

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

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SUSAN SABOL, VALERIE DONE, and	:	
KATHLEEN KLODNER on behalf of	:	CIVIL ACTION NO.
themselves and all others similarly situated,	:	2:11-cv-04586-KM-MAH
 Plaintiffs,	:	
 -against-	:	
	:	AMENDED SETTLEMENT AGREEMENT
HYDROXATONE, LLC and ATLANTIC	:	
COAST MEDIA GROUP LLC	:	
 Defendants.	:	
	:	
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AMENDED CLASS ACTION SETTLEMENT AGREEMENT

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This Amended Class Action Settlement Agreement (“Amended Settlement Agreement” or “Amended Agreement”) is entered into, subject to final approval of the Court and entry of final judgment of dismissal with prejudice, between plaintiffs Susan Sabol, Valerie Done and Kathleen Klodner (collectively, “Plaintiffs”) and the Settlement Class, as defined below, represented by Plaintiffs, and defendants Hydroxatone, LLC and Atlantic Coast Media Group (collectively, “Defendants”). Plaintiffs and Defendants are, at times, individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

1. On August 8, 2011, Tammy Gray, filed a putative class action complaint against Defendants in the United States District Court for the District of New Jersey, and was assigned Case Number 2:11-cv-04586-SRC-MAS (“Sabol/Done Case”), alleging causes of action under the New Jersey Consumer Fraud Act, and common law claims of breach of contract and unjust enrichment.
2. On March 23, 2012, Plaintiffs Susan Sabol and Valerie Done, on behalf of themselves and a nationwide class, filed a First Amended Complaint in the Sabol/Done Case, replacing the original putative class action representative and alleging an additional cause of action in the alternative under the Utah Consumer Sales Practices Act.
3. The parties have engaged in significant discovery, including the production of over 17,000 documents relating to the claims of the individual plaintiffs.
4. On August 14, 2012, Defendants and Plaintiffs participated in a mediation before Judge Stephen M. Orlofsky (ret.). After further negotiations, the Parties entered into a Memorandum of Understanding dated December 4, 2012.

5. On February 7, 2013, Plaintiffs Susan Sabol, Valerie Done and Kathleen Klodner filed a Second Amended Class Complaint.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINED TERMS

In addition to the terms defined above, the following terms shall have the meanings set forth below:

1.1 Recitals. The recitals set forth above are incorporated by reference and are explicitly made part of this amended agreement.

1.2 Definitions. As used in this Amended Agreement, capitalized terms shall have the meanings provided below, unless defined elsewhere in the Amended Agreement:

(a) “Action” means the civil action entitled *Sabol et al. v. Hydroxatone LLC et al.*, No. 2:11-cv-04586-KM-MAH, United States District Court for the District of New Jersey, including but not limited to the Second Amended Complaint, any prior complaints in this litigation, and any amendments to such prior complaints. “Action” also includes any claims that Defendants have asserted or could assert by way of any defense and/or Counterclaim.

(b) “Approved Claim” means a Claim submitted by a Claimant that the Settlement Administrator, in its discretion and subject to review by Counsel for the Parties, determines to be timely, accurate, complete, in proper form and with the requisite attestation. Defendants retain the right to verify all Approved Claims and to notify the

Settlement Administrator of any discrepancies, subject to Class Counsel review, as set forth in this Amended Settlement Agreement.

(c) “Approved Claimants” means those Claimants who submitted Approved Claims.

(d) “Auto-Ship Program,” for purposes of this Amended Settlement Agreement, means any practice by which Defendants mail to a consumer one or more products on a recurring basis. Auto-Ship Program includes the “Preferred-Customer Beauty Program.” A consumer is deemed to be a participant in an Auto-Ship Program if Defendants’ records indicate that the consumer is enrolled in such a program or received the product(s) via mail.

(e) “Claim” means a request for relief pursuant to Sections 5 and 6 of this Amended Settlement Agreement submitted by a Settlement Class Member on a Claim Form to the Settlement Administrator in accordance with the terms of the Amended Agreement.

(f) “Claim Form” means the online web form interface and written Claim form to be provided by the Settlement Administrator to Settlement Class Members. The online Claim Form interface shall be developed by the Settlement Administrator and is subject to review and approval by the Parties. The written Claim Form shall be substantially in the form of Exhibit A, attached hereto.

(g) “Claim Deadline” means the date by which all Claim Forms must be postmarked or received by the Settlement Administrator to be considered timely. The Claim Deadline shall be 30 days after Final Approval (Final Fairness) Hearing.

(h) “Claimant” means a Settlement Class Member who has submitted a Claim by the Claim Deadline.

(i) “Class Counsel” shall have the meaning set forth in Paragraph 8.2 of this Amended Settlement Agreement.

(j) “Class Representatives” means Susan Sabol, Valerie Done and Kathleen Klodner. “Former Class Representative” means Tami Gray.

(k) “Clear and Conspicuous” shall mean, when referring to a statement, disclosure, or any other information provided to consumers, that such statement, disclosure, or other information by whatever medium communicated is readily understandable for a reasonable consumer to read and comprehend, and is presented in such size, color, contrast, location, and audibility that is readily noticeable to reasonable consumers to whom it is disclosed.

(l) “Common Fund” means the fund in the amount of Three Million Dollars (\$3,000,000) to be deposited by Defendants into an interest bearing joint Escrow Account for the benefit of the Settlement Class, as set forth more fully in Section 4 of this Amended Settlement Agreement. Administrative costs and expenses, the cost of Notice, and attorneys’ fees and costs, and other amounts as set forth herein shall be paid from the Common Fund.

(m) “Complaint” means the Second Amended Class Action Complaint filed in this Action by Class Counsel.

(n) “Court” shall mean the United States District Court for the District of New Jersey, where this matter is currently pending before the Honorable Kevin McNulty.

(o) “Defendants” shall mean Hydroxatone LLC, Atlantic Coast Media Group LLC and their affiliates, subsidiaries, parents, related companies and their respective officers, directors, shareholders, managers, partners, contractors, representatives, employees, agents, marketing partners and predecessors, successors and assigns, and each of them.

(p) “Effective Date” means the first date by which all of the following events shall have occurred:

(i) the Court has entered the Preliminary Approval Order substantially in the form of Exhibit B attached hereto;

(ii) the Court has entered the Final Approval Order and Judgment substantially in the form of Exhibit C attached hereto and the Final Approval Order and Judgment has been entered approving the Amended Settlement Agreement in all respects, dismissing the Action with prejudice, and such Final Order being immediately appealable; and

(iii) the time for appeal from the Final Order shall have expired, or if any appeal of the Final Order as to the Amended Settlement Agreement is taken, that appeal shall have been finally determined by the highest court, including motions for reconsideration and/or petitions for writ of certiorari, and which Final Order is not subject to further adjudication or appeal, and has been confirmed in whole pursuant to the terms of the Amended Settlement Agreement and Final Order as entered and effective.

(q) “Email Notice” means the email notice substantially in the form of Exhibit D attached hereto. The Email Notice will be sent electronically to the last known

email address of all Settlement Class Members for whom Defendants have email addresses.

(r) “Escrow Account” means the escrow account established pursuant to and in accordance with the terms and conditions set forth in the Escrow Agreement between the Parties, substantially in the form of Exhibit E, with an escrow agent to be selected by the Parties. The terms and conditions of the escrow agreement attached as Exhibit E are material terms and are incorporated into this Amended Settlement Agreement by this reference.

(s) “Fee and Cost Application” means the written motion or application by which Susan Sabol, Valerie Done and Kathleen Klodner and/or Class Counsel request that the Court award attorneys’ fees, costs, expenses and Participation Awards (as defined herein).

(t) “Final Approval (Final Fairness) Hearing” means the hearing scheduled to take place at least one-hundred (100) days after the date of entry of the Preliminary Approval Order at which the Court shall:

(i) determine whether to grant final approval to this Amended Settlement Agreement and to finally certify the Settlement Class;

(ii) consider any timely objections to this Amended Settlement and all responses hereto; and

(iii) consider the Fee and Cost Application.

