

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3
4 MEGAN SCHMITT, DEANA
5 REILLY, CAROL ORLOWSKY, and
6 STEPHANIE MILLER BRUN,
7 individually and on behalf of
8 themselves and all others similarly
9 situated,

10 Plaintiffs,

11 v.

12 YOUNIQUE, LLC,
13 Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

14 On September 24, 2019, this Court granted the motion of Plaintiffs Megan
15 Schmitt, Deana Reilly, and Stephanie Miller-Brun (“Plaintiffs”) for preliminary
16 approval of the Class Settlement Agreement (“Agreement”)¹ and certification of the
17 Settlement Class (as defined below). *See* ECF No. 256.

18 Commencing on October 23, 2019, pursuant to the notice requirements in the
19 Agreement and the Preliminary Approval Order, Heffler Claims Group (the
20 “Settlement Administrator”) began providing notice to Settlement Class members in
21 compliance with Exhibit C to the Settlement Agreement and the Notice Plan, due
22 process, and Rule 23 of the Federal Rules of Civil Procedure. The notice:

- 23 (a) fully informed Settlement Class members about the Action and the
24 existence and terms of the Agreement;

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26 ¹ Capitalized terms used in this Final Approval Order shall have the same meaning as
27 defined in the Agreement unless otherwise expressly stated.

1 (b) advised Settlement Class members of their right to request exclusion from
2 the settlement and provided sufficient information so that Settlement Class
3 members were able to decide whether to accept the settlement, opt-out and
4 pursue their own remedies, or object to the proposed settlement;

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6 (c) provided procedures for Settlement Class members to file written
7 objections to the proposed settlement, to appear at the Final Approval hearing,
8 and to state objections to the proposed settlement; and

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10 (d) provided the time, date, and place of the Final Approval hearing.

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12 On _____, the Court held a Final Approval hearing to determine
13 whether the proposed settlement is fair, reasonable and adequate and whether
14 judgment should be entered dismissing this Action with prejudice. The Court
15 reviewed (a) the Motion for Final Approval (the “Motion”) and all supporting
16 materials, including but not limited to the Settlement Agreement; (b) Plaintiffs’
17 Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses to
18 Class Counsel and Service Awards, and all supporting materials; (c) any objections
19 filed with or presented to the Court; and (d) the parties’ responses to any objections.
20 The Court also considered the oral argument of counsel and any objectors who
21 appeared. Based on this review and the findings below, the Court finds good cause
22 to order the following.

23 **IT IS HEREBY ORDERED:**

24 1. The Court has jurisdiction over the subject matter of this Action, all
25 claims raised therein, and all parties thereto, including the Settlement Class.

26 2. The Agreement is fair, reasonable, adequate and in the best interests of
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1 Settlement Class members. The Agreement was negotiated over a period of almost
2 a year at arm's length, in good faith and without collusion, by capable and experienced
3 counsel, with full knowledge of the facts, the law, and the risks inherent in litigating
4 the Action, and with the active involvement of the parties. Moreover, the Agreement
5 confers substantial benefits on the Settlement Class members, is not contrary to the
6 public interest, and will provide the parties with repose from litigation. The parties
7 faced significant risks, expense, and uncertainty from continued litigation of this
8 matter, which further supports the Court's conclusion that the settlement is fair,
9 reasonable, adequate and in the best interests of the Settlement Class members.

10 3. The Court grants final approval of the Agreement in full, including but
11 not limited to the releases therein and the procedures for distribution of the Settlement
12 Fund. All Settlement Class members who have not excluded themselves from the
13 Settlement Class are bound by this Final Approval Order and Judgment.

14 4. The parties shall carry out their respective obligations under the
15 Agreement in accordance with its terms. The relief provided for in the Agreement
16 shall be made available to the various Settlement Class members submitting valid
17 Claim forms, pursuant to the terms and conditions in the Agreement. The Agreement
18 is incorporated herein in its entirety as if fully set forth herein and shall have the same
19 force and effect of an order of this Court.

20 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

21 5. _____ objections to the Settlement were filed by Settlement Class
22 members. The Court has considered all objections and finds that they do not warrant
23 or support rejection or non-approval of the Settlement. All objections are hereby
24 overruled in all respects. All persons who did not object to the Settlement in the
25 manner set forth in the Agreement are deemed to have waived any objections,
26 including but not limited to by appeal, collateral attack, or otherwise.

1 6. Attached hereto as Exhibit A is a list of persons who made valid and
2 timely requests to be excluded from the Settlement and the Settlement Class (the
3 “Opt-Out Members”). The Opt-Out Members are not bound by the Agreement and
4 this Final Approval Order and shall not be entitled to any of the benefits afforded to
5 Settlement Class members under the Agreement.

