

**SUPERIOR COURT  
(CLASS ACTION)**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**No.: 500-06-000626-123**

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**LÉNINE PETIT**

**Petitioner**

**v.**

**NEW BALANCE ATHLETIC SHOE, INC.**

**NEW BALANCE, INC.**

**NEW BALANCE CANADA, INC.**

**Respondents**

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**SETTLEMENT AGREEMENT**

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In consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following has been agreed to by the Parties:

1. **WHEREAS** this settlement agreement (the “**Agreement**”) is entered into by and among (i) named petitioner Lénine Petit on behalf of himself and the Class defined below and (ii) New Balance Athletic Shoe, Inc., New Balance, Inc. and New Balance Canada, Inc. (collectively, “**New Balance**”).
2. **WHEREAS** the Agreement shall be submitted to the Superior Court of Quebec for approval.
- I. **Specifications and Definitions:**
3. All amounts of money mentioned in the present Agreement are in Canadian dollars.
4. In this Agreement, in addition to the terms that are defined elsewhere herein, the following terms have the meanings specified below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.
  - (a) “**Action**” or “**Class Action**” means *Petit v. New Balance Athletic Shoe, Inc. et als.*, Superior Court of Quebec, District of Montreal, Court File Number 500-06-000626-123;

- (b) **“Agreement”** or **“Settlement”** or **“Settlement Agreement”** means the written settlement agreement set out herein, including its schedules and any written executed amendments thereto;
- (c) **“Approval Hearing”** means court hearing held to determine whether the Agreement should be approved;
- (d) **“Approval Order”** means the court order approving the Agreement;
- (e) **“Claim”** means the claim of a Class Member or his or her representative submitted on a Claim Form as provided in this Agreement or in accordance with paragraph 21 hereof;
- (f) **“Claimant”** means a Class Member who has submitted a Claim.
- (g) **“Claim Form”** means the form submitted by a Class Member in order to obtain Compensation;
- (h) **“Claim Period”** means the time period in which Class Members may submit a Claim Form. The Claim Period shall run for one hundred eighty (180) days following the publication of the Pre-Approval Notice;
- (i) **“Class”** means the Class as set out more fully below;
- (j) **“Class Counsel”** means Consumer Law Group Inc.;
- (k) **“Class Member”** means a Person who resides in Canada and falls within the definition of the Class set out more fully below;
- (l) **“Class Period”** means the period from January 1, 2010, up to and including the date of the Approval Hearing;
- (m) **“Compensation”** means the cash given to a Class Member pursuant to the terms of the Agreement;
- (n) **“Controlled Instability Shoe”** means any shoe that utilizes designs aimed at creating some level of instability to utilize the wearer’s muscles in a different or altered manner from traditional shoes;
- (o) **“Court”** means the Superior Court of Quebec;
- (p) **“Defence Counsel”** means Borden Ladner Gervais LLP;
- (q) **“Effective Date”** means 30 days after the Approval Order has been signed and entered and no appeals have been taken therefrom, or if any appeals have been taken, the date upon which such appeals are finally resolved in such manner as to permit the completion of the settlement in accordance with the terms and conditions of the Agreement;

- (r) **“Litigation”** means the Class Action;
- (s) **“Opt Out Deadline”** means 90 days following the publication of the Pre-Approval Notice;
- (t) **“Opt Out Form”** means the form that enables a Class Member to exclude himself from the Agreement;
- (u) **“Parties”** means the Representative Plaintiff and New Balance;
- (v) **“Person”** means a physical person;
- (w) **“Pre-Approval Notice”** means the notice that advises Class Members of the upcoming Approval Hearing of the Agreement;
- (x) **“Pre-Approval Order”** means the court order rendered with respect to the proposed Pre-Approval Notice;
- (y) **“Release”** means the release and waiver set forth in this Agreement;
- (z) **“Released Parties”** means New Balance Athletic Shoe, Inc., New Balance, Inc. and New Balance Canada, Inc., and each of their present or past directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns;
- (aa) **“Releasing Persons”** means the Representative Plaintiff, on behalf of himself, and the Class Members, as well as their respective heirs, executors, administrators, representatives, agents, partners, successors and assigns;
- (bb) **“Representative Plaintiff”** means the petitioner named in the Litigation, specifically, Lénine Petit;
- (cc) **“Schedules”** means the schedules incorporated by reference into to the Agreement;
- (dd) **“Settlement Benefits”** means the monetary and other relief available to Class Members;
- (ee) **“Settlement Cap”** means the amount of \$155,00.00, inclusive of all valid Claims, costs of the Pre-Approval Notice and all amounts that may be due to the *Fonds d’aide aux recours collectifs*;
- (ff) **“Settling Parties”** means the Representative Plaintiff and New Balance Athletic Shoe, Inc., New Balance, Inc. and New Balance Canada, Inc.;