(u) “Final Approval Order and Judgment” means the Order, substantially in the form of Exhibit C attached hereto, in which the Court grants final approval of this Amended Settlement Agreement, finally certifies the Settlement Class,

and authorizes the entry of a final judgment and dismissal of the Action with prejudice. The form of the Final Approval Order and Judgment, attached as Exhibit C hereto, is a material term of this Amended Settlement Agreement.

(v) “Long Form Notice” or “Long Form Publication Notice” means the Notice of Proposed Amended Settlement of Class Action that will be published on the Settlement Administrator’s website substantially in the form attached as Exhibit F.

(w) “Net Common Fund” shall have the meaning set forth in Paragraph 4.1(a)(ii).

(x) “Notice” shall mean, collectively, the communications by which Settlement Class members are notified of this Amended Settlement Agreement and the Court’s Preliminary Approval of this Amended Settlement Agreement; this includes the Email Notice, Postcard Notice, Long Form Notice and Publication Notice.

(y) “Participation Award” shall be the consideration to the named Plaintiffs for their participation in this Action, as described in Paragraph 4.1(d).

(z) “Party” and “Parties” shall have the meaning set forth in the introductory paragraph of this Amended Settlement Agreement.

(aa) “Person(s)” shall mean any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

(bb) “Plaintiffs” shall have the meaning set forth in the introductory paragraph of this Amended Settlement Agreement.

(cc) “Plaintiffs’ Counsel” shall mean the firms of Cohen Milstein Sellers & Toll PLLC, McLaughlin & Stern LLP and the Law Office of Angela Edwards.

(dd) “Plaintiffs’ Lead Counsel” shall mean the firm of Cohen Milstein Sellers & Toll PLLC.

(ee) “Postcard Notice” or “Short Form Postcard Notice” means the postcard notice substantially in the form of Exhibit G attached hereto. The Postcard Notice will be sent by United States Mail to the last known physical address of all Settlement Class Members for whom an acceptable email address is not available.

(ff) “Preliminary Approval” or “Preliminary Approval Order” shall mean the Court’s entry of an order of preliminary approval of this Amended Settlement Agreement which shall be substantially in the form of Exhibit B attached hereto. The form of the Preliminary Approval Order attached hereto as Exhibit B is a material term of this Amended Settlement Agreement.

(gg) “Product Benefit(s)” refers to the Hydroxatone-branded products (as further described in Section 5 below) that will be distributed to Approved Claimants who select and/or are entitled to a Product Benefit(s) option under the terms of this Amended Settlement Agreement. Shipping and processing costs will be paid out of the Common Fund.

(hh) “Publication Notice” means the “Long-Form Publication Notice” and the “Short-Form Postcard Notice” substantially in the forms of Exhibits F and G, respectively, attached hereto. The Long-Form Publication Notice will be published on a specifically designated website accessible via the Internet and the Short-Form Postcard Notice will be published via the wire services of either PR Newswire or Business Wire.

(ii) “Related Actions” shall mean all actions asserting claims and allegations similar to those set forth in the Action, including any claims and/or litigations

arising out of or related to the purchase of any Hydroxatone-branded products or enrollment or participation in any Risk Free Trial and/or Auto-Shipment Program, including but not limited to the action entitled Margolis v. Hydroxatone LLC et al., Civil Action No. 2:11-cv-4355 (SRC)(CLW), which is pending in the United States District Court for the District of New Jersey.

(jj) “Released Claims” shall have the meaning set forth in Section 14 of this Amended Settlement Agreement.

(kk) “Released Parties” shall have the meaning set forth in Section 14 of this Amended Settlement Agreement.

(ll) “Releasing Parties” shall have the meaning set forth in Section 14 of this Amended Settlement Agreement.

(mm) “Request for Exclusion” means a valid request for exclusion from a member of the Settlement Class as set forth in Section 11 of this Amended Settlement Agreement.

(nn) “Risk-Free Trial” shall mean, for purposes of this Amended Settlement Agreement, any offer or program by which a consumer is able to receive and use product(s) for a specified period of time (including offers and programs in which consumers are charged a shipping and processing fee) and will only incur an obligation to pay for such product(s) if he or she does not take affirmative actions to cancel and return the product package or jar before the end of the specified trial period of time. For purposes of this Amended Settlement Agreement, consumers are deemed to participate in a Risk-Free Trial offer or program upon receiving Hydroxatone-branded products.

(oo) "Settlement Administrator" shall have the meaning set forth in Paragraph 9.1 of this Amended Settlement Agreement.

(pp) "Amended Settlement Agreement," "Amended Settlement," or "Amended Agreement" means this Amended Stipulation and Amended Agreement of Settlement, including all attached and/or incorporated exhibits.

(qq) "Settlement Amount" means the aggregate value of the Settlement Benefits.

(rr) "Settlement Benefits" shall mean the Cash Benefit and the Product Benefit.

(ss) "Settlement Class" shall have the meaning set forth in Paragraph 3.1 of this Amended Settlement Agreement.

(tt) "Settlement Class Member" (also referred to herein as "Class Member") means any Person within the Settlement Class who does not submit a timely and valid Request for Exclusion.

(uu) "United States" includes the fifty states of the United States and all territories and possessions of the United States.

1.3 Singular and Plural. Definitions used herein shall apply to the singular and plural forms of each term defined.

1.4 Gender. Definitions used herein shall apply to the masculine, feminine, and neuter genders of each term defined.

1.5 References to a Person. References to a Person are also to the Person's permitted successors and assigns.

1.6 Terms of Inclusion. Whenever the words “include,” “includes” or “including” are used in this Amended Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

2. COOPERATION BY THE PARTIES

2.1 Cooperation. The Parties and their counsel agree to cooperate fully with each other to promptly execute all documents and take all steps necessary to effectuate the terms and conditions of this Amended Settlement Agreement. The Parties and their counsel further agree to support the Final Approval of the Amended Settlement Agreement including against any appeal of the Final Approval Order and Judgment including any collateral attack on the Amended Settlement Agreement or the Final Approval Order and Judgment.

3. DEFINITION OF THE SETTLEMENT CLASS

3.1 Settlement Class. For purposes of this Amended Settlement Agreement only, the Parties agree to the certification, as discussed in Paragraph 8 of this Amended Settlement Agreement, of a Settlement Class as defined below:

“Settlement Class”

All Persons residing in the United States who between January 1, 2005 and [insert date of Preliminary Approval Order] paid for, and/or were charged for Hydroxatone-branded products, and/or were charged shipping and processing fees for such products, in connection with a Risk-Free Trial and/or Auto-Shipment Program.

3.2 Settlement Class Exclusions. The following persons are expressly excluded from the Settlement Class: Defendants, any entities in which Defendants has or had a controlling interest, any officers or directors of Defendants, the legal representatives, heirs, successors, and assigns of Defendants, any Judge assigned to this

action and his or her immediate family, and anyone who timely requests exclusions from the Class.

4. CONSIDERATION TO PLAINTIFFS AND THE SETTLEMENT CLASS

4.1 Consideration to Plaintiffs and the Settlement Class. In exchange for the terms and conditions set forth in this Amended Settlement Agreement, including without limitation the Released Claims, Defendants will provide the following consideration:

(a) **Common Fund.**

(i) Defendants will pay the Three Million Dollars (\$3,000,000) to establish a Common Fund for the benefit of the Settlement Class, in accordance with the terms and conditions set forth in the Escrow Agreement.

(ii) The following shall be paid out of the Common Fund prior to any distribution of the Common Fund to the Settlement Class:

(1) attorney's fees and costs;

(2) Participation Awards;

(3) administrative costs and the costs of Notice, but excluding internal costs to Defendants (except as providing in section 4.1(a)(ii)(4) herein) to administer the Settlement; and

(4) shipping and processing costs ("Shipping and Processing Costs") not to exceed \$7.95 per shipment, in connection with the provision of benefits to all Approved Claimants who elect to receive a Product Benefit.

