or court documents including citations listing the Claimant's address showing that the Claimant resided in the Geographic Area during the Class Period.

g. All Claims must be submitted to the Settlement Administrator by the end of the Claim Period. Any Settlement Class Member who wishes to submit a Claim must timely complete, sign (by hard copy or electronic signature), and submit a Claim Form and provide the Settlement Administrator with all requested information and documentation. All Claim Forms shall be submitted to the Settlement Administrator with an attestation under penalty of perjury. The Claim Form must be valid and complete in order for the Claimant to be accepted as an Eligible Claimant. Electronic Claim Forms will be accessible and may be submitted through the Settlement Website by using a unique class member identifier issued by the Settlement Administrator. All Claimants will be required to enter the full name, birthdate and current age of the infant for whom they purchased the product (if the current age does not correspond to the infant being born during, or within three (3) months prior to, the Class Period, the Claim will be excluded); and the state where the product was purchased (purchases in states other than New York or Florida will be excluded). The Parties reserve the right to seek to disqualify claims originating from websites or other sources that contain false information and/or encourage fraudulent claims. Settlement Class Members may not submit Claims through a third-party claims filing service that takes a "cut" and/or charges a fee directly or indirectly for claims submitted on behalf of the Settlement Class Member; the Settlement Administrator shall reject all Claims submitted through such service.

h. The Settlement Administrator shall receive, process, and make determinations regarding all Claim Forms as promptly as possible and as Claim Forms are received. On a weekly basis throughout the Claim Period, and continuing until the Settlement Administrator's claims-processing work concludes, the Settlement Administrator shall provide Class Counsel and Defendant with a spreadsheet that contains information sufficient to determine: (a) the number of Settlement Class Members that submitted a Claim Form; (b) the number of submitted Claim Forms that are valid and timely, and the number that are not; (c) the number of submitted Claim Forms the Settlement Administrator intends to treat as valid claims; and (d) the number of submitted Claim Forms the Settlement Administrator has denied. These weekly reports shall not contain the names, email addresses, mailing addresses, or other personal identifying information of the Settlement Class Members.



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i. The Settlement Administrator will execute a confidentiality and non-disclosure agreement with Defendant and Class Counsel and will take all reasonable steps to ensure that any information provided to it by Settlement Class Members will be used solely for the purpose of effecting this Settlement. All personal identifying information of Settlement Class Members, including names, birthdates, addresses, and email addresses, shall be provided (upon request) only to Reese LLP and Taus Cebulash & Landau LLP (who shall not provide the information to anyone else), or to Defense Counsel or Defendant. Any such information received from the Settlement Administrator will be treated as “Attorneys’ Eyes Only” under the protective order in this case (Dkt. 20), and shall be destroyed within 150 days after the Settlement Administrator finishes issuing settlement checks to Eligible Claimants.

j. Only one Claim Form may be submitted per household.

k. If the Settlement Administrator suspects fraud with respect to any Claim, the Settlement Administrator may reject the claim and will report on Claims identified as fraudulent to Class Counsel and Defense Counsel. Class Counsel and Defense Counsel reserve the right to bring the fraudulent Claims to the attention of the Court.

l. Claim Forms can be submitted by Settlement Class Members to the Settlement Administrator (1) via online Internet submissions utilizing the Settlement Website; (2) by email; or (3) via U.S. Mail.

m. Claim Forms that do not meet the requirements set forth in this Settlement Agreement and/or in the Claim Form instructions shall be rejected. Where a good faith basis exists, the Settlement Administrator may reject a Claim Form based on, among other reasons, insufficient confirmation of a qualifying purchase, incompleteness, lack of a signature, illegibility, fraud, or untimeliness.

