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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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

Plaintiff,

v.

ALACER CORP.,

Defendant.

Case No. CGC-12-519221

**CLASS ACTION**

**AMENDED STIPULATION OF  
SETTLEMENT**

1 This Amended Stipulation of Settlement (“Stipulation”) is made and entered into by and  
2 among Plaintiffs Crystle Wong, Nicholas J. Gianino, Arnold Lee and Lori Risman (“Plaintiffs”),  
3 on behalf of themselves and the Settlement Class (defined below), by and through Class Counsel  
4 authorized to enter into this settlement on their behalf, and Defendant Alacer Corp. (“Alacer”), to  
5 settle *Crystle Wong v. Alacer Corp.* (Case No. CGC-12-519221, Superior Court of California,  
6 County of San Francisco) (the “*Wong Action*”) and *Gianino, et al. v. Alacer Corp.* (Case No.  
7 SACV 09-01247-CJC (RNBx), United States District Court for the Central District of California)  
8 (the “*Gianino Action*”) (collectively, the “Actions”), subject to final approval of the settlement  
9 terms (“Settlement”) by the Court.

10 **I. RECITALS**

11 A. On October 27, 2009, Nicholas J. Gianino, Arnold Lee and Lori Risman filed the  
12 *Gianino Action* on behalf of themselves and a class of others similarly situated  
13 against Alacer, alleging (1) unfair and deceptive acts and practices in violation of  
14 the California Consumers Legal Remedies Act (“CLRA”), California Civil Code  
15 §1750, *et seq.*; (2) false and misleading advertising in violation of the California  
16 False Advertising Law (“FAL”), California Business & Professions Code §  
17 17500, *et seq.*; (3) unlawful, unfair and fraudulent conduct in violation of the  
18 California Unfair Competition Law (“UCL”), California Business & Professions  
19 Code § 17200, *et seq.*; (4) unjust enrichment; (5) intentional  
20 misrepresentation/fraud; (6) negligent misrepresentation; (7) breach of express  
21 warranty; (8) breach of implied warranty; and (9) breach of contract, all in  
22 connection with claims made by Alacer in the marketing, advertising and  
23 packaging of its Emergen-C products, including claims that they “boosted” one’s  
24 immune system if used as directed.

25 B. On May 5, 2010, Plaintiffs Gianino, Lee and Risman filed an Amended  
26 Complaint asserting claims for (1) violation of the CLRA, (2) violation of the  
27 FAL, (3) violation of the UCL, (4) unjust enrichment, (5) intentional  
28 misrepresentation/fraud, and (6) negligent misrepresentation.

1 C. On August 4, 2010, the court denied Alacer's motion to dismiss Plaintiffs' claims  
2 under Federal Rule of Civil Procedure 12(b)(6) and, on August 19, 2010, Alacer  
3 filed its answer to the Amended Complaint. Thereafter, the Parties engaged in  
4 extensive discovery.

5 D. On February 27, 2012, the court denied Plaintiffs' motion to certify a nationwide  
6 class for California law claims.

7 E. Following the court's Order denying class certification, on March 5, 2012, the  
8 parties stipulated to stay the *Gianino* Action pending a status conference. On  
9 March 7, 2012, the court issued an order granting the stipulation to stay and  
10 directing the parties to meet and confer regarding a revised scheduling order to be  
11 submitted within 45 days.

12 F. On March 16, 2012, Crystle Wong filed the *Wong* Action on behalf of herself and  
13 a class of similarly situated California consumers, against Alacer, making the  
14 same factual allegations asserted in the *Gianino* Action and asserting claims for  
15 violations of the CLRA, FAL and UCL.

16 G. Due to stipulations filed by the parties to the *Gianino* Action on April 18 and June  
17 12, 2012, in order to give the parties time to discuss possible resolution of the  
18 Actions, the court stayed the *Gianino* Action and ordered that the parties submit  
19 an agreed-upon scheduling order by August 24, 2012.