(iii) All of the amounts referenced in Paragraph 4.1(a)(ii) shall be paid from the Common Fund prior to any distribution to the Settlement Class. The remainder of the Common Fund, following the deduction of the amounts set forth in Paragraph 4.1(a)(ii) above, shall be referred to herein as the "Net Common Fund."

(iv) Any distribution of monies from the Net Common Fund to provide Cash Benefits (as further described in Section 5 of this Amended Settlement Agreement) to the Settlement Class shall commence only after the Effective Date. In the event that Approved Claims for Cash Benefits exceed the available cash in the Net Common Fund, all Cash Benefits will be reduced in a pro rata proportion.

(v) In the event that there remains cash in the Net Common Fund after all Cash Benefits have been paid, or from Class Members failing to cash settlement checks, the remaining cash will be allocated by Class Counsel to The Electronic Frontier Foundation through *cy pres* distributions, or as otherwise directed by the Court.

(vi) Cash Benefits will be paid to Settlement Class Members in accordance with the Settlement Benefit Rules described in Section 5 of this Amended Settlement Agreement.

(vii) Defendants, and/or their insurer, shall deposit the Three Million Dollars (\$3,000,000) cash payment into the Escrow Account within ten (10) business days of the entry of the Preliminary Approval Order.

(b) **Product Benefit.** Defendants will provide to the Settlement Class up to \$4 million in Product Benefits in the form of Hydroxatone-branded products, as further described in Section 5 of this Amended Settlement Agreement.

(c) **Prospective Relief.**

(i) This Section 4.1(c) of this Amended Settlement Agreement shall apply to Defendants and Defendants' successors, assigns, officers, agents, servants, employees and representatives. Isolated violations of the Amended Settlement

Agreement, including marketing materials or representations, and technical and/or human errors, will not result in a formal action or motion to the Court, related to any matters set forth in this Amended Settlement Agreement, including but not limited to an application for an order of contempt, unless said violations are not appropriately addressed after they have been identified in writing to Defendants by Class Counsel.

(ii) Defendants hereby agree that they will adhere to the following for all Hydroxatone-branded products:

(1) Defendants will not use the word “free” by itself for offers where the customer is required to return the product that is being offered to avoid being billed for the price of such product;

(2) Defendants will disclose the terms of their Risk Free Trial and Auto-Shipment Program(s) in a Clear and Conspicuous manner before getting the customer’s final acceptance to the offer;

(3) Defendants will provide a simple mechanism on Hydroxatone-branded websites controlled by Hydroxatone that allows a customer to easily effectuate a cancellation of an Auto-Shipment Program; and

(4) Defendants will provide customers who provide an email address and who cancel with email confirmation to that email address of such cancellation within 10 days of the cancellation becoming effective.

(iii) Opportunity to Cure. Should Plaintiffs, their counsel, or any of the Class Members claim that Defendants are in violation of any of the terms set forth above, the Defendants must be afforded thirty (30) days prior written notice and opportunity to cure.

(d) **Participation Awards to Plaintiffs.** Defendants agree not to oppose Class Counsel's request for the Court to award a Participation Award of \$1,000 to each Class Representative, and \$500 to the Former Class Representative. If approved, such Participation Awards will be added to Class Counsel's cost bill submitted to the Court and paid directly by Class Counsel to Plaintiffs.

5. SETTLEMENT BENEFITS RULES

5.1 **Settlement Benefits.** In addition to all other consideration set forth in the Amended Agreement, including the Prospective Relief, Settlement Class Members may file a Claim with the Settlement Administrator to obtain a Settlement Benefit selecting either the Cash Benefit or the Product Benefit set forth in Paragraphs 5.3 and 5.4 of this Amended Settlement Agreement. To be eligible to receive a Settlement Benefit, Settlement Class Members must submit a completed Claim Form to the Settlement Administrator by the Claims Deadline and comply with the Settlement Benefit Rules described in this Amended Settlement Agreement.

5.2 **Claims-Based Settlement.** This is a claims-based settlement. There will be no reversion of any portion of the Common Fund to Defendants. All Settlement Class members who submit an Approved Claim will receive a *pro rata* share of the Net Common Fund and/or Product Benefit according to the following guidelines:

5.3 Group One Claimants

(a) "Group One Claimants" are Settlement Class Members who submit a Claim and represent, in a sworn statement on the Claim Form, that they

(i) tried to, attempted to, made efforts to, or took any actions designed to return Risk-Free Trial product(s) and/or Auto-Shipment Program product(s)

and paid more than shipping and processing and/or return postage in connection with such product and/or received additional shipments of product for which they paid, OR

(ii) cancelled and/or attempted to cancel their Auto-Shipment Program memberships but received additional shipments of product for which they paid more than shipping and processing and/or return postage.

(b) Group One Claimants will be eligible to receive their choice of either a *pro rata* share of the Net Common Fund (Cash Benefit), or Product Benefits.

The Cash Benefit option is calculated as follows:

(i) Cash Benefit option

Group 1 Claimant who spent more than \$200 with Defendants after all prior refunds	\$100
Group 1 Claimant who spent between \$100 and \$200 with Defendants after all prior refunds	\$75
Group 1 Claimant who spent less than \$100 with Defendants after all prior refunds	\$40

(ii) Product Benefit option (while supplies last, pursuant to the total product value limitation described in this Amended Agreement)

Group 1 Claimant who spent more than \$150 with Defendants after all prior refunds	Choice of One of the Following Products	Retail Price
	1. Luminique Facial Brightener 3oz	\$49.95
	2. Sunsoak Age-Defying Self Tanner 1oz	\$59.95
	3. Pore Minimizer Serum 1 oz	\$59.95
	4. Instant Wrinkle Filler 30 Day Boxes	\$59.95
	5. Instant Effect 30 Day Boxes	\$59.95
	6. Celtrixa Stretchmark Lotion-Original Formula	\$59.95

Group 1 Claimant who spent \$150 or less with Defendants after all prior refunds	Choice of One of the Following Products	Retail Price
	Hydroxatone Anti-aging Body Lotion by Celtrixa	\$19.95
	Declatone Deluxe Sample for Retail - 0.5oz	\$29.95
	Hydroxatone Gentle Milky Cleanser 3 oz	\$39.95
	Hydroxatone Age Defying Toner 3oz	\$39.95
	Keracalm	\$39.95

Defendants reserve the right to substitute products based upon supply and availability.

5.4 Group Two Claimants

(a) “Group Two Claimants” are Settlement Class Members who do not fall within the definition of Group One Claimants.

(b) Group Two Claimants will be eligible to receive their choice of one Product Benefit from the following products while supplies last (pursuant to the total product value limitation described in this Amended Agreement).

Group 2 Claimants	Choice of One of the Following Products	Retail Price
	Hydroxatone Anti-aging Body Lotion by Celtrixa	\$19.95
	Declatone Deluxe Sample for Retail - 0.5oz	\$29.95
	Hydroxatone Gentle Milky Cleanser 3 oz	\$39.95
	Hydroxatone Age Defying Toner 3oz	\$39.95
	Keracalm	\$39.95

5.5 Settlement Benefit Rules

(a) A Claim for Settlement Benefits will not be an Approved Claim unless a Claimant submits to the Settlement Administrator by the Claims Deadline a Claim Form completed in its entirety providing information to verify that he or she is

appropriately claiming a Settlement Benefit in accordance with this Amended Settlement Agreement.

(b) A Claimant will not be entitled to a Settlement Benefit unless he or she:

(i) paid Defendants money that was not refunded in connection with a Risk Free Trial and/or Auto-Shipment Program; and

(ii) swears under oath, and/or provides documentation showing that he or she was charged, paid, and/or was not refunded, credited, or reimbursed for the amounts claimed to be charged and/or paid.

(c) No Settlement Class Member will be entitled to a Settlement Benefit if the Settlement Class Member previously

(i) received a full credit, refund, adjustment or offset of money paid to Defendants in connection with a Risk Free Trial and/or Auto-Shipment Program; or

(ii) released Defendants from liability arising out of such transaction(s) in a prior claim or lawsuit.