n. If the Settlement Administrator rejects a Claim because it is fraudulent or likely fraudulent, that rejection is final. For all rejected Claims other than those determined to be fraudulent or likely fraudulent, the Settlement Administrator shall notify the Claimant in writing of the deficiency using the contact information provided in the Claim Form. Claimants shall be provided twenty-one (21) days from issuance of the deficiency notice from the Settlement Administrator (which shall be emailed where possible or if email is not available, sent by U.S. mail) to cure the deficiency. The decision of the Settlement Administrator as to whether the deficiency has been cured shall be final. No person shall have any claim against Defendant, Defense Counsel, Plaintiffs, Class Counsel, Co-Lead Class Counsel, and/or the Settlement Administrator based on any eligibility determinations or distributions made in accordance with this Settlement Agreement.

o. The Settlement Administrator shall initiate payment of valid and eligible Claims to Eligible Claimants within 60 days after the Effective Date.

p. **Uncashed Checks.** All checks issued by the Settlement Administrator to Eligible Claimants shall remain valid for 150 days.

5. **Opt-Outs.**

a. Any person within the Settlement Class definition who wishes to exclude themselves from the Settlement must submit a written request to opt-out to the Settlement Administrator, which shall be postmarked no later than the Objection and Opt-Out Deadline or submitted online through the Settlement Website and verified no later than the Objection and Opt-Out Deadline.

b. The written request to opt-out must:

i. Identify the case name of the Litigation;

ii. Identify the full name, current address, email address, and phone number of the person seeking exclusion from the Settlement;

iii. Be personally signed by the person seeking exclusion;

iv. Include a statement clearly indicating the person's intent to be excluded from the Settlement;

v. Request exclusion only for that one person whose personal signature appears on the request;

vi. Declare under oath and subject to the penalty of perjury that the person seeking exclusion personally purchased, other than for resale, GSG in the State of New York or State of Florida between October 10, 2011 and April 23, 2016;

vii. State the name and birthdate of the infant for whom the person purchased GSG, and the infant's relationship to the Claimant.

c. To be effective and valid, opt-out requests submitted online must verify the request to opt out no later than the Objection and Opt-Out Deadline using the link sent to the person who submitted the request for exclusion.

d. Opt-out requests seeking exclusion on behalf of more than one person shall be deemed invalid by the Settlement Administrator.

e. Any person who submits a valid and timely request to opt-out in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Settlement; (iii) gain any rights by virtue of the Settlement; or (iv) be entitled to object to any aspect of the Settlement.

f. Any member of the Settlement Class who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Objection and Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to Settlement Class Members.

g. On a weekly basis during the Claim Period, the Settlement Administrator shall provide Defendant and Class Counsel with a list of the persons who timely and validly

requested to opt-out from the Settlement and copies of each such request, and a final report of all opt-outs will be provided to the Court with Plaintiffs' Motion for Final Approval.

6. **Objections.**

a. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court, Class Counsel, Defense Counsel, and the Settlement Administrator, on or before the Objection and Opt-Out Deadline, as specified in the Preliminary Approval Order. Any person who submits a request to opt out waives any right to object to the Settlement.

b. The written objection must be made under penalty of perjury, and include:

i. The case name and number of the Litigation;

ii. The full name, address, telephone number, and email address of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;

iii. Declare under oath and subject to the penalty of perjury that the person seeking exclusion personally purchased, other than for resale, GSG in the State of New York or State of Florida between October 10, 2011 and April 23, 2016;

iv. A statement describing the date and location (including the store name and address) of their purchase of GSG, and the birthdate of the infant for whom the objecting Settlement Class Member purchased GSG, and the infant's relationship to the Claimant;

v. Any supporting papers, materials, or briefs the objector wishes the Court to consider when reviewing the objection;

vi. A statement of whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;

vii. A statement of the number of times in which the objector (and, where applicable, objector's counsel) has objected to a class action settlement within the five years preceding the date that the objector files the objection, along with the caption of each case in which the objector has made such objection;

viii. A statement of the specific grounds for the objection, including any legal and factual support and any evidence in support of the objection;

ix. A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel; and

x. The objector's signature.

