



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

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Case Number: CGC-12-519221

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ORDER

**WONG, CRYSTLE INDIVIDUALLY AND ON BEHALF OF OTHERS VS. ALACER
CORPORATION**

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1 Michael R. Reese (Cal. Bar No. 206773)
mreese@reeserichman.com
2 **REESE RICHMAN LLP**
875 Avenue of the Americas, 18th Floor
3 New York, New York 10001
Telephone: 212/643-0500
4 Facsimile: 212/253-4272

5 Alan Mansfield (Cal. Bar No. 125998)
amansfield@whatleykallas.com
6 **WHATLEY KALLAS, LLP**
1 Sansome Street, 35th Floor
7 San Francisco, California 94104
Telephone: 415/860-2503
8 Facsimile: 888/331-9633

9 Jeffrey A. Leon
jeff@complexlitigationgroup.com
10 **COMPLEX LITIGATION GROUP LLC**
513 Central Avenue, Suite 300
11 Highland Park, Illinois 60035
Telephone: 847/433-4500
12 Facsimile: 847/433-2500

13 **Attorneys for Plaintiffs**

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

16 **CRYSTLE WONG**, individually and on
behalf of others similarly situated,

17 Plaintiff,

18 vs.

19 **ALACER CORP.**,

20 Defendant.

Case No. CGC-12-519221

CLASS ACTION

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND DIRECTING
DISSEMINATION OF CLASS NOTICE**

Hearing Date: December ¹² 7, 2013
Time: 9:30 a.m. 7
Dept.: 302
Judge: Hon. Marla J. Miller

Compl. Filed: March 16, 2012

BY FAX

26 THIS MATTER having been brought before the Court on Motion ~~jointly~~ by Plaintiff
27 Crystle Wong, ^{unopposed} and by Defendant Alacer Corp. ("Alacer"), through their respective attorneys,
28 under Rule 3.769 of the California Rules of Court, for an Order granting preliminary approval of

FILED
Superior Court of California
County of San Francisco

DEC 12 2013

CLERK OF THE COURT

BY:  Deputy Clerk

1 a class action settlement and directing the dissemination of class notice (the "Motion"), and the
2 Court having reviewed the submissions of the parties, having held hearings on October 30, 2013,
3 November 19, 2013 and December ¹² 7, 2013, and having found that the parties are entitled to the *mjn*
4 relief they seek; and for good cause shown;

5 IT IS ORDERED that the Motion is GRANTED, and it is further ORDERED as follows:

6 1. The Court grants Plaintiff Wong leave to file a First Amended Complaint for the
7 purposes of adding Nicholas J. Gianino, Arnold Lee and Lori Risman as Plaintiffs and alleging a
8 nationwide Class.

9 2. The proposed Amended Stipulation of Settlement dated November 26, 2013 (the
10 "Stipulation"), submitted with the Motion and filed with the Court, is within the range of that
11 which may be approved as fair, reasonable, and adequate. Unless otherwise defined herein, all
12 capitalized terms in this Order have the same meaning as the meaning described in the
13 Stipulation.

14 3. Based upon the submissions of the parties and the evidence submitted therein, the
15 Court conditionally makes the following findings for settlement purposes only, subject to final
16 affirmation at the Final Approval Hearing: (a) the members of the Settlement Class
17 ("Settlement Class Members") are so numerous as to make joinder impracticable; (b) there are
18 questions of law and fact common to the Settlement Class, and such questions predominate over
19 any questions affecting only individual Settlement Class Members; (c) Plaintiffs' claims and the
20 defenses thereto are typical of the claims of Settlement Class Members and the defenses thereto;
21 (d) Plaintiffs and their counsel can and have fairly and adequately protected the interests of the
22 Settlement Class Members in this action; and (e) a class action is superior to all other available
23 methods for fairly and efficiently resolving this action and provides substantial benefits to the
24 Parties, the Settlement Class Members and the Court. These findings are made for settlement
25 purposes only. The Court expresses no opinion or conclusion in this Order or otherwise about
26 whether class certification would be proper if this case proceeded on the merits. Alacer may, if
27 the settlement is not fully or finally approved or does not reach its Effective Date, argue and take
28 the position that the elements necessary for class certification are not met in this case.