(d) Claimants shall have until the Claims Deadline to file a Claim Form and to show sufficient proof that they are eligible under the Settlement Benefit Rules. Settlement Benefits may be requested by deceased Settlement Class Members through representatives of their estate if appropriate documentation is provided.

(e) No Settlement Benefits shall be distributed under this Amended Settlement Agreement until after the Effective Date, unless otherwise agreed to by the

Parties. If this Amended Settlement Agreement is not approved, no payments or distributions of Settlement Benefits of any kind shall be made.

(f) With regard to Claims submitted by Claimants, Defendants/Settlement Administrator (with oversight from Plaintiffs' Counsel) may verify that such Claimants satisfy the criteria to be eligible for the claimed benefit.

(g) If a Claim Form for a Group One Benefit is received from a valid Settlement Class Member, but that Settlement Class Member does not otherwise qualify for a Group One Benefit, then, subject to the verification above, such Settlement Class Member will be offered a Group Two Benefit. A Settlement Class Member may only receive a benefit from Group One or Two, but not both

(h) So long as there is sufficient money in the Common Fund, Approved Claimants who choose a Product Benefit shall incur no expense or costs in connection with the Product Benefit (including, without limitation any costs associated with shipping and processing of the product). Shipping and Processing Costs will be paid from the Common Fund in accordance with Section 4 above. Further, Approved Claimants will not be asked to provide any credit or debit card information in connection with their choice of the Product Benefit. If there is not sufficient money in the Common Fund to cover all Shipping and Processing Costs, all Benefits will be reduced *pro rata*.

(i) In the event that the claims for Settlement Benefits exceed the Net Common Fund and/or Product Benefits, the Cash and/or Product Benefits shall be reduced *pro rata* and in no event will Defendants be required to provide any further Cash or Product Benefits.

6. SETTLEMENT BENEFIT CLAIMS PROCESS

6.1 The Settlement Administrator shall maintain a website that provides information regarding the Settlement, including the Long Form Notice, and enables the on-line filing of Claim Forms.

6.2 Settlement Class Members shall be given the option of completing the Claim Form online or submitting the Claim Form by mail.

6.3 From the date that Class Notice is first provided and through at least the Claims Deadline, the Settlement Administrator shall also maintain a toll-free telephone number for Settlement Class Members to obtain information regarding the Settlement, including instructions on how to file a Claim.

6.4 The Settlement Administrator shall deem Claims to be Approved Claims only in accordance with this Amended Settlement Agreement.

6.5 The Settlement Administrator shall not determine that a Claim is an Approved Claim unless the Claimant provides all of the information requested on the Claim Form or otherwise provides sufficient proof to meet a preponderance of evidence standard confirming that he or she is entitled to a Settlement Benefit.

6.6 The Settlement Administrator shall identify duplicate Claims using reasonable means (such as the use of unique identifying numbers on each Claim Form) and deny the duplicate Claim(s).

6.7 The Settlement Administrator shall deny Claims that are not submitted by the Claims Deadline.

6.8 Defendants and Class Counsel shall have the right to inspect and verify the Claim Forms (including forms submitted electronically) received by the Settlement Administrator, and Defendants may submit pertinent information to the Settlement

Administrator for review and consideration by the Settlement Administrator for purposes of determining whether a Claim shall be deemed an Approved Claim.

6.9 Defendants shall have the right to object to Claims being deemed an Approved Claim for any reason that is in accordance with this Amended Settlement Agreement. The Settlement Administrator shall provide Class Counsel with a list of Claims to which an objection is made, together with the reasons for the objection. If Class Counsel do not dispute an objection to a Claim Form, that Claim Form shall be rejected by the Settlement Administrator. If a dispute arises between Class Counsel and Defendants regarding any objection to a Claim Form and/or decision by the Settlement Administrator regarding a lack of qualifying proof on a Claim Form that results in a materially lower settlement benefit categorization than has been requested by a putative Claimant, Defendant and Class Counsel shall agree upon a dispute resolution process that shall, at a minimum, require that the Parties confer regarding the same, and if no agreement is reached, the submission of the dispute to an arbitrator to be appointed by the Court and compensated out of the Common Fund.

6.10 If a Claim Form is rejected by the Settlement Administrator, the Settlement Administrator shall provide written notice to the Claimant making the Claim by mailing a letter or emailing such notice to any email address provided by the Person for the receipt of correspondence by the Settlement Administrator.

6.11 Except as set forth above, if a Claim for Cash Benefits is accepted, there shall be no notice of acceptance required to be sent to the Claimant. Tender of the Settlement Benefit shall suffice for notice.

6.12 If a Claim for a Product Benefit is accepted, the Settlement Administrator shall provide the Claimant with a letter or email containing a unique code and/or instructions that will enable the Claimant to obtain his or her Product Benefit if and when such Settlement Benefits are tendered, along with instructions for how and when to obtain the Settlement Benefit.

6.13 If a Person entitled to a Settlement Benefit wishes to contest the amount of his or her award, the Person may not deposit or cash the check or claim the Product Benefit. The person must object in writing notifying the Settlement Administrator within twenty (20) days from the issue date on their distribution check of the reasons underlying the objection and provide any and all documentation which he or she believes will support a different Benefit Settlement amount.

6.14 The deadline for submitting the Claim Form shall be the Claims Deadline. Any Claim Form submitted after the Claim Deadline shall be untimely and void. In the event of a dispute over the timeliness of a Claim Form, the dispute resolution procedures described above shall apply.

7. CLASS COUNSEL'S FEES AND COSTS

7.1 Class Counsel's Fees and Costs. Class Counsel will apply to the Court by motion for an award to Class Counsel for attorneys' fees of up to 33 1/3 percent of the Common Fund and costs, to be paid from the Common Fund. Attorneys' fees and costs awarded by the Court shall be allocated among Plaintiffs' Counsel by Plaintiffs' Lead Counsel in a manner that, in Plaintiffs' Lead Counsel's sole opinion, fairly compensates Plaintiffs' Counsel for their respective contributions to the progress of and results obtained in the litigation. Class Counsel will also apply for Participation Awards for the Class Representatives and the Former Class Representative in the aggregate amount of

\$3,500 payable from the Common Fund, and shall be entitled to receive such compensation to the extent awarded by the Court. Defendants and their agents agree not to oppose the application for attorney's fees or expenses, or for Participation Awards as set forth herein.

7.2 Disbursement of Attorneys' Fees and Costs and Plaintiff Compensation.

Pursuant to written directions from Plaintiffs' Lead Counsel to Defendants, attorneys' fees and costs and Plaintiffs' Participation Awards awarded by the Court shall be paid to Plaintiffs' Lead Counsel within fifteen (15) days of the date the Court enters its Order awarding such fees and costs. Notwithstanding the foregoing, if for any reason the Court fails to grant final approval to this Amended Settlement Agreement; the Final Approval Order and Judgment is reversed or rendered void as a result of an appeal; or this Amended Settlement Agreement is voided, rescinded, or terminated for any other reason, then Class Counsel shall return to Defendants all fees, costs and other payments received by Class Counsel under this Amended Agreement. In such event, Class Counsel shall be severally liable for such payments to the extent received by them. To effectuate this provision, each individual attorney or firm who receives a share of payments under this provision shall execute a guarantee of repayment in the form attached hereto as Exhibit H.

7.3 The Parties agree that the rulings of the Court regarding the amount of attorneys' fees or costs and any Participation Award, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Approval Hearing as provided for in this Amended Settlement Agreement and any determinations in that regard will be embodied in a separate order.

Any order or proceedings relating to the amount of attorneys' fees or incentive award, including any appeals from or modifications or reversals of any order related thereto, shall not operate to modify, reverse, terminate, or cancel the Amended Settlement Agreement, affect the releases provided for in the Amended Settlement Agreement, or affect whether the Final Approval Order and Judgment becomes Final as defined herein, unless such order would, if entered, cause Defendants' total liability for attorneys' fees to exceed 33 1/3 percent of the Common Fund, in which event, Defendants may terminate this Amended Settlement Agreement in accordance with the provisions set forth above.