c. In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney),

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the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

d. A Settlement Class Member may submit a written statement of objection(s) on his or her own behalf or through a lawyer hired at that Settlement Class Member's own expense, provided the Settlement Class Member has not submitted a request to opt out. Lawyers asserting objections on behalf of Settlement Class Members must: (1) file a notice of appearance with the Court by the deadline set by the Court in the Preliminary Approval Order, or as the Court otherwise may direct; (2) file a declaration under oath attesting to his or her representation of each Settlement Class Member on whose behalf the objection is being filed or file (*in camera*) a copy of the contract between that lawyer and each such Settlement Class Member; and (3) comply with all of the requirements and procedures described in Paragraph 6, including providing all information set forth in Paragraph 6(b). Lawyers asserting objections on behalf of Settlement Class Members also must file a declaration under oath that specifies the number of times during the prior five-year period they have objected to a class action settlement on their own behalf or on behalf of a member of a class.

e. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Settlement Agreement and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms of or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Settlement Agreement by appeal or any other means.

7. **Notice Plan and Claims Administration.** Notice Plan and Claims Administration costs will be paid by Defendant up to \$750,000 (which includes the use of ClaimScore as part of the settlement administration). Defendant shall cooperate with Co-Lead Class Counsel and the Settlement Administrator in providing reasonable additional data necessary to effectuate and administer the Settlement. In no event shall the Settlement Administrator disseminate notice in any manner materially different from that set forth below, unless the Parties jointly agree in writing to authorize such forms of notice. The Notice Plan shall include:

a. Individual Notice–Emailing. The Settlement Administrator will use previously subpoenaed information from retailers to send the Notice of Settlement by email or U.S. mail where such information indicates a purchase of GSG during the Class Period and an address within the Geographic Area.

b. Media Notice. The Settlement Administrator will disseminate Media Notice that will target Settlement Class Members in the Geographic Area via programmatic display ads, paid social media, and search engine marketing. To avoid confusion and inconsistent information about the Settlement, information about the Settlement will be provided solely by the Notice Plan. The Parties will not make statements to the media or third party claims promotion sites or issue their own press releases about the Settlement.

c. Joint Press Release. The Settlement Administrator will issue a Joint Press Release in New York and Florida at the beginning of the Claim Period in a form approved by the Parties.

d. Settlement Website. The Settlement Website shall provide, at a minimum: (i) information concerning the deadline for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-free phone number applicable to the Settlement; (iii) copies of the Settlement Agreement, the Claim Form, the Long Form Notice, Court orders regarding this Settlement, and other relevant Court documents, including any Motion for Approval of Attorneys' Fees, Costs, and Service Awards; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms (and accompanying documents) electronically using an electronic signature service through the Settlement Website. The Settlement Website shall be maintained by the Settlement Administrator until 90 days after the Effective Date.

e. Toll-Free Number. The Settlement Administrator shall establish a toll-free telephone number with an interactive voice response ("IVR") technology system that will provide members of the Settlement Class with information and direct them to the Settlement Website within 30 days of the Preliminary Approval Order. The toll-free telephone number shall be included in the Long Form Notice, Media Notice, and on the Settlement Website, and the IVR system shall be capable of providing general information concerning the deadline for filing a Claim Form, opting out of or objecting to the Settlement, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing. The toll-free number(s) shall be maintained by the Settlement Administrator during the time period that the Settlement Website is active.

f. The Settlement Administrator shall provide Co-Lead Class Counsel and Defense Counsel with a declaration detailing all of its efforts regarding the Notice Plan and of its timely completion of the Notice Plan and its outreach to the members of the Settlement Class, to be filed as an exhibit to Plaintiffs' Motion for Final Approval of Class Action Settlement.

g. Defendant will work with the Settlement Administrator to effectuate notice pursuant to the Class Actions Fairness Act (28 U.S.C. § 1715; "CAFA") within 10 days after filing the Motion for Preliminary Approval of Class Action Settlement.

