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7 *the Settlement Class*

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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12
13 YEVGENIYA GRANINA, on Behalf of
Herself and All Others Similarly Situated,

14 Plaintiff,

15 v.

16
17 EDDIE BAUER, LLC and DOES 1 through
100, inclusive,

18 Defendants.

) CASE NO.: BC569111

) CLASS ACTION

) **DECLARATION OF ZEV B. ZYSMAN IN**
) **SUPPORT OF FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Date: April 23, 2018

) Time: 9:00 a.m.

) Dept: 323

) Judge: Hon. Elihu M. Berle

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DECLARATION OF ZEV B. ZYSMAN

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3 1. I am an attorney at law duly licensed to practice in the State of California. I am
4 counsel of record (“Class Counsel”) for Plaintiff Yevgeniya Granina and the Class, in the above-
5 entitled action.¹ I have personal knowledge of the matters stated herein and if called as a witness, I
6 could and would competently testify to the matters set forth herein.

7 2. I am submitting this Declaration in support of Plaintiff’s Memorandum of Points and
8 Authorities In Support of Final Approval of the Class Action Settlement.

9 **I. THE SETTLEMENT DISCUSSIONS**

10 3. I have personally been involved in the prosecution of this class action since its
11 inception on January 12, 2015 and through to the present.

12 4. The Agreement, and the terms thereof, are the result of arm’s-length negotiations by
13 counsel, experienced in class action and other complex litigation, and was reached after a mediation
14 conducted by California Supreme Court Justice Edward A. Panelli (Ret.) on May 10, 2017 at
15 JAMS, and numerous settlement discussions to finalize the terms of the Settlement. The settlement
16 negotiations which spanned over a period of many months were complicated and protracted.

17 5. The Settlement was reached only after Class Counsel had engaged in sufficient
18 investigation and discovery. Class Counsel’s investigation and discovery included:

- 19 • Investigation and drafting of class action complaint and amended complaint,
20 which included researching of the applicable law with respect to the claims
21 asserted therein and potential defenses thereto.
- 22 • Drafting class certification and merits discovery, including special interrogatories,
23 requests for production, and requests for admissions.
- 24 • Drafting and serving discovery directed to Eddie Bauer which requested
25 information concerning: (1) the names and contact information of putative class
26 members, and (2) non-content detail for each telephone call, including the class
27 members’ telephone numbers, and the date, time, and duration of the subject call.
- Serving informal discovery requests.
- Reviewing Defendant’s written responses/amended responses to discovery as well as
meeting and conferring with defense counsel over the scope and sufficiency of the

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¹ This declaration incorporates by reference the definitions in the Amended Settlement Agreement and Release (“Agreement”), and all terms used herein shall have the same meanings as set forth in the Agreement.

1 responses over a period of several months.

- 2 • Reviewing documents produced by Defendant. These documents included, call
3 technology manuals and policies, training manuals, work shop materials, call scripts,
4 and protocols relating to the call centers, technical data sheets, information regarding
5 the approximate size of the Class during the Class Period, data relating to the
6 inbound calls that were recorded with persons in California during the Class Period,
7 Defendant's policies and procedures relating to the recording of telephone calls.
8 Class Counsel reviewed and analyzed the documents produced by Defendants
- 9 • Performing research, consisting of review of trade literature, civil dockets, and legal
10 filings.
- 11 • Consulting with privacy rights experts and IT specialists.
- 12 • Researching viability of preserving cell site location information vis-a-vis cellular
13 communication carriers, including Verizon, AT&T, T-Mobile, and Sprint.
- 14 • Drafting PMK deposition notices regarding class certification issues;
15 purpose(s) for which Defendant recorded telephone calls with California
16 consumers; policy directives relevant to the recording of telephone calls in
17 California; call technology employed by Defendant at call centers.
- 18 • Researching and drafting class certification motion and supporting exhibits (withheld
19 filing following tentative agreement to settle).
- 20 • Engaging in numerous discussions with defense counsel, regarding the legal
21 and factual bases for Plaintiff's claims and Defendant's defenses.

22 6. By the time Plaintiff agreed to settle, she and her counsel had adequate
23 information to assess the strengths and weaknesses of her case, and Plaintiff and Class Counsel had
24 sufficient grasp of the legal and factual issues in the litigation to make a thorough appraisal of the
25 adequacy of the settlement to provide meaningful relief to the Settlement Class. The full terms of
26 the Parties' settlement were subsequently memorialized in the Agreement.

27 **II. PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE TO CLASS**

28 7. On December 15, 2017, the Court signed the Order providing preliminary approval
of the settlement and set a hearing date for final approval of settlement.

8. Pursuant to the Settlement, Defendant provided the Claims Administrator with a
computerized list of records, characterized as the Class List.² The Class Member List contained
name and mailing (postal and email) address information. The Claims Administrator caused the
postal addresses in the Class Member List to be updated using the National Change of Address

² See Declaration of Andrew Perry of Kurtzman Carson Consultants ("KCC") in Support of
Class Notice and Claims Administration Costs ("Perry Dec."), filed concurrently herewith.