- (gg) “**Toning Shoes**” means New Balance’s Rock&Tone, TrueBalance, and Aravon Ria, Aravon Riley, and Aravon Quinn shoes referred to as toning shoes, and other applicable New Balance shoes referred to as toning shoes, purchased by Class Members during the Class Period;

**II. The Class:**

5. The Class is composed of all Persons residing in Canada who have purchased New Balance Toning Shoes during the Class Period (N.B. the date of the Approval Hearing). Excluded from the Class are all Persons who timely and validly request exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Pre-Approval Order.
6. The Approval Order, once issued, shall bind all those Class Members in Canada.

**III. History of the Litigation:**

7. Representative Plaintiff Lénine Petit filed a Motion to Authorize the Bringing of a Class Action and To Ascribe the Status of Representative (the “Motion to Authorize”) with the Superior Court of Quebec. The Motion to Authorize alleged, *inter alia*, that New Balance engaged in untrue and deceptive advertising, promotion and marketing practices associated with its toning shoes. The Representative Plaintiff sought leave to bring an action in damages, injunction relief and an action in exemplary damages against New Balance pursuant to the *Competition Act (Canada)*, R.S.C., 1985, c. C-34, the *Consumer Protection Act (Quebec)*, R.S.Q., c. P-40.1, and the *Civil Code of Quebec*, R.S.Q. 1991, c. 64.
8. New Balance has strenuously denied, and continues to deny, that it made any misrepresentations whatsoever with respect to the benefits of wearing its Toning Shoes. New Balance further holds that the Class Action does not meet the criteria for authorization specified in Article 1003 of the *Quebec Code of Civil Procedure* (the “*Code of Civil procedure*” or the “C.C.P.”), R.S.Q. c. C-25.

**IV. Settlement Negotiations:**

9. Class Counsel and Defence Counsel have engaged in good faith, constructive settlement discussions for several months. The Settling Parties knew about, approved and were kept informed of these ongoing discussions. On or about January 23, 2013, in conformity with the instructions provided by the Settling Parties, Class Counsel and Defence Counsel arrived at an agreement in principle to settle the Litigation.
10. The Representative Plaintiff and Class Counsel believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. They recognize and acknowledge the expense and length of the complex proceedings that will be required to prosecute the Litigation. The Representative Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks involved in continuing with the Litigation, as well as

the difficulties and delays inherent to class action proceedings. Moreover, the Representative Plaintiff and Class Counsel have concluded that the Agreement provides Class Members with benefits and is fair, reasonable, appropriate and in their best interests.

11. New Balance expressly denies any wrongdoing alleged in the Class Action and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Class Action. New Balance asserts that it has substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, New Balance has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, New Balance accepts the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.

**V. Settlement Benefits:**

12. Settlement Benefits shall consist of two primary components: (1) refunds to Class Members who submit valid Claims, and (2) New Balance's agreement to refrain from certain conduct relating to the marketing and advertising of its Toning Shoes.

**(a) *Direct compensation***

13. New Balance will pay no more than a maximum amount of \$155,000 (the "Settlement Cap") for payment of all valid Claim, costs of the Pre-Approval Notice and all amounts that may be due to the *Fonds d'aide aux recours collectifs*;
14. New Balance will provide to each individual Class Member that qualifies for Compensation the following:
  - a) For a single pair of Toning Shoes: an amount of \$100, without the necessity of proof of purchase.
  - b) For two or more pairs of Toning Shoes: a maximum amount of \$200, with proof of purchase required for at least one of the pairs of Toning Shoes.
15. For each Claimant who submits a valid Claim, New Balance shall provide payment as described above, so long as providing such Compensation does not exceed the Settlement Cap. If providing each Claimant with such Compensation will exceed the Settlement Cap, then in such circumstances each Claimant's Compensation shall be reduced on a *pro rata* basis.

16. For Quebec residents, it is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim the percentage of 2% on each individual Compensation paid in money to Class Members as provided for at s. 1(3)(a) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*, R.R.Q., c. R-2.1, r. 2. This means that Class Members residing in Quebec will actually receive 98% of the amount that is applicable to them.