**8. PRELIMINARY APPROVAL OF AMENDED SETTLEMENT AND
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

8.1 As soon as practicable after the execution of this Amended Settlement Agreement, Class Counsel and Defendants' Counsel shall jointly apply for entry of the Preliminary Approval Order in the form of Exhibit B hereto. The Preliminary Approval Order shall include provisions:

- (a) preliminarily certifying the Settlement Class for settlement purposes only;
- (b) preliminarily approving this Amended Settlement and finding this Amended Settlement sufficiently fair, reasonable and adequate to allow Notice to be disseminated to the Settlement Class;
- (c) approving the form, content, and manner of the Notice;
- (d) setting a schedule for proceedings with respect to final approval of this Amended Settlement;
- (e) providing that, pending entry of a Final Approval Order and Judgment, the Parties shall cooperate in seeking orders that no Settlement Class Member

(either directly, in a representative capacity, or in any other capacity) shall commence or continue any action against Defendants or other Released Parties asserting any of the Released Claims; and

(f) staying the Action, other than such proceedings as are related to this Amended Settlement.

8.2 For settlement purposes only, the Parties agree that the Court may enter an order conditionally certifying the Settlement Class, appointing Lead Plaintiffs Susan Sabol, Valerie Done and Kathleen Klodner as representatives of the Hydroxatone Settlement Class, and appointing the following counsel as “Class Counsel” for the Settlement Class:

COHEN MILSTEIN SELLERS & TOLL PLLC
Andrew N. Friedman
Whitney R. Case
1100 New York Avenue, N.W., Suite 500 West
Washington, DC 20005-3964

MCLAUGHLIN & STERN LLP
Lee S. Shalov
260 Madison Ave.
New York, NY 10016

LAW OFFICE OF ANGELA EDWARDS
Angela Edwards
72 Canterbury Circle
East Longmeadow, MA 01028

8.3 Conditional certification of the Settlement Class and appointment of Plaintiffs as Class Representatives and Class Counsel by the Court shall be binding only if the terms of this Amended Settlement Agreement are given full force and effect. In the event this Amended Settlement Agreement is terminated pursuant to its terms, or a Final Approval Order and Judgment does not occur for any reason, the conditional certification

of the Settlement Class and Class Counsel shall be automatically nullified with the Parties reserving all of their rights with respect to class certification.

9. SETTLEMENT ADMINISTRATOR

9.1 The parties will jointly select an independent Settlement Administrator, who, among other things, will work with the Parties to:

- (a) provide Notice to Settlement Class members;
- (b) maintain a settlement website, which shall include a posting of the Long Form Notice;
- (c) process Claim Forms;
- (d) respond to Settlement Class Member inquiries;
- (e) confirm the issuance of Cash Benefits to the Approved Claimants;
- (f) oversee the shipment of Product Benefits to Approved Claimants;
- (g) provide any necessary certifications to the Court concerning the administration and processing of claims; and
- (h) provide CAFA Notice, with assistance from Defendants.

9.2 No later than fifteen (15) calendar days before the Final Approval (Final Fairness) Hearing, the Settlement Administrator shall provide to Class Counsel the following information:

- (a) the number of e-mail notices sent to Settlement Class members;
- (b) the number of postcard notices sent to Settlement Class members;
- (c) the approximate number of visits to the settlement website from the date of entry of a Preliminary Approval Order; and
- (d) such other similar tracking information reasonably requested by Class Counsel.

**10. NOTICE OF AMENDED SETTLEMENT
AND ADMINISTRATION OF CLAIMS**

10.1 As soon as practicable after the Preliminary Approval of the Settlement Class, Defendants shall initiate a search of its reasonably available electronic data in an effort to ascertain the valid electronic mail address of each Settlement Class member. Thereafter, the Settlement Administrator shall send to all identified potential Settlement Class members via electronic mail a copy of the Email Notice (which shall be substantially in the form of Exhibit D attached hereto).

10.2 For those Settlement Class Members for whom Defendants do not have a valid electronic mail address, and for those emails sent to Settlement Class Members that are deemed undeliverable, the Settlement Administrator shall send the Post Card Notice (which shall be substantially in the form of Exhibit G attached hereto).

10.3 The Individual Notice shall direct Class Members to a settlement website where the Long Form Notice (which shall be substantially in the form of Exhibit F attached hereto) and Claim Forms (which shall be substantially in the form of Exhibit A attached hereto) will be available and where class members will be able to file a Claim Form electronically. The Settlement Administrator shall use its commercially reasonable efforts to complete the identification of Settlement Class members and electronic mailing of these notices Settlement Class members within 30 days from the entry of the Preliminary Approval Order.

10.4 The Settlement Administrator shall provide the Publication Notice to potential Settlement Class members through a press release describing the Amended Settlement via P.R. Newswire or Business Wire services and via a specifically designated website accessible via the Internet. The Publication Notice shall be designed to comply

with Fed. R. Civ. P. 23(c)(2) and shall state that a class action lawsuit involving Hydroxatone has been settled and advise that if the reader was a Hydroxatone customer, he or she may be entitled to Settlement Benefits. If a Settlement Class member contacts the Settlement Administrator, the Settlement Administrator will provide as requested, via electronic mail, the individual with the Long Form Notice and a Settlement Class Claim Form. Defendants and the Settlement Administrator shall make such Publication Notice within thirty (30) calendar days after the Preliminary Approval of the Amended Settlement as provided herein. Upon entry of a Preliminary Approval Order, the Settlement Administrator shall also update and continue to maintain the Amended Settlement website. Such website will continue to host appropriate information relating to the Amended Settlement and administration of Claims, and contact information for the Settlement Administrator. In addition, the website will post the Second Amended Complaint; the Preliminary Approval Order; and this Amended Settlement Agreement. Such website will also provide a link to Class Counsel's website.

10.5 All of the costs associated with Notice and settlement administration will be paid from the Common Fund.

10.6 The Settlement Administrator will timely notify the appropriate federal and state officials of this Amended Settlement Agreement to the extent required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. REQUESTS FOR EXCLUSION

11.1 Settlement Class members who wish to exclude themselves (opt out) from the Settlement Class must submit a written Request for Exclusion to the Settlement Administrator. To be effective, such a request must include the Settlement Class members'

- (a) name,
- (b) mailing address,
- (c) e-mail address,
- (d) the signature of the Settlement Class member (or, in the case of a Person who is deceased or incapacitated only, the signature of the legally authorized representative of that Settlement Class member), and
- (e) substantially the following statement, "I want to opt out of the class certified in the Sabol/Done v. Hydroxatone litigation."

11.2 Requests for Exclusion may be submitted via First Class United States Mail or other overnight private carrier such as FedEx, paid by the Settlement Class member and sent to the Settlement Administrator at the address provided in the Individual Notice of Settlement. Requests for Exclusion must be postmarked no later than twenty one (21) days before the Final Approval (Final Fairness) Hearing.

11.3 The Settlement Administrator shall promptly log each Request for Exclusion that is received, and shall provide copies of the log and all such Requests for Exclusion to Class Counsel no later than ten (10) days before the Final Approval (Final Fairness) Hearing.

12. OBJECTIONS

12.1 Settlement Class members who do not request exclusion from the Settlement Class may object to the Amended Settlement. Settlement Class Members who choose to object to the Amended Settlement must file written notices of intent to object with the Court and serve copies of any such objection on counsel for the Parties, as set forth in more detail in Paragraph 12.2 of this Amended Settlement Agreement. Any Settlement Class Member may appear at the Final Approval (Final Fairness) Hearing, in

person or by counsel, and be heard to the extent permitted under applicable law and allowed by the Court, in opposition to the fairness, reasonableness, and adequacy of the Amended Settlement, and on Class Counsel's application for an award of attorneys' fees and costs. The right to object to the Amended Settlement must be exercised individually by an individual Settlement Class member and, except in the case of a deceased, minor, or incapacitated Person or where represented by counsel, not by the act of another Person acting or purporting to act in a representative capacity.