6 **CERTIFICATION OF THE SETTLEMENT CLASS**

7 7. Solely for purposes of the Agreement and this Final Approval Order and
8 Judgment, the Court hereby certifies the following Settlement Class:

9 All persons that purchased Younique’s original Moodstruck 3D Fiber Lashes
10 between October 2012 and July 2015 while residing in California, Ohio,
11 Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania,
12 Tennessee, Texas, or Washington. The Settlement Class specifically
13 excludes: (a) Younique’s officers, directors, employees and attorneys; (b)
14 governmental entities; (c) the Court, the Court’s immediate family, and the
15 Court staff; and (d) any person that timely and properly excludes himself or
16 herself from the Settlement Class.

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18 8. The Court incorporates its preliminary conclusions in the Preliminary
19 Approval Order (ECF No. 256) regarding the satisfaction of Federal Rules of Civil
20 Procedure 23(a) and 23(b). Because the Settlement Class is certified solely for
21 purposes of settlement, the Court need not address any issues of manageability for
22 litigation purposes.

23 9. The Court grants final approval to the appointment of Plaintiffs Megan
24 Schmitt, Deana Reilly, and Stephanie Miller-Brun as the Class Representatives and
25 concludes that they have fairly and adequately represented the Settlement Class and
26 shall continue to do so.

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1 10. The Court grants final approval to the appointment of The Sultzer Law
2 Group P.C., Nye Peabody Stirling Hale & Miller LLP, Walsh PLLC, and Carlson
3 Lynch Sweet Kilpela & Carpenter, LLP as Class Counsel for the Settlement Class.

4 11. The Settlement Class described above is certified solely for the purpose
5 of the settlement described in the Agreement. The Court finds and orders that
6 defendant Younique, LLC (“Younique”) has not conceded that this Action or any
7 similar case is amenable to class certification for purposes of litigation, and orders
8 that nothing in this Final Order or in the Agreement shall prevent Younique or
9 Plaintiffs from opposing or supporting class certification, or seeking decertification,
10 if this Final Order approving the Agreement is reversed or invalidated, on appeal or
11 otherwise, for any reason.

12 **NOTICE TO THE CLASS**

13 12. The Court finds that the Notice Plan, set forth in the Agreement and
14 effectuated pursuant to the Preliminary Approval Order: (i) was the best notice
15 practicable under the circumstances; (ii) was reasonably calculated to provide, and
16 did provide, due and sufficient notice to the Settlement Class regarding the existence
17 and nature of the Action, certification of the Settlement Class for settlement purposes
18 only, the existence and terms of the Agreement, and the rights of Settlement Class
19 members to exclude themselves from the Agreement, to object and appear at the Final
20 Approval hearing, and to receive benefits under the Agreement; and (iii) satisfied the
21 requirements of the Federal Rules of Civil Procedure, the United States Constitution,
22 and all other applicable law.

23 13. The Court finds that Younique has satisfied the notice requirements of
24 the Class Action Fairness Act, 28 U.S.C. § 1715.

25 **ATTORNEYS’ FEES , EXPENSES AND SERVICE AWARDS**

26 14. The Court awards Class Counsel \$_____ in fees and
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1 reimbursement of \$_____ in expenses. The Court finds these amounts to
2 be fair and reasonable. Payment shall be made from the Qualified Settlement Fund
3 pursuant to the procedures in Sections IV.A.1, X.A. and X.B of the Agreement.

4 15. The Court awards Class Representatives Megan Schmitt, Deana Reilly,
5 and Stephanie Miller-Brun \$_____ each as a Service Award. The Court awards
6 Kirsten Bowers, the named Plaintiff in the parallel *Bowers* action that was resolved
7 as part of the Agreement, \$_____ as a Service Award. The Court awards
8 Settlement Class members Breanna Kelly, Ashley Willey and Maegan Nelson
9 \$_____ each as a Service Award. The Court finds these amounts to be justified
10 by these individuals' service to the Settlement Class. Payment shall be made from
11 the Settlement Fund pursuant to the procedures in Sections IV.A.1 and X.C of the
12 Agreement.

13 **RELEASES**

14 16. The Court releases and forever discharges the Released Persons from
15 each of the Released Claims, as provided in the Agreement. The Releasers are
16 permanently barred and enjoined from instituting, maintaining, or prosecuting, either
17 directly or indirectly, any litigation that asserts the Released Claims. This permanent
18 bar and injunction is necessary to protect and effectuate the Agreement, this Final
19 Approval Order, and the Court's authority to effectuate the Agreement, and is ordered
20 in aid of this Court's jurisdiction and to protect its judgments. The Released Claims
21 shall be construed as broadly as possible to ensure complete finality over this Action
22 involving the advertising, labeling, and marketing of the Products as set forth herein.
23 The full terms of the release described in this paragraph are set forth in Sections II.V,
24 II.W, and IX.A-G of the Agreement and are specifically approved and incorporated
25 herein by this reference (the "Release"). In addition, Plaintiffs and each Settlement
26 Class member are deemed to have waived (i) the provisions of California Civil Code
27 § 1542, which provides that a general release does not extend to claims that the
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1 creditor or releasing party does not know or suspect to exist in his or her favor at the
2 time of executing the release and that, if known by him or her, would have materially
3 affected his or her settlement with the debtor or released party, and (ii) any similar
4 federal or state laws, rights, rules, or legal principle that is similar, comparable, or
5 equivalent to California Civil Code § 1542.