**(b) Indirect compensation**

17. In addition to the relief discussed above, as part of this Agreement, New Balance will agree to take commercially reasonable efforts to refrain from the following conduct:
- a) New Balance will not make or assist others in making any claims that the Toning Shoes or the Controlled Instability Shoes, are effective in strengthening muscles or that wearing such product will result in quantified percentage or amount of muscle toning or strengthening, unless that representation is non-misleading and is supported by at least one adequate well controlled human clinical study.
  - b) New Balance will not make or assist others in making any other health or fitness benefit claims about the Toning Shoes and Controlled Instability Shoes, including, but not limited to, claims about muscle tone and/or muscle activation, unless that representation is non-misleading and New Balance possesses and relies upon competent and reliable scientific evidence to substantiate that the representation is true.
  - c) New Balance will not misrepresent or assist others in misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study or research relating to New Balance's Toning Shoes or Controlled Instability Shoes. For the purposes of this agreement, third party sales of Controlled Instability Shoes in connection with product packaging already in third party retail inventory prior to the Effective Date shall not constitute a violation of this Agreement.

**VI. Claims Process and Administration:**

18. In order to obtain Compensation:
- a) Class Members must complete and submit by mail a timely Claim Form (Schedule A of the present Agreement)

- b) in which he/she solemnly declares under penalty of law that he/she has purchased in Canada the Toning Shoes between January 1, 2010 up to and including the date of the Approval Order;
- c) AND, only if applicable, provide one or more proof(s) of purchase for the Toning Shoes;
- d) the Claim Form must be mailed to Borden Ladner Gervais LLP, attention Marie Gamelin at 1000 de la Gauchetière Street West, 9<sup>th</sup> Floor, Montreal, Quebec, H3B 5H4;
- e) the Claim Forms are available on Class Counsel's website at [www.clg.org](http://www.clg.org).
19. The Claim Form must be postmarked no later than October 25, 2013.
20. Class Members are entitled to submit only one claim form.
21. Claims submitted in connection with the settlement in *Kimberly Carey, et al. v. New Balance Athletic Shoe, Inc.*, Case Number 11-cv-10001-LTS, in the United States District Court for the District of Massachusetts (the "U.S. Settlement"), by Canadian residents who are Class Members herein, and which were not paid by the Claims Administrator in the U.S. Settlement (the "U.S. Settlement Claimants"), shall be transferred for consideration under this Settlement Agreement. Any such transferred claims shall be considered timely submitted pursuant hereto.
22. The Parties have designated Borden Ladner Gervais LLP ("BLG") to receive the claims and issue the payments to Class Members. All of BLG's fees, costs, expenses, disbursements, etc. will be borne solely by New Balance, in addition to the Settlement Benefits as outlined above.
- New Balance through BLG shall be responsible for, without limitation: (a) arranging for the dissemination of the Pre-Approval Notice; (b) responding to requests from Class Members for the Pre-Approval Notice; (c) receiving and maintaining Class Member correspondence regarding requests for exclusion and objections to the Settlement; (d) forwarding verbal and written inquiries to Class Counsel for a response, if warranted; (e) receiving correspondence from Class Members; (f) responding to requests from Class Counsel and forward to Class Counsel for reply; (g) translating any and all documentation relating to the Pre-Approval Notice, the Agreement itself, its Schedules, and/or the implementation thereof, etc. from English to French; and (h) otherwise implementing and/or assisting with the Pre-Approval Notice, the Approval Order, and/or the Settlement Benefits of the Settlement.
23. If BLG determines that a Claim meets the requirements specified above, BLG shall send the Class Member, by mail, the applicable Compensation within the delay specified by paragraph 25 herein.

24. If the Class Member submits an incomplete Claim or Claim Form, BLG shall give the Class Member written notice of the deficiencies and the Class Member shall have 60 days from the date of the written notice to cure the deficiencies. If, within the time provided, the Class Member cures these deficiencies and BLG determines that the Claim or Claim Form complies with the requirements specified above, BLG shall send the Class Member, by mail, the applicable Compensation. Class Member shall have only one opportunity to cure.
25. BLG shall begin to pay timely, valid, and approved Claims commencing ten (10) days after the close of the Claim Period so long as this period is after the Effective Date, or sooner upon New Balance and Class Counsel's joint direction, but not before the issuance of the Court's Approval Order. Before payment to Claimants is made, BLG shall provide to Class Counsel an accounting with such information as: all valid and rejected Claim submissions, Pre-Approval Notice costs, amounts due to the *Fonds d'aide aux recours collectifs*, etc.

**VII. Dispute Resolution:**

26. Any dispute involving the right of a Class Member to participate in the Agreement or receive Compensation shall be dealt with first by New Balance, which will try to settle it. If there is still a dispute, Class Counsel and Defence Counsel shall meet, confer and attempt to reach a resolution, and, if unable to resolve the issue, shall submit for decision any issue on which they disagree to the judge of the Superior Court of Quebec who will be seized with the approval of the Agreement.

