

FILED
San Francisco County Superior Court

JUN 27 2014

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

CRYSTLE WONG, NICHOLAS J.
GIANINO, ARNOLD LEE, and LORI
RISMAN, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

ALACER CORP.,

Defendant.

Case No. CGC-12-519221

CLASS ACTION

**FINAL APPROVAL ORDER,
DECREE AND JUDGMENT**

Compl. Filed: March 16, 2012

THIS MATTER having been brought before the Court by Plaintiffs Nicholas J. Gianino, Arnold Lee, Lori Risman and Crystle Wong and without objection from Defendant Alacer Corp. ("Alacer"), through their respective attorneys, pursuant to Rule 3.769 of the California Rules of Court, for an Order granting final approval of a class action settlement (the "Motion"); and the Court having reviewed the submissions of the Parties in connection with both preliminary and final settlement approval,¹ all properly and timely filed objections to the proposed class action settlement, and the Parties' responses to such objections, having held hearings on May 13, 2014, June 3, 2014 and June 26, 2014, after having held preliminary approval hearings on October 30,

¹ Unless otherwise defined herein, all capitalized terms set forth in this Order shall have the same meaning as that set forth in the Stipulation and the Order Granting Motion for Preliminary Approval of Class Action Settlement and Directing Dissemination of Class Notice dated December 12, 2013.

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1 November 19 and December 12, 2013, and having found that the Parties are entitled to the relief
2 they seek; and for good cause shown;

3 The Court makes the following findings:

- 4 1. The Court has jurisdiction over the subject matter of this action and over
5 all claims raised therein and all Parties thereto, including the Settlement
6 Class.
- 7 2. With respect to the Settlement Class, the Court finally finds and
8 concludes, for settlement purposes only, that: (a) the Settlement Class
9 Members are so numerous as to make joinder of them impracticable;
10 (b) there are questions of law and fact common to the Settlement Class,
11 and such questions predominate over any questions affecting only
12 individual Settlement Class Members; (c) Class Representatives' claims
13 and the defenses asserted thereto are typical of the claims of Settlement
14 Class Members and the defenses asserted thereto; (d) Class
15 Representatives and Settlement Class Counsel have fairly and adequately
16 protected the interests of Settlement Class Members throughout this
17 action; and (e) a class action is superior to all other available methods for
18 fairly and efficiently resolving this action and provides substantial benefits
19 to both the litigants and the Court.² The Court therefore determines that
20 this action satisfies the prerequisites for class certification for settlement
21 purposes pursuant to California Code of Civil Procedure Section 382 and
22 California Civil Code Section 1781, and finally certifies the Settlement
23 Class for settlement purposes.
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26 ² These findings are made for settlement purposes only. The Court expresses no opinion or
27 conclusion in this Order or otherwise about whether class certification would be proper if this
28 case proceeded on the merits. Alacer may, if the settlement does not reach its Effective Date,
argue and take the position that the elements necessary for class certification are not met in this
case.

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3. Accordingly, for purposes of this settlement only, the Court finally approves Plaintiffs Nicholas J. Gianino, Arnold Lee, Lori Risman and Crystle Wong (collectively "Class Representatives") as representatives of the Settlement Class, represented by the Settlement Class Counsel set forth below, and certifies a Settlement Class defined as follows: "all persons who from June 1, 2006 to February 27, 2012 purchased Emergen-C products in the United States. Excluded from the Settlement Class are Alacer's employees, officers, directors, agents, and representatives and those who purchased the Products for the purpose of re-sale."
 4. Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rule 3.766 of the California Rules of Court, and due process. The Class Notice apprised the members of the Settlement Class of the pendency of the litigation, of all material elements of the proposed settlement, of the effect on the members of the Settlement Class, and of their opportunity to opt out of the settlement, to comment on and object to the settlement, and to appear at the Final Approval Hearing. Full opportunity has been afforded to the members of the Settlement Class to participate in the Final Approval Hearing. Accordingly, the Court determines that all members of the Settlement Class who have not opted out are bound by this Final Judgment and Order.
 5. Through March 19, 2014 (the deadline for opting out of the Settlement Class set by the Court in its Preliminary Approval Order) no purported members of the Settlement Class have opted out of the Settlement Class.

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6. The Stipulation of Settlement dated as of September 26, 2013, as amended on November 26, 2013 (the "Stipulation") was arrived at after extensive arm's-length negotiations conducted in good faith by counsel for all Parties in the above-captioned action, including several private mediations among the Parties.
7. This litigation presents difficult and complex issues as to liability and damages, as to which there are substantial grounds for difference of opinion.
8. The settlement terms set forth in the Stipulation are fair, reasonable and adequate in light of the complexity, expense and duration of the litigation, and the risks inherent and involved in establishing liability and damages, and in maintaining the class action through trial and appeal.
9. The promises and commitments of the Parties under the terms of the Stipulation, including the creation of the Settlement Fund, constitute fair value given in exchange for the releases of the Released Claims against the Released Persons. Settlement Class Members have until October 1, 2014 to submit claims for full refunds of the Emergen-C products they purchased, up to \$36.00, regardless of whether they have proofs of purchase. Class members will be further informed of their ability to make claims for refunds through October 1, 2014 by publication in USA Today and Delta Sky Magazine and on the internet through the Settlement Website and phone message to be modified by July 1, 2014. Publication to be made in USA Today twice at a quarter page size and Delta Sky Magazine at half page size. Cameron Azari and Class Counsel are responsible for taking the above actions. Mr. Azari and Class Counsel to file a Declaration by October 15, 2014 stating number of additional claims and also confirm publication and website with changed information.