1 4. Accordingly, for purposes of this settlement only, the Court preliminarily approves
2 Plaintiffs NICHOLAS J. GIANINO, ARNOLD LEE, LORI RISMAN and CRYSTLE WONG
3 (collectively "Class Representatives") as representatives of the Settlement Class, represented by
4 the Settlement Class Counsel set forth below, and conditionally certifies a Settlement Class
5 defined as follows: "all persons who from June 1, 2006 to February 27, 2012 purchased Emergen-
6 C products in the United States. Excluded from the Settlement Class are Alacer's employees,
7 officers, directors, agents, and representatives and those who purchased the Products for the
8 purpose of re-sale."

9 5. This matter is conditionally certified as a class action for settlement purposes only,
10 under California Code of Civil Procedure Section 382 and California Civil Code Section 1781. If
11 the settlement does not receive final approval, Defendant Alacer retains the right to assert that this
12 action may not be certified as a class action.

13 6. Reese Richman LLP; Whatley Kallas, LLP; D'Angelo & Hashem, LLC; Complex
14 Litigation Group LLC; Becker, Paulson, Hoerner & Thompson, P.C.; and The Kreisler Law Firm,
15 LLC are appointed as Settlement Class Counsel.

16 7. A Final Approval Hearing shall be held before this Court on April 2, 2014 at
17 9:30 a.m., to determine whether: (a) for final affirmation, this action meets each of the
18 prerequisites for class certification and may properly be maintained as a class action on behalf of
19 the Settlement Class for settlement purposes; (b) the Court should finally approve the Stipulation
20 and all terms contained therein as fair, reasonable, and adequate; (c) the Court should enter a
21 Final Judgment and Order that will be consistent and in accordance with the terms of the
22 Stipulation and will (i) finally approve the terms of the Stipulation, including a provision for the
23 payment of attorneys' fees and incentive awards to the Plaintiffs that the Court deems fair,
24 reasonable and adequate; and (ii) release the Released Persons of and from all further liability to
25 the Plaintiffs and Settlement Class Members with respect to the Released Claims as set forth in
26 the Stipulation ("Final Judgment and Order"). The Final Approval Hearing may be postponed,
27 adjourned or continued by further order of this Court, without further notice to the Settlement
28 Class.

1 8. At the Final Approval Hearing, the Court will consider and determine whether the
2 Stipulation should be finally approved as fair, adequate and reasonable in light of any timely and
3 valid objections presented by Settlement Class Members and the parties' responses to any such
4 objections that have been submitted to the Court in accordance with the provisions set forth
5 below.

6 9. Any Settlement Class Member may object to the fairness, reasonableness or
7 adequacy of the proposed settlement. Each Settlement Class Member who wishes to object to any
8 term of this settlement must do so in writing by timely mailing a written objection to each of the
9 following addresses:

Clerk of the Court	Class Counsel	Alacer's Counsel
Civil Clerk's Office San Francisco Superior Court 400 McAllister St., Room 103 San Francisco, CA 94102-4514	Patrick J. Sheehan Whatley Kallas, LLP 60 State Street, 7 th Floor Boston, Massachusetts 02109	Robyn E. Bladow Kirkland & Ellis LLP 333 South Hope Street Los Angeles, California 90071

14
15 Any such objection must be postmarked no later than fourteen (14) days prior to the date initially
16 set for the Final Approval Hearing. Any such objection must contain (a) the full name, address
17 and telephone number of the Settlement Class Member, and if he or she retains an attorney, the
18 attorney's full name, address, and telephone number, (b) a written statement of all grounds for the
19 objection accompanied by any legal support for the objection (if any), (c) a statement whether the
20 Settlement Class Member or his/her counsel intends to appear at the Final Approval Hearing,
21 (d) proof of membership in the Settlement Class, (e) the signature of the Settlement Class
22 Member or her/his counsel. Any objection that fails to satisfy the above requirements, or that is
23 not timely submitted, will be disregarded by the Court (absent further order), and deemed to have
24 been waived, and the Settlement Class Member asserting such objection shall be bound by the
25 final determination of the Court.