**VIII. Notice Requirements and Opting Out:**

**(a) *Pre-Approval Notice***

27. As part of the Settlement Cap, New Balance shall pay the costs to notify Class Members of the Agreement by way of a Pre-Approval Notice which states inter alia: (i) that the Agreement will be submitted to the Superior Court of Quebec for approval, specifying the date and place of such proceedings; (ii) the nature of the Agreement and the method of its execution; (iii) the procedure to be followed by the Class Members to prove their Claims; (iv) that the Class Members have the right to present their arguments to the Court as regards the Agreement; and (v) the procedure to be followed in order to file and Opt Out Form on or before the Opt Out Deadline. Attached as Schedule B is the proposed Pre-Approval Notice.
28. The Pre-Approval Notice shall be disseminated on or before April 29, 2013 in the following manner:
- a) once in the form of an approximately 1/3 of a page advertisement in the first section of the nationally distributed edition of the newspaper the Globe & Mail;
  - b) once in the form of an approximately 1/3 of a page advertisement in the first section of the newspaper *La Presse*, in the version(s) that are distributed in

- Montreal and any other edition available in the province of Quebec and elsewhere in Canada;
- c) once in the form of an approximately 1/3 of a page advertisement in the first section of the newspaper Metro News Canada, which is distributed in major urban centres across Canada;
  - d) a Canadian Newswire (CNW) news release in both English and French;
  - e) posting on New Balance's Canadian corporate twitter page <https://twitter.com/newbalancecan> until at least October 25, 2013;
  - f) posting on Class Counsel's website [www.clg.org](http://www.clg.org) until at least October 25, 2013;
  - g) a Google Ad Words cost-per-click campaign of no less than \$2,000 applicable to Canadian residents using the following keywords: "New Balance", "New Balance Canada", "New Balance Settlement", « Règlement New Balance », "New Balance Class Action", « Recours collectif New Balance », "New Balance Toning Shoe", « New Balance chaussure tonifiante », "Toning Shoe", « chaussure tonifiante », "Rock Tone", "True Balance", "Aravon Ria", "Aravon Riley", "Aravon Quinn" – which means that Class Members will be directed to Class Counsel's webpage dedicated to the New Balance Settlement;
29. New Balance may also choose to issue its own press release, which must be in both French and English, simultaneously with the publication mentioned in the preceding paragraph at its sole discretion and expense.
30. Prior to the dissemination of the Pre-Approval Notice, BLG shall, at New Balance's sole expense, and Class Counsel shall establish toll-free telephone numbers that will provide Settlement-related information to Class Members in both English and French.
31. Prior to the dissemination of the Pre-Approval Notice, the Pre-Approval Notice and dissemination shall be submitted to the Superior Court of Quebec for a Pre-Approval Order, as indicated above.

**(b) Opting Out of the Agreement**

32. Class Members who do not wish to be bound by the Agreement may opt out of the Agreement. Class Members who want to opt out and who are residents of Quebec must do so by giving notice to the Clerk of the Superior Court of Quebec by the Opt Out Deadline and in the manner prescribed by the *Code of Civil Procedure*, as well as complete the Opt Out Form, attached as Schedule C, and file it with BLG by the Opt Out Deadline. All other Class Members who want to opt out must complete the Opt Out Form, attached as Schedule C, and file it with BLG by the Opt Out Deadline.

33. BLG, within thirty (30) days following the Opt Out Deadline, shall provide Class Counsel a list of all Opt Out Forms. BLG must also cross reference the Class Members who have opted out against the filed claims to ensure that someone who has opted out cannot receive any benefit under the Agreement.

**IX. Court Approval of the Agreement:**

34. The Parties shall use their best efforts to effectuate this Settlement.

**(a) *Pre-Approval Notice***

35. Promptly following execution of the Agreement, Class Counsel shall file a motion with the Superior Court of Quebec for approval of the Pre-Approval Notice and shall seek to obtain the Pre-Approval Order.

**(b) *Motions for Approval***

36. Class Counsel shall file a motion with the Superior Court of Quebec for approval of the Agreement and shall seek to obtain the Approval Order.

37. Subject to judicial approval and only for purposes of the Agreement, New Balance shall consent to the authorization of the Class Action pursuant to articles 1002, 1003, and 1006 C.C.P.

38. No later than 10 days before the Approval Hearing, BLG shall provide Class Counsel with an affidavit or declaration, by a competent affiant or declarant, attesting that the Pre-Approval Notice has been disseminated in accordance with the Pre-Approval Order.