1 10. The objections to the Settlement submitted are without merit and are
2 hereby overruled.

3 11. The Parties and each Settlement Class Member have submitted to the
4 jurisdiction of this Court for any suit, action, proceeding, or dispute arising
5 out of the Stipulation, permitting the Court to retain continuing
6 jurisdiction over this action pursuant to Rule 3.769 of the California Rules
7 of Court. It is in the best interests of the Parties and the Settlement Class
8 Members, and consistent with principles of judicial economy, that any
9 dispute between any Settlement Class Member (including any dispute as
10 to whether any person is a Settlement Class Member) and any of the
11 Released Persons that in any way relates to the applicability or scope of
12 the Stipulation, or of this Final Judgment and Order, should be presented
13 exclusively to this Court for resolution by this Court.

14 Based upon the foregoing, and all of the evidence presented in the record,

15 **IT IS ORDERED, ADJUDGED, and DECREED** as follows:

16 1. The Parties' request for final approval of the Class Action Settlement is
17 **GRANTED.**

18 The Stipulation submitted by the Parties is finally approved as fair, reasonable, adequate,
19 just, and in the best interests of the Settlement Class, and the Parties are hereby directed to
20 consummate the Stipulation in accordance with its terms. The Stipulation shall be deemed
21 incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

22 2. The proposed method for providing relief to Settlement Class Members, as set
23 forth in the Stipulation, is finally approved as fair, reasonable, adequate, just, and in the best
24 interests of the Settlement Class, and the Parties are hereby ordered to provide and comply with
25 the relief described in the Stipulation in accordance with the terms of the Stipulation. The Court
26 further approves the following *cy pres* recipients, who are each to receive one-quarter of the Net
27 Settlement Fund as that term is defined in the Stipulation, and are to use such funds consistent
28 with the requirements of C.C.P. § 384: ChangeLab Solutions, Wellness in the Schools, Vitamin

1 Angels and Feeding America. Such funds will be distributed pursuant to separate order by Court.
2 Counsel to supply the following information for the court order: full name of the organization,
3 address, and person at organization to whom net amount is to be distributed. Counsel will also
4 supply written acknowledgement from organizations that funds will be utilized for the purposes
5 of the organization and no other purposes and further the organizations will each sign a receipt
6 acknowledging funds when they are received.

7 3. The proposed fee and expense award to Settlement Class Counsel and the payment
8 of incentive awards to the Class Representatives, as set forth in the papers submitted in support of
9 Plaintiffs' Motion for Final Certification of Settlement Class, Approval of Class Action
10 Settlement, and Payment of Attorneys' Fees and Costs and Incentive Awards dated March 7,
11 2014, are approved. These amounts are as follows: (a) Incentive Awards \$35,000 -- \$5,000 to
12 Ms. Wong, \$10,000 to Mr. Gianino, \$10,000 to Mr. Lee and \$10,000 to Ms. Risman. (b)
13 \$72,512.72 for expenses to Class Counsel, payable to Whatley Kallas LLP for distribution to
14 Class Counsel as appropriate. (c) \$1,935,000 -- 30% of settlement amount of \$6.45 million for
15 attorneys' fees, to be paid one half 20 business days after the Effective Date and balance after
16 completion of further obligations of Class Counsel and Mr. Azari, or 20 business days after the
17 Effective Date, whichever is later. Fees to be paid directly to Whatley Kallas LLP for distribution
18 to Class Counsel as appropriate.

19 4. By this Final Approval Order, Decree, and Judgment entered pursuant to it,
20 effective as of the settlement's Effective Date, and in consideration of the Stipulation and the
21 benefits extended to the Settlement Class, Class Representatives, on behalf of themselves and the
22 Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself
23 and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint
24 venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups,
25 directors, officers, shareholders, employees, agents, representatives, servants, partners, executors,
26 administrators, assigns, predecessors, successors, descendants, dependents, and heirs, are deemed
27 to fully release and forever discharge the Released Persons from the Released Claims as set forth
28 in the Stipulation. Effective as of the settlement's Effective Date, the Court orders and enters a

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1 permanent injunction barring and enjoining the Class Representatives and the Settlement Class
2 Members from bringing, filing, commencing, prosecuting, continuing to prosecute, maintaining,
3 intervening in, participating in, or receiving any benefits from any lawsuit, arbitration, or
4 administrative, regulatory, or other proceeding in law or equity that asserts, arises from, concerns,
5 or is in any way related to the claims as set forth in this Paragraph and as described in the
6 Stipulation.

7 5. This Final Approval Order, Decree, and Judgment, the Stipulation, and the
8 settlement which it reflects, and any and all acts, statements, documents, or proceedings relating
9 to the settlement are not, and shall not be construed as, or used as an admission by or against
10 Alacer or any Released Person of any fault, wrongdoing, or liability on their part, or the validity
11 of any Released Claim, or of the existence or amount of damages.

12 6. Without affecting the finality of this Judgment and pursuant to Rule 3.769 of the
13 California Rules of Court, this Court retains continuing jurisdiction over this settlement, including
14 the administration, consummation, and enforcement of the Stipulation. In addition, without
15 affecting the finality of this Judgment, this Court retains jurisdiction over the Parties, the
16 Released Persons, and each member of the Settlement Class, who are deemed to have submitted
17 to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of
18 or relating to this Order and the terms of the Stipulation.

19 7. The Court finds that there is no reason for delay and directs the Clerk to enter
20 judgment in accordance with the terms of this Order and Judgment as of the date of this Order
21 and Judgment.

22 DATED: June 27, 2014


Hon. James A. Robertson, II, Judge