6 **OTHER PROVISIONS**

7 17. Pursuant to Sections IV.A.1 of the Agreement, the Settlement Fund,
8 consisting of Three Million, Two Hundred and Fifty Thousand Dollars
9 (\$3,250,000.00), shall be used to pay: (i) any necessary taxes and tax expenses, if any;
10 (ii) all costs and expenses associated with Class Notice, including but not limited to
11 all fees and expenses of the Settlement Administrator; (iii) all costs and expenses
12 associated with the administration of the Settlement, including but not limited to all
13 fees and expenses of the Settlement Administrator; (iv) any Attorneys' Fees award
14 made by the Court to Class Counsel pursuant to Section X(A) of the Agreement; (v)
15 any award of Expenses made by the Court to Class Counsel pursuant to Section X(B)
16 of the Agreement; (vi) any Service Awards made by the Court to Plaintiffs under
17 Section X(C) of the Agreement; (vii) cash payments distributed to Settlement Class
18 members who have submitted timely, valid, and approved claims pursuant to the
19 claims process outlined in Section V; and (viii) the Residual Funds, if any, pursuant
20 to Section V(L) of the Agreement.

21 18. If any monies remain in the Settlement Fund after the payments
22 described herein in Paragraph 17, and the expiration of checks mailed to members of
23 the Settlement Class, it shall be called the Residual Fund. Any value remaining in the
24 Residual Fund shall increase eligible Settlement Class members' relief on a *pro rata*
25 basis until the Residual Fund is exhausted, unless the parties mutually agree that a
26 supplemental distribution is economically infeasible. Should the parties mutually
27 agree that a supplemental distribution is economically infeasible, then the parties will
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1 meet and confer in good faith to reach an agreement on a *cy pres* recipient approved
2 by the Court. If the parties are unable to reach an agreement on a *cy pres* recipient,
3 then Younique, on the one hand, and Plaintiffs, on the other hand, may submit
4 alternative proposals for the *cy pres* recipient to the Court and the Court will select
5 the recipient.

6 19. Subject to the terms and conditions of the Agreement, the Court enters
7 an injunction against Younique requiring it to comply with the requirements in
8 Paragraph IV.B.1 of the Agreement.

9 20. The Agreement and this Final Approval Order, and all documents,
10 supporting materials, representations, statements and proceedings relating to the
11 Agreement, are not, and shall not be construed as, used as, or deemed evidence of,
12 any admission by or against Younique of: (a) liability, fault, wrongdoing, or violation
13 of any law, (b) the validity or certifiability for litigation purposes of the Settlement
14 Class, (c) the strength of any of the claims or allegations in the Complaint or any other
15 claims that could have been asserted in the Action, or (d) the infirmity of any defenses
16 to Plaintiffs' claims or allegations.

17 21. The Agreement and this Final Approval Order, and all documents,
18 supporting materials, representations, statements and proceedings relating to the
19 Settlement, shall not be offered or received into evidence, and are not admissible into
20 evidence, in any action or proceeding, except that the Agreement and this Final
21 Approval Order may be filed in any action by Younique or the Settlement Class
22 members seeking to enforce the Agreement or the Final Approval Order. This Final
23 Approval Order and the Agreement may be pleaded as a full and complete defense to
24 any action, suit, or other proceedings that has been or may be instituted, prosecuted
25 or attempted against the Released Parties in such capacity with respect to any of the
26 Released Claims, and may be filed, offered, received into evidence, and otherwise
27 used for such defense.

1 22. The Court hereby dismisses the Action in its entirety with prejudice, and
2 without fees or costs except as otherwise provided for herein.

3 23. Without affecting the finality of this Final Approval Order, the Court will
4 retain jurisdiction over this Action and the parties with respect to the interpretation,
5 implementation and enforcement of the Agreement for all purposes.

6 24. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there is
7 no just reason for delay in the entry of this Final Approval Order and Judgment and
8 immediate entry by the Clerk of the Court is expressly directed.

9 NOW, THEREFORE, the Court hereby enters judgment in this matter
10 pursuant to Rule 58 of the Federal Rules of Civil Procedure.

11 **SO ORDERED this ____ day of _____, 2019.**

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16 Honorable James V. Selna
17 United States District Judge
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