8. **Class Counsel's Attorneys' Fees and Expenses, and Service Awards.** The Parties acknowledge that they negotiated and agreed upon all consideration to the Settlement Class before discussing or negotiating Class Counsel's attorneys' fees and expenses, and service awards.

a. Class Counsel may apply to the Court for an attorneys' fees and expenses award of up to \$11,250,000 which must be approved by the Court. The amount of the attorneys' fees and expenses award ordered by the Court shall be the sole monetary obligation for attorneys' fees and expenses to be paid by Defendant pursuant to the Settlement. Plaintiffs, Settlement Class Members, and Class Counsel expressly release Defendant from any such payments for attorneys' fees and costs that otherwise may be due by operation of law or otherwise. Plaintiffs, Class Counsel, and Settlement Class Members will not seek in excess of the sums specified in this Paragraph, and in any event, they agree that Defendant shall not pay, nor be obligated to pay, any sum in excess of the cap amounts specified in this Paragraph.

b. The Parties agree that Class Counsel may apply to the Court on behalf Class Representatives Jennifer Hasemann and Wendy Manemeit for an order granting a service award to each of them not to exceed \$10,000 each (for a total of \$20,000) for their services as representatives of the Settlement Class, to be paid by Defendant. The Parties agree that the decision

whether or not to award any such payment, and the amount of that payment, rests in the exclusive discretion of the Court.

c. Defendant shall pay the Court-ordered attorneys' fees and expenses award and any service awards within thirty (30) calendar days after the occurrence of both (1) the Effective Date and (2) the expiry of the period for, or final resolution of, any separate appeal or challenge of an order awarding attorneys' fees or expenses.

9. **Motion for Preliminary Approval.** Plaintiffs will file a Motion for Preliminary Approval by March 5, 2025, in a form agreed to by Defendant, and will share a draft of the preliminary approval motion, and all accompanying exhibits and declarations, with Defendant at least 7 days prior to filing.

10. **Stay Pending Entry of Preliminary Approval Order.** Until the Preliminary Approval Order is entered, the Parties agree to a stay of all litigation proceedings against the Releasing Parties and Released Parties; and the Parties and their respective counsel shall not in any way subsequently argue that the Released Parties or Releasing Parties have failed to comply with their litigation obligations in any respect by reason of the Released Parties' or Releasing Parties' suspension of litigation efforts following the execution of this Settlement Agreement. Upon entry of the Preliminary Approval Order, all proceedings in this Litigation pertaining to Defendant, other than the proceedings necessary to effectuate this Settlement Agreement, shall be stayed and suspended until further notice of the Court.

11. **Motion for Final Approval.** Plaintiffs will file a Motion for Final Approval pursuant to the deadline set in the Court's Preliminary Approval Order in a form agreed to by Defendant and will share a draft of the final approval motion, and all accompanying exhibits and declarations, with Defendant at least 5 days prior to filing.

12. **No Admission of Wrongdoing.** The Parties agree that, by negotiating and signing this Settlement Agreement and settling the Litigation, Defendant is not admitting any liability, fault, or violation of law. The Parties agree and acknowledge that Defendant denies all allegations and claims asserted against it, but is settling the Litigation to avoid the risk, burden, and expense of continued litigation.

13. **Interpretation.**

a. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe, contradict, or clarify this Settlement Agreement, its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed. The Parties expressly agree that the terms and conditions of this Settlement Agreement will control over any other written or oral agreements, and this Settlement Agreement supersedes all prior negotiations, understandings, and agreements between the Parties.

b. The Settlement Agreement, the Settlement, all documents, orders, and other evidence relating to the Settlement, the fact of their existence, any of their terms, any other statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the



Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) any fact alleged, defense asserted, or any fault, misrepresentation, or omission by the Released Parties; (iii) the propriety of certifying a litigation class or any decision by any court regarding the certification of a class, and/or (iv) whether the consideration to be given in this Settlement Agreement represents the relief that could or would have been obtained through trial in the Litigation, in any trial, civil, criminal, administrative, or other proceeding of the Litigation or any other action or proceeding in any court, administrative agency, or other tribunal.