1 system. The Claims Administrator then updated these retrieved addresses. In all, the Claims
2 Administrator successfully delivered Notice Packets by E-Mail and U.S. Mail to 15,551 Class
3 Members.

4 9. With respect to those Class Members whose Class Notice by regular mail was
5 returned to the Claims Administrator as undeliverable, the Claims Administrator promptly
6 attempted to obtain an updated address, and if an address was obtained, the Claims Administrator
7 resent the Class Notice Packets to those updated addresses. If an email address was included in the
8 Class List, the Claims Administrator sent the Class Notice to that potential Class Member by email
9 rather than by regular mail. If the email was reported to the Claims Administrator as undeliverable,
10 the Claims Administrator promptly sent a Class Notice to that potential Class Member by regular
11 mail.

12 10. The Claims Administrator also established an internet Settlement Website,
13 www.GraninaClassActionSettlement.com, where the full Class Notice, Claim Form, Amended
14 Settlement Agreement, Motion for Attorneys' Fees, Expenses and Incentive Award, and other
15 documents were made available. Moreover, the Settlement Website allowed Class Members to file
16 claims online or download copies of the Claim Form and Class Notice.

17 11. The Claims Administrator caused an online banner advertisement campaign to be
18 disseminated on the Google Display Network geo-targeted to California Adults 18+ and resulted in
19 1,251,222 internet impressions to be delivered across mobile and desktop devices.

20 12. The Claims Administrator also established a toll-free phone number (1-866-653-
21 4618) for Class Members to call to answer questions regarding the Settlement and their claims.

22 13. Additionally, as authorized by the Agreement, Class Counsel, along with this filing,
23 concurrently filed a noticed motion requesting an award of attorneys' fees and expenses, and a
24 service payment to the Class Representative. The motion was posted on the Settlement Website.

25 14. As the Court preliminarily determined, the method of disseminating notice was the
26 most reasonable notice under all of the circumstances, and it comports with California law,
27 including Rule 3.766(f) and 3.769 of the Rules of Court.

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1 **III. THE FAVORABLE REACTION TO THE SETTLEMENT**

2 15. The reaction of Class Members to the Settlement has been overwhelmingly positive.
3 The Class Notice advised Class Members of the Settlement which includes reimbursement to Class
4 Counsel and the Class Representative for her time and effort in the litigation. The Class Notice also
5 advised Settlement Class Members of their right to request exclusion from the Class, or to object to
6 the settlement.

7 16. The 70-day response period for filing any objections to, or requests for exclusions
8 from, the Settlement will end on March 22, 2018. As of the date of this filing, Class Counsel has
9 been informed that the Claims Administrator received only seventeen requests from Class Members
10 to opt-out of the Settlement. *See* Perry Decl. ¶15. Moreover, there were *no* objections to the
11 proposed Settlement. The Claims Administrator will submit a Supplemental Declaration to the
12 Court regarding the Class Notice and claims submitted by April 9, 2018, as directed in the Court's
13 December 15, 2017 Preliminary Approval Order.

14 17. These extremely low numbers weigh heavily in favor of settlement approval. The
15 absence of any objection validates the Settlement, including that aspect of the Settlement which
16 provides for reimbursement of attorneys' fees and expenses to Class Counsel as well as an incentive
17 award for the Class Representative and supports the finding that there is an overwhelming
18 endorsement of all aspects of the Settlement, and is compelling evidence that the Settlement is fair
19 and reasonable.

20 **IV. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE SETTLEMENT**
21 **CLASS AND WARRANTS APPROVAL**


22 18. It is the considered and informed judgment of Class Counsel, based on all the
23 protracted proceedings to date, and extensive experience in litigating class actions under both state
24 and federal laws, that the Settlement now before the Court is fair, reasonable, adequate and in the
25 best interest of the Settlement Class and should be approved by the Court.

26 19. The Settlement is the result of substantial, good faith, arm's-length negotiations,
27 under the supervision of Justice Panelli, with counsel for the Parties steadfastly maintaining their
28 respective positions on the merits of the litigation.

1 20. This action has been settled after intense negotiations that presented difficult legal
2 and factual issues. Class Counsel thoroughly analyzed these issues, concluding that the outcome of
3 this litigation, and of any appeals that would inevitably follow a successful trial, were inherently
4 uncertain and risky. The proposed Settlement constitutes a favorable result for the Class Members
5 which is imminently fair, reasonable and adequate under the circumstances considering the benefits
6 obtained, the strengths of Plaintiff's case, the risk, expense, complexity and likely duration of
7 further litigation, the stage of the proceedings, the amount of discovery completed and the
8 experience and views of counsel. Based on a thorough analysis of the strong defenses set forth by
9 Defendant, the documents produced, Class Counsel's investigation and discovery, and the
10 arguments presented by Defendant's counsel relating to the claims asserted by Plaintiff, Class
11 Counsel submit that the Settlement is an excellent result for the members of the Settlement Class.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct.

14 Executed this 13th day of February, 2018 at Encino, California.

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Zev B. Zysman