39. Objections to the Agreement can be formulated by Class Members before the Court. Objections, including all briefs or other papers or evidence in support thereof, shall be postmarked, served, filed and received by Class Counsel and Defence Counsel no later than 10 days prior to the Approval Hearing. Any Class Member who wishes to appear before the Court at the Approval Hearing must postmark, serve and file notice of such intent to be heard no later than 10 days prior to the Approval Hearing.

40. At the Approval Hearing, Class Counsel and Defence Counsel shall move for final approval of the Agreement and present their arguments in support thereof.

**(c) *Failure to Obtain Approval Order***

41. If the Agreement is not approved by the Superior Court of Quebec, the Settling Parties shall be restored to their respective positions in the Litigation, as if no settlement had ever been signed.

**X. Class Counsel Fees and Expenses:**

42. New Balance agrees to pay Class Counsel Fees and Expenses in accordance with the terms and conditions specified below. This amount is paid over and above any Compensation to Class Members and will not come out of or in any way reduce the Settlement Benefits payable to Class Members under this Agreement.
43. Within the Motion for leave to approve the Agreement, Class Counsel will be asking the Court to approve their global award of attorney fees and for reimbursement of their expenditures (“Class Counsel Fees and Expenses”) of \$ 95,000 plus the Goods and Services Tax (“GST”) and Quebec Sales Tax (“QST”). Defence Counsel shall confirm to the Court at the Approval Hearing that they and New Balance believe the Class Counsel Fees and Expenses to be fair, reasonable and appropriate and that New Balance has agreed to pay the said amount of Class Counsel Fees and Expenses in this case.
44. New Balance shall pay the Class Counsel Fees and Expenses to Defence Counsel in trust for Class Counsel 5 business days after the Superior Court of Quebec has issued the Approval Order. All amounts deposited in trust shall be released to Class Counsel by Defence Counsel 5 business days after the Effective Date.

**XI. Award for Representative Plaintiff:**

45. New Balance will pay \$ 1,000 to Representative Plaintiff Lénine Petit in consideration for the time and efforts he has put into the Litigation and its preparation. New Balance shall pay this award to Defence Counsel in trust for Representative Plaintiff 5 business days after the Superior Court of Quebec has issued the Approval Order. This award deposited in trust shall be released to Class Counsel by Defence Counsel 5 business days after the Effective Date. Class Counsel shall then remit this award to Representative Plaintiff.

**XII. Fonds d'aide aux recours collectifs:**

46. It is understood that this Agreement provides Class Members with an individual liquidated claim under Article 1028 C.C.P., and as such, with respect to Quebec residents only, the *Fonds d'aide aux recours collectifs* shall be entitled to 2% of each individual Class Member's Compensation paid in money, as is provided for at s. 1(3)(a) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*, R.R.Q., c. R-2.1, r. 2.

**XIII. Releases:**

47. Upon the Effective Date, the Representative Plaintiff on behalf of himself and the Class Members hereby fully, finally, and forever release, relinquish, and discharge the Released Persons from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorney fees, losses, expenses, obligations or demands, of any kind whatsoever that the Releasing Persons may

have or may have had, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged or could have been alleged in the Litigation, regarding the representation about the benefits of wearing New Balance Toning Shoes sold in Canada and bought or obtained by the Representative Plaintiff or Class Members on or before the [Date of Approval Order], other than for bodily injury (“**Released Claims**”).

48. Nothing in this Agreement shall constitute or shall be deemed to constitute a waiver by New Balance of any defence with respect to any Class Member who opts out of the Agreement, or in the event this Agreement is not approved by the Court.
49. Any Compensation paid or given pursuant to the Agreement is made without admission of liability. The Releasing Parties agree that the Agreement, the Pre-Approval Order and the Approval Order rendered in respect of the Agreement shall not constitute an admission or be used as evidence against New Balance. Nothing in the Agreement shall be used for any purpose in any legal proceeding unless expressly authorized herein.

**XIV. Miscellaneous Provisions:**

50. The Agreement and its Schedules supersede all prior settlement agreements, whether oral or in writing, pertaining to the subject matter of the Litigation and constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any Settling Party concerning the Agreement or its Schedules other than the representations, warranties, and covenants covered and memorialized herein.
51. The Settling Parties acknowledge that it is their intent to conclude the Agreement, and they agree to co-operate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement.
52. The Settling Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Agreement shall not be deemed an admission by any Settling Party as to the merits of any claim or defence. The Settling Parties agree that the consideration provided to the Class Members and the other terms of the Agreement were negotiated in good faith, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.
53. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of New Balance, or is or may be deemed to be or may be

used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of New Balance in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. New Balance may file this Agreement and/or the Approval Order in any action that may be brought against it in order to support any defence or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.