**14. Modification or Termination and Reservation of Rights.**

a. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest and approved by the Court; provided, however, that, after entry of the Final Approval Order and Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all Exhibits hereto) without further approval by the Court if such changes are consistent with the Court's Final Approval Order and Judgment and do not materially limit the rights of Settlement Class Members under this Settlement Agreement.

b. In the event the terms or conditions of this Settlement Agreement are modified by (or to comply with) any court order as described herein, the Plaintiffs may unanimously or Defendant may, in their respective discretion, to be exercised within fourteen (14) days after such modification, declare this Settlement Agreement null and void. For purposes of this Paragraph 14(b), modifications include any modifications (1) to the definition of the Settlement Class, Settlement Class Members, Released Parties, or Released Claims; or (2) to the terms of the Settlement consideration described in Paragraph 4; or (3) that increase the caps described in Paragraphs 7 and 8; or (4) that materially change the requirements for approval of a Claim; or (5) that materially change the proposed Notice Plan, including methods of distributing notice, to the Settlement Class. In the event of qualifying modification by any court, and in the event the Parties do not exercise their unilateral option to withdraw from this Settlement Agreement pursuant to this Paragraph 14(b), the Parties shall meet and confer within seven (7) days of such a court order to attempt to reach an agreement as to how best to effectuate the court-ordered modification and preserve their settlement.

c. The Parties agree that the effectiveness of this Settlement Agreement is not contingent upon the Court's approval of any attorneys' fees or expenses or service awards to Plaintiffs. If the Court declines to approve, in whole or in part, a request for attorneys' fees or expenses or service awards to Plaintiffs, all remaining provisions in this Settlement Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the payment of attorneys' fees or expenses or service awards to Plaintiffs, or the amount thereof, shall be grounds for cancellation, termination, or modification of this Settlement Agreement.

d. Defendant may, in its sole discretion, terminate this Settlement Agreement if more than a specified number of members of the Settlement Class submit valid and timely



requests to exclude themselves from the Settlement pursuant to the terms of this agreement (e.g., fraudulent opt-outs do not count toward this provision), as agreed to by the Parties and attached as Exhibit F and submitted to the Court for in camera review. If applicable, Defendant must exercise this option in writing within fourteen (14) calendar days of the Objection and Opt-Out Deadline.

e. If this Settlement Agreement is terminated pursuant to its terms, disapproved by the Court or any appellate court with jurisdiction over the Settlement, or not consummated for any reason, or the Effective Date for any reason does not occur, then:

i. The Settlement Agreement will be deemed null and void ab initio. The terms and provisions of this Settlement Agreement will have no further force and effect with respect to the Parties or Settlement Class Members and will not be used in this Litigation or in any other proceeding for any purpose;

ii. Any judgment shall be automatically vacated upon notice of the same to the Court and the Litigation shall return to the procedural posture as of January 23, 2025;

iii. The Parties will petition the Court to have any stay orders entered pursuant to this Settlement lifted;

#### **15. Miscellaneous Terms.**

a. The Parties agree that the consideration provided to the Settlement Class and the other terms of the Settlement Agreement were negotiated at arm's length, in good faith by the Parties, and reflect a settlement that was reached voluntarily, after consultation with competent legal counsel, and with the assistance of an independent, neutral mediator, Magistrate Judge Diane Welsh (Ret.) of JAMS Philadelphia, a former United States Magistrate Judge, via in-person mediation, as well as numerous follow up written and oral communications and negotiations both directly and through the mediator, after nearly a decade of litigation.

b. Plaintiffs and Class Counsel have concluded that the Settlement set forth herein constitutes a fair, reasonable, and adequate resolution of all claims that the Plaintiffs asserted or could have asserted against Defendant, and all claims asserted or that could have been asserted in this Litigation, including the claims on behalf of the Settlement Class, and that the Settlement promotes the best interests of the Settlement Class.