12.2 To be effective, a notice of intent to object to the Amended Settlement must be filed with the Court and must:

- (a) Contain a caption that includes the name of the Sabol/Done Case and the case number as follows: *Sabol et al. v. Hydroxatone*, Case No. 2:11-cv-04586-KM-MAH (D.N.J.);
- (b) Provide the name, address, telephone number and signature of the Settlement Class member filing the intent to object;
- (c) Provide the approximate date of his/her transaction with Hydroxatone and the total amount paid by him or her for Hydroxatone products;
- (d) Verify by sworn statement that he or she has not received a refund of his/her Hydroxatone product charges and/or shipping and processing charges and/or that they have not been reimbursed for return postage charges paid;
- (e) Be filed with the District of New Jersey Clerk of the Court not later than 30 (thirty) days before the date of the Final Approval Hearing;
- (f) Be served on Class Counsel and counsel for Defendants so as to be received no later than 30 (thirty) days before the date of the Final Approval Hearing;

(g) Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney;

(h) Contain the number of class action settlements objected to by the Settlement Class Member in the last three years; and

(i) State whether the objecting Settlement Class member intends to appear at the Final Approval (Final Fairness) Hearing, either in person or through counsel.

12.3 In addition to the foregoing, if the Settlement Class Member is represented by counsel and such counsel intends to speak at the Final Approval (Final Fairness) Hearing, a notice of intent to object must contain the following information:

(a) A detailed statement of the specific legal and factual basis for each and every objection; and

(b) A detailed description of any and all evidence the objecting Settlement Class member may offer at the Final Approval (Final Fairness) Hearing, including copies of any and all exhibits that the objecting Settlement Class member may introduce at the Final Approval (Final Fairness) Hearing.

12.4 Any Settlement Class member who does not file a timely and adequate notice of intent to object in accordance with this Section 12 waives the right to object or to be heard at the Final Approval (Final Fairness) Hearing and shall forever be barred from making any objection to the Amended Settlement. To the extent any Settlement Class member objects to the Amended Settlement, and such objection is overruled in whole or in part, such Settlement Class member will be forever bound by the Final Approval Order and Judgment of the Court.

13. FINAL APPROVAL

13.1 The Individual Notice to Settlement Class shall contain a date, time, and location for the Final Approval (Final Fairness) Hearing to be conducted by the Court.

13.2 Upon final approval of this Amended Settlement Agreement, the Final Approval Order and Judgment (which shall be substantially in the form of Exhibit C attached hereto) shall be entered by the Court, which shall, *inter alia*:

(a) Grant final approval to the Amended Settlement and Amended Settlement Agreement as fair, reasonable, adequate, in good faith and in the best interest of Plaintiffs and all Class Members, and order the Parties to carry out the provisions of this Amended Settlement Agreement;

(b) Adjudge that the Releasing Parties are conclusively deemed to have released Defendants and the Released Parties of the Released Claims;

(c) Bar and permanently enjoin each Settlement Class Member, including but not limited to the plaintiffs in Related Actions, from prosecuting against the Released Parties any and all of the Released Claims;

(d) Enjoin Defendants as set forth in the Prospective Relief described in Paragraph 4 (c) of this Amended Settlement Agreement; and

(e) Reserve continuing jurisdiction by the Court to preside over any ongoing proceedings relating to this Amended Settlement Agreement.

14. RELEASE BY ALL SETTLEMENT CLASS MEMBERS

14.1 The Releases. As of the Effective Date, the Settlement Class members including Plaintiffs in this Action (collectively, the “Releasing Parties”), release Defendants (as defined herein) and any and all of their predecessors, successors, assigns, parents, subsidiaries, owners (including Thomas Shipley and Andrew Surwilo),

employees, agents, consultants, directors, officers, partners, financial or investment advisors, insurers, lenders, legal representatives, affiliates, vendors and suppliers or other entities in which Defendants have a controlling interest or which are related to or affiliated with it, including: (a) Defendants Hydroxatone LLC and Atlantic Coast Media Group LLC; (b) Defendants' counsel; (c) Defendants' successors and predecessors and their past, present, and future direct and indirect owners, parents, subsidiaries, and other corporate affiliates, vendors and suppliers or other entities in which Defendants have a controlling interest; (d) Marketing Architects, Inc.; and (e) for each of the foregoing Persons, each of their past, present, or future officers, directors, shareholders, owners, employees, representatives, agents, principals, partners, members, administrators, legatees, executors, heirs, estates, predecessors, successors, or assigns (the "Released Parties"), from the "Released Claims." The Released Claims do not include any actual or potential personal injury claims.

14.2 Released Claims. "Released Claims" have the meaning set forth in the entirety of this Section 14 of this Amended Settlement Agreement and means any and all actions, causes of action, claims, demands, liabilities, obligations, damage claims, restitution claims, injunction claims, declaratory relief claims, fees, costs, sanctions, proceedings and/or rights of any nature and description whatsoever, whether legal or equitable, including, without limitation, violations of any state or federal statutes and laws, rules or regulations, including but not limited to 47 U.S.C. § 201, *et seq.*, Ala. Code § 8.19-1 *et seq.* (Alabama); Alaska Stat. § 45.50.471 *et seq.* (Alaska); Ariz. Rev. Stat. Ann. § 44-1521 *et seq.* (Arizona); Ark. Code Ann. § 4-88-101 *et seq.* (Arkansas); Cal. Civ. Code § 1671, Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Bus. & Prof. Code

§17500 *et seq.*, *Cal. Civ. Code § 1750 et seq.* (California); Colo. Rev. Stat. § 6-1-105 *et seq.* (Colorado); Conn. Gen. Stat. § 42-110a (Connecticut); Del. Code Ann. Tit. 6, § 2511 *et seq.* (Delaware); D.C. Code Ann. § 28-3901 *et seq.* (District of Columbia); Fla. Stat. Ann. § 501.201 *et seq.* (Florida); Ga. Code Ann. § 10-1-390 *et seq.* (Georgia); Haw. Rev. Stat. § 481A-1 *et seq.* and Haw. Rev. Stat. § 480-1 *et seq.* (Hawaii); Idaho Code § 48-601 *et seq.* (Idaho); Kan. Stat. Ann. § 50.623 *et seq.* (Kansas); Ky. Rev. Stat. § 367.11.0 *et seq.* (Kentucky); La. Rev. Stat. Ann. § 51:1401 *et seq.* (Louisiana); Me. Rev. Stat. Ann. Tit. 5, § 205-A *et seq.* (Maine); Md. Com. Law Code Ann. § 13-101 *et seq.*, Md. Com. Law Code Ann. § 13-301 *et seq.*, Md. Com Law Code Ann. § 13-408 *et seq.* (Maryland); Mass Gen. L. ch. 93A, § *et seq.* (Massachusetts); Mich. Stat. Ann. § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Minn. Stat. § 325F.68 *et seq.*, Minn. Stat. §.8.31 (Minnesota); Miss. Code Ann. § 75-24-3 *et seq.* (Mississippi); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri); Mont. Code Ann. § 30-14-101 *et seq.* (Montana); Neb. Rev. Stat. § 59-1601 *et seq.* (Nebraska); Nev. Rev. Stat. § 41.600 and Nev. Rev. Stat. § 598.0903 *et seq.* (Nevada); N.H. Rev. Stat. Ann. § 358:1 *et seq.* (New Hampshire); N.J. Rev. Stat. § 56:8-1 *et seq.*, N.J. Rev. Stat. § 56:12-1 *et seq.* (New Jersey § 46:30A-1); N.M. Stat. Ann. § 57-12-1 *et seq.* (New Mexico); N.Y. Gen. Bus. Law. § 349 *et seq.*, (New York); N.C. Gen. Stat. § 75-1 *et seq.* (North Carolina); N. D. Cent. Code § 51-15-01 *et seq.* (North Dakota); Ohio Rev. Code Ann. § 1345.01 *et seq.*, O.R.C. 1333.60 (Ohio); Okla. Stat. Tit. 15, § 751 *et seq.* (Oklahoma); Ore. Rev. Stat. § 646.605 *et seq.* (Oregon); Penn. Stat. § 201-1 *et seq.* (Pennsylvania); R.I. Gen. Laws § 6-13.1:1 *et seq.* (Rhode Island); S.C. Code Ann. § 39-5-10 *et seq.* (South Carolina); S.D. Codified Laws Ann. § 37-24.1 *et seq.* (South Dakota); Tenn. Code Ann. § 47-18-101 *et seq.* (Tennessee);