26 10. Any Person included within the definition of the Settlement Class who wishes to
27 be excluded from the Settlement Class must mail or deliver a written request for exclusion to the
28 Settlement Administrator, care of the address provided in the Class Notice, postmarked or

1 delivered no later than fourteen (14) days before the Final Approval Hearing, or as the Court
2 otherwise may direct. The request must state that the Settlement Class Member wishes to be
3 excused, and must contain (a) the full name, address and telephone number of the Settlement
4 Class Member, (b) proof of membership in the Class, and (c) the signature of the Settlement Class
5 Member. Any Person within the Settlement Class who wishes to be excluded from the Settlement
6 Class can opt out only for himself or herself. No Person may opt out for any other Person or
7 group of persons, nor can any Person within the Settlement Class authorize any other Person to
8 opt out on his or her behalf. Any request for exclusion that fails to satisfy the above
9 requirements, or that has not been timely sent, will be deemed ineffective, and any Person
10 included within the Settlement Class who does not properly and timely submit a request for
11 exclusion shall be deemed to have waived all rights to opt out and shall be deemed a Settlement
12 Class Member for all purposes.

13 11. The Court finds that the manner of dissemination and content of the Class Notice
14 (attached as Exhibits B and C to the Stipulation) meets the requirements of California Civil Code
15 Section 1781, California Code of Civil Procedure Section 382, Rule 3.766 of the California Rules
16 of Court, and due process. The dissemination and content of the Class Notice as set forth in detail
17 in the Amended Declaration of Cameron Azari dated November 22, 2013, constitutes ^{reasonable} ~~the best~~ notice ^{practicable under the circumstances} and provides sufficient notice to members of the ^{m g}
18 Settlement Class. All costs incurred in connection with the preparation and dissemination of any ^{m g}
19 settlement notices to the Settlement Class shall be promptly paid out of the Settlement Fund. The
20 Court hereby also approves the appointment of Epiq Systems as the settlement administrator for
21 the purpose of disseminating the Class Notice.

22
23 12. If the Stipulation is finally approved, the Court shall enter a Final Judgment and
24 Order and Decree that will be consistent and in accordance with the terms of the Stipulation and
25 will: (a) finally approve the terms of the Stipulation, including a provision for the payment of
26 attorneys' fees and incentive awards to the Plaintiffs that the Court deems fair, reasonable and
27 adequate; and (b) release the Released Persons of and from all further liability to the Plaintiffs
28 and Settlement Class Members with respect to the Released Claims as set forth in the Stipulation.

1 Such Final Judgment and Order shall be fully binding with respect to all members of the
2 Settlement Class who have not timely and validly requested exclusion and the Released Persons.

3 13. In the event that the Stipulation is not approved by the Court, is terminated or fails
4 to become effective in accordance with its terms, the entire Stipulation shall become null and
5 void. The parties shall be equally responsible for any due and unpaid administrative and notice
6 costs and expenses, including the costs of notifying the Class and any claims administration costs.

7 14. The dates of performance are as follows:

8 (a) The Long Form Notice and Short Form Notice substantially
9 in the forms attached to the Stipulation as Exhibits B and C shall be
10 posted on www.emergencerefund.com, or its substantial equivalent,
11 within ten days of entry of this Order. A copy of the Stipulation and
12 Claim Form shall be made available to Class Members through the
13 Settlement Website, or by calling the toll-free number provided by the
14 Settlement Administrator or by writing to the Settlement
15 Administrator.

16 (b) Within thirty days of entry of this Order, the Short Form
17 Notice substantially in the form of Exhibit C attached to the
18 Stipulation shall be published in accordance with the media plan set
19 forth in the Amended Declaration of Cameron Azari, dated November
20 22, 2013. mgm

21 (c) The deadlines for filing or submitting objections and
22 requests for exclusion by Settlement Class Members shall be March 19, 2014
23 _____.

24 (d) The Parties shall file and serve papers in support of final
25 approval of the settlement, including the provision for payment of
26 attorneys' fees and reimbursement of litigation expenses to Settlement
27 Class Counsel and payment to the Class Representatives, by March 7, 2014
28 _____ . Any responses by the Parties to any objections that may

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be timely and validly filed will be filed by March 25, 2014

(e) The Final Approval Hearing shall be held before this Court
on April 2, 2014, at 9:30 a.m.

DATED: December 12, 2013

Marla J. Miller
HON. MARLA J. MILLER
Judge of the Superior Court