c. To the extent permitted by law, all agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

d. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

e. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Signatures submitted by email or electronic signature service, shall also be

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considered originals. The date of execution shall be the latest date on which any Party signs this Settlement Agreement.

f. Defendant shall bear its own attorneys' fees and costs in the Litigation.

g. The Parties hereto and their respective counsel agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Settlement Agreement, including to obtain a Final Approval Order and Judgment approving the Settlement. The Final Approval Order and Judgment shall: (1) grant final approval of all terms of this Settlement Agreement; (2) confirm that the Notice Plan complied with the requirements of due process and Federal Rule of Civil Procedure 23 by providing due, adequate, and sufficient notice of the Settlement to the Settlement Class; (3) determine that this Settlement Agreement is fair, reasonable, and adequate; (4) direct that the Litigation be dismissed with prejudice; and (5) retain the Court's continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, to construe and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties.

h. This Settlement Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto and the Settlement Class Members, including any and all Released Parties and any corporation, partnership, or other entity into or with which any Defendant or Released Party hereto may merge, consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

i. This Settlement Agreement was jointly drafted by the Parties. Plaintiffs, Settlement Class Members, and Defendant shall not be deemed to be the drafters of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the contra proferentem canon of construction. Accordingly, this Settlement Agreement should not be construed in favor of or against one Party as the drafter, and the Parties agree that the provisions of any laws or common law construing ambiguities against the drafter shall have no application.

j. The headings used in this Settlement Agreement are inserted merely for the convenience of the reader and shall not affect the meaning or interpretation of this Settlement Agreement.

k. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa), and the use of the masculine includes the feminine (and vice-versa).

l. The Parties and their counsel agree not to make disparaging public statements about each other and/or their counsel, or related to the Settlement and/or the Litigation, although they are free to respond in a truthful and non-disparaging manner to inquiries regarding the Settlement and/or the Litigation. The Notice Plan will be facilitated exclusively by the Settlement Administrator pursuant to the Notice Plan.

m. Plaintiffs acknowledge, agree, and understand that: each has read and understands the terms of this Settlement Agreement, and has consulted with their counsel before executing this Settlement Agreement.

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n. All Parties represent and warrant that they are agreeing to the terms of this Settlement Agreement and have been afforded the opportunity to discuss the contents of this Settlement Agreement with their attorneys, and that the terms and conditions of this document are fully understood and voluntarily accepted.

o. Each Party to this Settlement Agreement warrants that they are acting upon their independent judgment and not in reliance upon any warranty or representation, express or implied, of any nature or any kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

p. The Court shall retain exclusive and continuing jurisdiction over all Parties, the Litigation, and this Settlement Agreement to resolve any suit, action, proceeding, case, controversy, or dispute that may arise regarding this Settlement Agreement, the application of the Release, any other matters regarding implementation of the Settlement, or in relation to this Litigation, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement (“Disputes”). The Parties, and each Settlement Class Member, hereby irrevocably submit to the exclusive jurisdiction and venue of the Court for resolution of Disputes, and irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is in any way an improper venue or an inconvenient forum. Plaintiffs and Settlement Class Members shall not oppose the reopening of the Litigation for the purposes of effecting the Release. To the extent there are any Disputes between the Parties and/or Settlement Class Members, they will submit those disputes to Judge Diane Welsh (Ret.) of JAMS Philadelphia, before reopening this Litigation.

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Dated: March 5, 2025

Dated: March 5, 2025

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*Plaintiff and Class Representative*

DocuSigned by:  
*Douglas Besman*  
3949BFD8EB8E478  
\_\_\_\_\_  
*Defendant Gerber Products Company*

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*Plaintiff and Class Representative*

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Dated: March 5, 2025

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*Plaintiff and Class Representative*

  
*Plaintiff and Class Representative*

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Dated: March 5, 2025

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*Plaintiff and Class Representative*

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*Defendant Gerber Products Company*

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*Plaintiff and Class Representative*



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