54. All of the Schedules to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.
55. Unless otherwise ordered by the Court, the Settling Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.
56. The captions contained in the Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of the Agreement or the intent of any provision thereof.
57. Except as otherwise provided herein, the Settling Parties shall bear their own respective costs.
58. Class Counsel, on behalf of the Class Members, are expressly authorized by the Representative Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class Members whom Class Counsel deems appropriate.
59. Each counsel or other Person executing the Agreement or any of its Schedules on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.
60. The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original counterparts shall be filed with the Superior Court of Quebec.
61. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.
62. The Superior Court of Quebec shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement and all parties hereto submit to the jurisdiction of this Court for purposes of implementing and enforcing the Agreement.

63. None of the Settling Parties, or their respective counsel, shall be deemed the drafter of this Agreement or its Schedules for purposes of construing the provisions thereof. The language in all parts of the Agreement and its Schedules shall be interpreted according to its fair meaning, and shall not be interpreted for or against any of the Settling Parties as the drafter thereof.
64. This Agreement and the Schedules hereto shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Quebec.
65. The parties acknowledge that they have required and consented that the Agreement and all related documents be prepared in both French and English. Both versions are equally authoritative. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en français et en anglais. Les deux versions ont la même valeur.*
66. The Agreement constitutes a transaction pursuant to Articles 2631 and following of the *Civil Code of Quebec* and the Settling Parties are hereby renouncing to any errors of fact, law and/or calculation.
67. Any and all notices, requests, directives or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by e-mail, by postage prepaid mail or by facsimile transmission followed by postage prepaid mail and shall be addressed as follows:

IF TO:

**LÉNINE PETIT**

Care of:

Me Jeff Orenstein  
**Consumer Law Group Inc.**  
 4150, Sainte.-Catherine St. West  
 Suite 330  
 Montreal, Quebec H3Z 2Y5  
 Phone 514-266-7863  
 Fax 514-868-9690  
 jorenstein@clg.org

IF TO:

**NEW BALANCE ATHLETIC SHOE, INC.**

**NEW BALANCE, INC.**

**NEW BALANCE CANADA, INC.**

Care of:

Marie Gamelin  
**Borden Ladner Gervais LLP**  
 1000, de la Gauchetière Street West  
 Suite 900  
 Montreal, Quebec H3B 5H4  
 Phone 514-954-2595  
 Fax : 514-954-1905

mgamelin@blg.com

SIGNED in Montreal on March 26, 2013

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(s) Robert Charbonneau  
Borden Ladner Gervais LLP  
On behalf of New Balance Athletic Shoe, Inc., New Balance, Inc. and New Balance  
Canada, Inc.

SIGNED in Montreal on March 26, 2013

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(s) Jeff Orenstein  
Consumer Law Group Inc.  
On behalf of Lénine Petit

Schedule A**New Balance Shoe Class Action Settlement****Claim Form**

Use this claim form only if you bought eligible New Balance Toning shoes from January 1, 2010 to May 30, 2013. The eligible New Balance shoes are listed below.

**All claim forms must be completed and submitted by mail no later than October 25, 2013 to:**

**New Balance Settlement Canada  
c/o Borden Ladner Gervais LLP, attention Marie Gamelin  
1000, de la Gauchetière Street West, Suite 900  
Montreal, Quebec, H3B 5H4**

<b>CLAIM INFORMATION</b>
<b>CLASS MEMBER INFORMATION</b>

Name:

Mailing Address:

Number and Street

City:  Province:  Postal Code:

Best Telephone Number:  (      )      -      E-mail Address:

<b>PURCHASE INFORMATION – NEW BALANCE SHOES</b>	
Eligible New Balance Shoe Types	Quantity Purchased
Rock&Tone	
TrueBalance	
Aravon Ria	
Aravon Riley	
Aravon Quinn	

Please note: No proof of purchase is necessary to submit a claim of \$100.00 (one pair of Toning Shoes). If you submit a claim where the amount sought exceeds \$200.00 (two or more pairs of Toning Shoes), your claim will be reduced to a maximum amount of \$200.00 and further BLG may request proof of purchase to validate your claim. If requested, you must provide proof of purchase or your claim will be reduced or denied and you may not appeal the reduction or denial.