Tex. Bus. & Comm. Code Ann. § 17.41 *et seq.* (Texas); Vt. Stat. Ann. Tit. 9, § 2451 *et seq.* (Vermont); Va. Code Ann. § 59.1-196 *et seq.* (Virginia); Wash. Rev. Code § 19.86.010 *et. seq.* (Washington); W.Va. Code § 46A-6-101 *et seq.* (West Virginia); and Wyo. Stat. § 40;12-101 *et seq.* (Wyoming), or principles of common law, whether liquidated or unliquidated, known or unknown, in law, equity, arbitration, or otherwise, whether or not concealed or hidden, that in any way relate to, in whole or in part, or arise out of, any of the allegations, claims, and/or theories raised in or that could have been raised in the Action or Related Actions against Defendants. The term “Released Claims” includes any and all actions, causes of action, claims, demands, liabilities, obligations, damage claims, restitution and unjust enrichment claims, injunction claims, declaratory relief claims, fees, costs, sanctions, proceedings and/or rights of any nature and description whatsoever, whether legal or equitable, that in any way challenge Defendants’ Risk Free Trials and/or Auto-Shipment Programs, billing practices (including the use of delayed-billing programs), beauty program, alleged use of a negative option program, the representations and/or disclosures and/or Defendants’ adherence to the terms (or alleged terms) of such offers, and/or any claim related to the receipt of and/ or payment for unordered products.

14.3 Waiver of Unknown Claims. On the Effective Date, the Released Parties and the Settlement Class Members shall be deemed to have, and by operation of this Amended Agreement shall have, with respect to the subject matter of the Released Claims, expressly waived the benefits of any statutory provisions or common law rule that provides, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the

release, which if known by it, would have materially affected its settlement with any other party. In particular, but without limitation, the Released Parties and the Settlement Class Members waive the provisions of California Civil Code § 1542 (or any like or similar statute or common law doctrine), and do so understanding the significance of that waiver. Section 1542 provides:

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

14.4 The Releasing Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the entry of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

14.5 As of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, each Settlement Class member who does not file a valid Request for Exclusion, thereby becoming a Settlement Class Member, automatically, upon final approval of the Amended Settlement, shall be held to have fully released, waived, relinquished, and discharged the Released Parties from the Released Claims, to the fullest

extent permitted by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Released Parties relating in any way whatsoever to the Released Claims.

14.6 On the Effective Date, the Settlement Class and each Settlement Class Member shall be deemed to have, and by operation of this Amended Agreement shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all of the Released Claims. This Amended Settlement Agreement may be pleaded by Defendants and the Released Parties as a bar to all, or any relevant portion, of any action pending or filed by a Settlement Class Member concerning, relating to or arising out of the Released Claims, and Class Counsel will cooperate with Defendants to enforce this Amended Agreement and Final Approval Order and Judgment, if entered pursuant to the terms herein, as to Released Claims, Released Parties, Released Claims and any collateral attacks or subsequent claims or actions.

14.7 The Releasing Parties stipulate and agree that upon the Court's final approval of this Amended Settlement Agreement, the Claims in *Sabol et al. v. Hydroxatone* shall be dismissed with prejudice.

14.8 The Releasing Parties, on behalf of themselves and their respective assigns, agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims.

14.9 Upon Final Approval, Defendants shall release and forever discharge Plaintiffs and their representatives, attorneys, employees, agents, predecessors and successors from any claim related to the prosecution of the Action and the Related Actions.

15. CONFIRMATORY DISCOVERY

15.1 As part of this Amended Settlement, defendants Hydroxatone LLC and Atlantic Coast Media Group LLC will provide confirmatory discovery regarding their financial condition, including production of audited financial statements for fiscal years 2010 and 2011 and financial statements for 2012.

16. AUTOMATIC TERMINATION OF AMENDED SETTLEMENT AGREEMENT AND TERMINATION RIGHTS

16.1 This Amended Settlement Agreement shall terminate automatically in the event that (i) the Court does not preliminarily approve this Amended Settlement Agreement, (ii) the Court does not finally approve this Amended Settlement Agreement, (iii) the Court does not enter the Final Approval Order and Judgment dismissing the claims with prejudice and without leave to amend; or (iv) this Amended Settlement Agreement does not become Final, is terminated, or is not consummated for any other reason:

16.2 Except as expressly stated herein, if any of the events set forth in Section 16.1 occur, this Amended Settlement Agreement shall automatically become null and void and have no further force or effect, and all proceedings that have taken place with regard to this Amended Settlement Agreement and the Amended Settlement shall be without prejudice to the rights and contentions of the Parties hereto;

16.3 In the event that the Amended Settlement is terminated,

(a) this Amended Settlement Agreement, all of its provisions (including, without limitation, any provisions concerning class certification), and all negotiations, statements and proceedings related to this Amended Settlement Agreement shall be without prejudice to the rights of any of the Parties, each of whom shall be

restored to their respective position as of August 14, 2012, including but not limited to the issues related to all claims, defenses, and issues under Fed. R. Civ. P. 23;

(b) This Amended Settlement Agreement, any provision of this Amended Settlement Agreement (including, without limitation, the provisions concerning class certification), and the fact of this Amended Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever; nor will any information produced solely in connection with the parties' mediation or confirmatory discovery be admissible;

(c) Any judgment or order entered in connection with this Amended Settlement Agreement, including, without limitation, any order certifying the Settlement Class, will be vacated and will be without any force or effect.

16.4 This Section 16 shall survive any termination of this Amended Settlement Agreement.

17. NO ADMISSION; LIMITATIONS ON USE OF AMENDED SETTLEMENT AGREEMENT

17.1 No Admission. Neither the acceptance by Defendants of the terms of this Amended Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission with respect to the merits of the claims alleged in the Action or Related Actions, the validity of any claims that could have been asserted by any of the Settlement Class Members in the Action or Related Actions, or the liability of Defendants in the Action or Related Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and Related Actions and maintain that the marketing and advertising for the Hydroxatone products, including but not limited to the Risk Free Trial and/or Auto-Shipment Program, at all

times were and are in compliance with all applicable laws, statutes, and regulations and also with all policies adopted by applicable regulatory agencies.

17.2 Limitations on Use. This Amended Agreement shall not be used, offered, or received into evidence in the Action and Related Action for any purpose other than to enforce, to construe, or to finalize the terms of the Amended Settlement Agreement and/or to obtain the preliminary and final approval by the Court of the terms of the Amended Settlement Agreement. Neither this Amended Settlement Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding, but where properly offered or received into evidence as set forth above, this Amended Settlement Agreement shall be binding and shall have preclusive effect on any claims barred by the release provisions and waiver of unknown claim provisions set forth above.

18. EXCLUSIVE REMEDY; DISMISSAL OF CLAIMS; JURISDICTION OF COURT; NO COLLATERAL ATTACK.

18.1 Exclusive Remedy. This Amended Agreement shall be the exclusive source of remedy for all Released Claims, any claim arising out of this Amended Agreement, and any complaint by any Settlement Class Member against the Released Parties related to the Released Claims. No Released Party shall be subject to liability or expense of any kind to any Settlement Class Member related to the Released Claims except as provided in this Amended Agreement. Upon the Effective Date, every Settlement Class Member shall be permanently barred and enjoined from asserting any Released Claims against any Released Party in any proceeding, including in any Related Actions.