Payment amounts to eligible Class Members will vary depending upon the number and amounts claimed by all Class Members and other adjustments and deductions as specified in the Settlement Agreement. The amount could be up to \$100 for each pair of Toning Shoes purchased up to a maximum of \$200. If the total amount of all claims submitted by all Class Members exceeds the total available relief, each eligible Class Member's award shall be reduced on a *pro rata* basis. For example, if notice costs are \$20,000, there will be \$135,000 left to pay Compensation (i.e. \$155,000 - \$20,000). This means that 1,350 Class Members will be able to receive Compensation of \$100 each (i.e.  $1,350 \times \$100 = \$135,000$ ). If there are double the amount of eligible Class Members who submit Claims (i.e. 2,700), then the Compensation will be reduced to \$50 each.

**Be advised that cheques will only begin to be mailed to eligible Class Members for Compensation hereunder no earlier than November 5, 2013.**

**Should you move in the time between when you submit this Claim form and when payment is made, it is your responsibility to inform BLG of your change of address.**

#### **AFFIRMATION**

I declare or affirm, under penalty of law, that the information in this claim form is true and correct to the best of my knowledge and that I purchased the applicable product(s) claimed above between January 1, 2010 and May 30, 2013. I understand that my claim form may be subject to audit, verification and Court review.

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

**Claim Forms must be postmarked no later than October 25, 2013.  
Questions? Visit [www.clg.org](http://www.clg.org) or call, toll-free, 1-888-909-7863.**

## Schedule B

### Pre-Approval Notice

# **IF YOU PURCHASED NEW BALANCE TONING SHOES YOUR RIGHTS MAY BE AFFECTED BY A PROPOSED CLASS ACTION SETTLEMENT**

A proposed class action settlement has been reached involving New Balance Toning Shoes.

## **WHO IS INCLUDED?**

You may be a Class Member if you purchased in Canada the New Balance Toning Shoes listed below from January 1, 2010 until May 30, 2013.

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## **TONING SHOES:**

**Rock&Tone, TrueBalance, Aravon Ria, Aravon Riley and Aravon Quinn**

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## **WHAT IS THIS CASE ABOUT?**

The lawsuit claims that New Balance made certain misrepresentations regarding the benefits of wearing its Toning Shoes in its marketing and sales. New Balance denies it did anything wrong. The Court did not decide which side was right. Instead, the parties have decided to settle.

## **WHAT DOES THIS SETTLEMENT PROVIDE?**

A maximum Settlement Cap of not more than \$155,000 is intended to pay claims to eligible Class Members and the costs of the settlement notice. New Balance is also agreeing to refrain from certain practices and to separately pay attorneys' fees, an award to the Representative Plaintiff and the costs of settlement administration. Full details about the Settlement are on the website [www.clg.org](http://www.clg.org).

## **WHAT TYPE OF COMPENSATION CAN YOU RECEIVE?**

New Balance will provide to each individual Class Member that qualifies for Compensation the following:

- For a single pair of Toning Shoes: an amount of \$100, without the necessity of proof of purchase.
- For two or more pairs of Toning Shoes: a maximum amount of \$200, with proof of purchase required for at least one of the pairs of Toning Shoes.

For each Claimant who submits a valid Claim, New Balance shall provide payment as described above, so long as providing such Compensation does not exceed the Settlement Cap. If providing each Claimant with such Compensation will exceed the Settlement Cap, then in such circumstances each Claimant's Compensation shall be reduced on a *pro rata* basis.

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

To get money, eligible Class Members must submit a claim form by mail postmarked no later than **October 25, 2013**. Payments could be up to \$100 for each pair of Toning Shoes purchased, up to a maximum of \$200 for multiple pairs of Toning Shoes, but will vary depending upon the number of Claims submitted by all Class Members and the costs of settlement notice, as specified more fully in the Settlement Agreement.

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

If you are a Class Member, you may (1) do nothing; (2) exclude yourself; (3) send in a Claim Form; and/or (4) object to the settlement. If you don't want to be bound by the settlement, you must exclude yourself. However, if you exclude yourself, you can't get a payment, but you can sue New Balance for these claims. If you stay in the Class, you may submit a Claim Form and/or object to the settlement.

### **WHAT ARE THE IMPORTANT DATES AND DEADLINES?**

A motion to approve the Settlement will be heard by the Superior Court of Quebec, 1 Notre Dame Street East, Montréal, Quebec on **May 30, 2013 at 8:40 a.m. in room 2.08**.

If the proposed Settlement is approved, it will be binding on all Class Members except those who timely and properly opt out.

If you wish to opt out, you must no later than **July 29, 2013**: i) complete and submit by mail the Opt Out Form; ii) the Opt Out Form is available on Class Counsel's website at **www.clg.org**. Class Members who want to opt out and who are residents of Quebec must IN ADDITION give notice to the Clerk of the Superior Court of Quebec.

If you wish to object to the proposed settlement, you must send a written notice of objection to Class Counsel and Defence Counsel by no later than **May 20, 2013**. Your written objection should include: (a) your name, address, e-mail address and telephone number; (b) a brief statement of the reasons for your objection; and (c) whether you plan to attend at the hearing in person or through a lawyer, and if by lawyer, the name, address, e-mail address and telephone number of the lawyer. Class Members who do not oppose the proposed settlement need not appear at the settlement approval hearing or take any other action at this time.

### **WHEN SHOULD I MAKE A CLAIM?**

The Claim Form is available on Class Counsel's website at **www.clg.org**. A Claim Form must be postmarked no later than **October 25, 2013**. The Claim form must be sent by mail to: New Balance Settlement Canada c/o Borden Ladner Gervais LLP, attention Marie Gamelin at 1000, de la Gauchetière Street West, Suite 900, Montreal, Quebec, H3B 5H4. There will be no further notice in the newspapers of this Settlement Agreement.

### **WHEN DO I GET PAID?**

Cheques will only begin to be mailed to eligible Class Members for Compensation at the earliest starting on **November 5, 2013**, assuming that the Settlement is approved and that such judgment has become final.

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

A complete copy of the Settlement Agreement and detailed information on how to obtain or file a Claim are available on Class Counsel's website at [www.clg.org](http://www.clg.org). To obtain a paper copy or for other information, please call Class Counsel at the numbers below.

**WHO REPRESENTS ME?**

The Class Counsel, or law firm representing the petitioner, is the following:

Jeff Orenstein  
**Consumer Law Group Inc.**  
4150, Sainte-Catherine St. West, Suite 330  
Montreal, Quebec, H3Z 2Y5  
Phone:  
1-888-909-7863 Toll Free  
514-266-7863 Montreal  
416-479-4493 Toronto  
613- 627-4894 Ottawa  
Email: [jorenstein@clg.org](mailto:jorenstein@clg.org)  
Website: [www.clg.org](http://www.clg.org)

If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

This notice has been approved by the Superior Court of Quebec.

Schedule C

## Opt Out Form

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**NEW BALANCE TONING SHOES CLASS ACTION SETTLEMENT  
OPT OUT FORM**

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Class Members are bound by the terms of the Settlement Agreement, unless they opt out of the class action.

If you opt out, you will not be entitled to make a claim or to receive any Compensation. If you opt out, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your claim. By opting out, you will take full responsibility for taking all necessary legal steps to protect your claim.

If you wish to opt out, you must no later than **July 29, 2013**, complete and submit by mail the present Opt Out Form to the following address: **Borden Ladner Gervais LLP, attention Marie Gamelin, 1000 de la Gauchetière Street West, Suite 900, Montreal, Quebec, H3B 5H4;**

Class Members who want to opt out and who are residents of Quebec must IN ADDITION give notice to the Clerk of the Superior Court of Quebec at:

Clerk of the Superior Court of Quebec  
Palais de Justice  
1, Notre-Dame Street East  
Montreal (Quebec) H2Y 1B6  
Court file no. 500-06-000626-123

**THIS IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
IT EXCLUDES YOU FROM MAKING A CLAIM IN THE SETTLEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO RECEIVE BENEFITS UNDER THE  
SETTLEMENT.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: _____
<b>Identification of person signing this Opt Out Form (please check):</b>
<input type="checkbox"/> I represent that I purchased New Balance Toning Shoes and am the above identified Class Member. I am signing this Opt Out Form to EXCLUDE myself from entitlement to benefits under the New Balance Toning Shoes Settlement Agreement.
<b>Purpose of Opting Out (check only one):</b>
<input type="checkbox"/> My current intention is to begin individual litigation against New Balance Athletic Shoe, Inc., New Balance, Inc. and/or New Balance Canada, Inc. to seek to recover damages related to the purchase of New Balance Toning Shoes.
<input type="checkbox"/> I am opting out of the class action for a reason other than to begin individual litigation against New Balance Athletic Shoe, Inc., New Balance, Inc. and/or New Balance Canada, Inc. to seek to recover damages related to the purchase of New Balance Toning Shoes. I do not intend to begin individual litigation against New Balance Athletic Shoe, Inc., New Balance, Inc. and/or New Balance Canada, Inc. with respect to New Balance Toning Shoes.
<b>I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE ANY COMPENSATION PURSUANT TO THE NEW BALANCE TONING SHOES CLASS ACTION SETTLEMENT AGREEMENT</b>
I wish to opt out of the New Balance Toning Shoes Settlement Program in Canada.
DATE: _____
_____ Name of Class Member
_____ Signature of Class Member