18.2 Dismissal of Claims. The Parties agree that, after the Court's approval of this Amended Settlement, a judgment substantially in the form of the Final Approval

Order and Judgment attached as Exhibit C shall be entered dismissing with prejudice the Action and releasing the Released Claims.

18.3 Continuing and Exclusive Jurisdiction. The Court shall retain continuing and exclusive jurisdiction with respect to implementation and enforcement of the terms of this Amended Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Amended Agreement.

18.4 No Collateral Attack. This Amended Agreement shall not be subject to collateral attack by any Settlement Class Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that a Settlement Class Member's claim was improperly denied, that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement Class Member failed to receive timely notice of the Amended Settlement Agreement.

19. MISCELLANEOUS PROVISIONS

19.1 Amendment. This Amended Agreement may be modified, amended or supplemented only by written agreement signed by or on behalf of all Parties and, if such modification, amendment or supplement is to be executed and become effective subsequent to the entry of the Court Order, only with the approval of the Court.

19.2 Assumption of Risk. In entering into this Amended Settlement Agreement, each of the Parties assumes the risk of any mistake of fact or law. If either Party should later discover that any fact which the Party relied upon in entering this Amended Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Amended Settlement Agreement, in whole or in part, by reason thereof.

19.3 **Binding On Assigns.** This Amended Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

19.4 **Class Member Signatures.** It is agreed that, because the Settlement Class Members are so numerous, it is impractical to have each Settlement Class Member execute this Amended Agreement. The Notice will advise all Settlement Class Members of the binding nature of the Releases and of the remainder of this Amended Agreement, and in the absence of a valid and timely Request for Exclusion, such Notice shall have the same force and effect as if each Settlement Class Member executed this Amended Agreement.

19.5 **Confidentiality Agreement.** The Parties agree that, prior to the provision of information to the Settlement Administrator, the Settlement Administrator will execute a confidentiality agreement satisfactory to Defendants.

19.6 **Construction.** The Parties agree that the terms and conditions of this Amended Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Amended Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or his or its counsel, participated in the drafting of this Amended Agreement.

19.7 **Counterparts.** This Amended Settlement Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and both of which counterparts taken together shall constitute

but one and the same instrument. A facsimile or PDF signature shall be deemed an original for all purposes.

19.8 **Governing Law.** All questions with respect to the construction of this Amended Settlement Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of New Jersey.

19.9 **Headings.** Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Amended Settlement Agreement or any provision hereof. Each term of this Amended Settlement Agreement is contractual and not merely a recital.

19.10 **Incorporation of Exhibits.** All exhibits attached hereto are hereby incorporated by reference as though set forth fully herein and are a material part of this Amended Settlement Agreement. Any notice or other exhibit attached hereto requires approval of the Court must be approved without material alteration from its current form in order for this Amended Settlement Agreement to become effective.

19.11 **Integration Clause.** This Amended Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Amended Agreement other than those expressly set forth in this Amended Agreement. This Amended Agreement supersedes all prior agreements and understandings among the Parties with respect to the Amended Settlement of the Action. This Amended Agreement may not be changed, altered or modified, except in a writing signed by the Parties and approved by the Court. This Amended Agreement may not be

discharged except by performance in accordance with its terms or by a writing signed by the Parties.

19.12 **No Assignment.** Each Party represents, covenants, and warrants that she or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that she or it herein releases.

19.13 **Notice.** All notices, requests, demands and other communications required or permitted to be given pursuant to this Amended Settlement Agreement shall be in writing and shall be delivered personally or mailed postage pre-paid by First Class U.S. Mail to the following persons at their addresses set forth as follows:

Plaintiffs' Class Counsel

COHEN MILSTEIN SELLERS & TOLL PLLC
Andrew N. Friedman
Whitney R. Case
Stefanie M. Ramirez
1100 New York Avenue, N.W., Suite 500 West
Washington, DC 20005-3964

McLAUGHLIN & STERN LLP
Lee S. Shalov
260 Madison Ave.
New York, NY 10016

LAW OFFICE OF ANGELA EDWARDS
Angela Edwards
72 Canterbury Circle
East Longmeadow, MA 01028

Counsel for Defendants

KELLEY DRYE & WARREN LLP
Michael C. Lynch
Joseph A. Boyle

Lauri A. Mazzuchetti
Michael A. Innes
200 Kimball Drive
Parsippany, NJ 07054

19.14 **Parties' Authority.** The signatories hereto represent that they are fully authorized to enter into this Amended Agreement and bind the Parties to the terms and conditions hereof.

19.15 **Participation on the Preparation of Amended Settlement Agreement.** The Parties and their counsel have each participated and cooperated in the drafting and preparation of this Amended Settlement Agreement. Hence, in any construction to be made of this Amended Settlement Agreement, the same shall not be construed against any party as drafter of the Amended Settlement Agreement.

19.16 **Represented by Counsel.** The Parties each acknowledge that he, she or it has been represented by counsel of his, her or its own choice throughout all of the negotiations that led to the execution of this Amended Settlement Agreement and in connection with the preparation and execution of this Amended Settlement Agreement.

19.17 **Duly Authorized.** The Parties each represent and warrant that each of the Persons executing this Amended Settlement Agreement is duly empowered and authorized to do so.

19.18 **Settlement Conditioned on Certain Matters.** This entire Amended Settlement Agreement is contingent upon the Parties reaching agreement on the contents of the exhibits and ancillary agreements hereto.

19.19 **Terms and Conditions Not Superseded.** Nothing in this Amended Agreement abrogates, supersedes, modifies, or qualifies in any way any of the contractual terms and conditions applicable in the ordinary course to the relationship between

Defendants and their customers, or to the products and services provided by Defendants and purchased by their customers.

19.20 **Waiver Of Compliance.** Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

20. SIGNATURE PAGE

WHEREFORE, the undersigned, being duly authorized, have caused this Amended Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

Dated this 22nd day of March, 2013.

DATED: March 22, 2013



ANDREW N. FRIEDMAN,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: _____, 2013

LEE S. SHALOV,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: _____, 2013

ANGELA EDWARDS,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: _____, 2013

HYDROXATONE, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

DATED: _____, 2013

ATLANTIC COAST MEDIA GROUP, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

20. SIGNATURE PAGE

WHEREFORE, the undersigned, being duly authorized, have caused this Amended Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

Dated this ____ day of March, 2013.

DATED: ____, 2013

ANDREW N. FRIEDMAN,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: 3/22, 2013



LEE S. SHALOV,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: ____, 2013

ANGELA EDWARDS,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: ____, 2013

HYDROXATONE, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

DATED: ____, 2013

ATLANTIC COAST MEDIA GROUP, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

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WHEREFORE, the undersigned, being duly authorized, have caused this Amended Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

Dated this ____ day of March, 2013.

DATED: ____, 2013

ANDREW N. FRIEDMAN,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: ____, 2013

LEE S. SHALOV,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: March 22, 2013

Angela Edwards
ANGELA EDWARDS,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: ____, 2013

HYDROXATONE, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

DATED: ____, 2013

ATLANTIC COAST MEDIA GROUP, LLC

By: _____
Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

20. SIGNATURE PAGE

WHEREFORE, the undersigned, being duly authorized, have caused this Amended Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

Dated this ____ day of March, 2013.

DATED: _____, 2013

ANDREW N. FRIEDMAN,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: _____, 2013

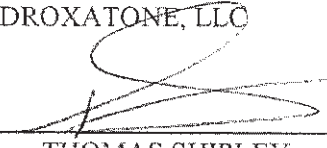
LEE S. SHALOV,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: _____, 2013

ANGELA EDWARDS,
ACTING AS PLAINTIFFS' CLASS COUNSEL

DATED: 22 3, 2013


HYDROXATONE, LLC

By: 

Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer

DATED: 22 3, 2013

ATLANTIC COAST MEDIA GROUP, LLC

By: 

Name: THOMAS SHIPLEY
Title: Co-Founder and Chief Executive Officer