20 H. Pursuant to the scheduling order entered on August 28, 2012, on September 24,  
21 2012, the parties to the *Gianino* Action stipulated to the filing of a Second  
22 Amended Complaint, which was filed on September 26, 2012. The Second  
23 Amended Complaint asserted claims on behalf of a class of consumers who  
24 purchased Emergen-C in Illinois, Massachusetts or New Hampshire, under  
25 Illinois, Massachusetts and New Hampshire laws, respectively.

26 I. On October 29, 2012, the parties to the *Gianino* Action stipulated to the filing of a  
27 Third Amended Complaint, which was then filed on November 6, 2012.

28 ///

J. Both the Third Amended Complaint in the *Gianino* Action and the Complaint in the *Wong* Action allege that the marketing, advertising and packaging of Alacer's Emergen-C products were false and misleading because certain products included, among other things, the following statements:

- "Health and Energy Booster."
- "The powerful blend of vitamins, antioxidants and minerals boost your immunity, increase your metabolic function and ignite your energy level - without caffeine."
- "Health Boost – 1,000 mg of vitamin C, zinc, quercetin and antioxidants power up your immune system to promote overall health."
- "A powerful blend of vitamin C, B vitamins, antioxidants and electrolytes [that] boosts your immunity, increases your metabolic function, and ignites your energy level to help you really feel the good."
- "Boost immunity, increase metabolic function, and ignite your energy level – without caffeine. If feeling good while boosting your immunity defenses is your thing, you've found the right box."
- "Energy Boost – 7 B vitamins . . . offer a natural energy boost – no caffeine, no crash."
- Emergen-C Immune Defense Formula is "[t]he feel good way to strengthen your immunity every day" and will "[a]ctivate the white blood cells that are most important in antibody production and in coordinating immune functions", "fight[] free radicals and help[] maintain healthy white blood cell activity," and "stimulate" and "enhance" the immune system.

K. While the Parties were litigating the Actions, they also participated in protracted, extensive, and hard-fought settlement negotiations. On October 25, 2011, the Parties participated in a full-day mediation session conducted by retired federal district Judge George Schiavelli of JAMS in Los Angeles, but were unable to reach a resolution during the mediation, and continued forward with the litigation.

L. On November 16, 2012, the Parties participated in a full-day mediation conducted by retired California Superior Court Judge Carl West of JAMS in Los Angeles, California, at which time the Parties agreed in principle to settle the Actions.

M. Based upon Class Counsel's investigation and evaluation of the facts and law relating to the matters alleged in the Actions, Plaintiffs and Class Counsel have agreed to settle the Actions pursuant to the terms and conditions set forth in this

1 Stipulation after considering, among other things: (1) the substantial benefits  
2 available to the Class under the terms of this Stipulation; (2) the attendant risks  
3 and uncertainty of litigation, especially in complex actions like this, as well as the  
4 difficulties and delays inherent in such litigation; and (3) the desirability of  
5 consummating this Stipulation promptly to provide effective relief to Plaintiffs  
6 and the Class.

- 7 N. Alacer has expressly denied and continues to deny all claims, contentions and  
8 charges of wrongdoing or liability against it arising out of any of the conduct,  
9 statements, acts and/or omissions alleged, or that could have been alleged, in the  
10 Actions. Notwithstanding its view that Plaintiffs' claims are meritless, however,  
11 Alacer desires to settle the Actions because a settlement will avoid the risk,  
12 expense and distraction of continued litigation, and therefore believes settlement  
13 on the terms and conditions set forth in this Stipulation is appropriate without  
14 admitting liability.
- 15 O. This Stipulation effectuates the resolution of disputed claims and is for settlement  
16 purposes only.

17 **II. DEFINITIONS**

- 18 A. As used in this Stipulation the following capitalized terms have the meanings  
19 specified below:

- 20 1. "Actions" means:

- 21 a. *Wong, et al. v. Alacer Corporation*, Case No. CGC-12-519221  
22 (California Superior Court for San Francisco County); and  
23 b. *Gianino, et al. v. Alacer Corp.*, Case No. SACV 09-01247-CJC  
24 (RNBx) (United States District Court for the Central District of  
25 California).

- 26 2. "Alacer's Counsel" means:

27 Melissa D. Ingalls  
28 Robyn E. Bladow  
Allison W. Buchner  
Kirkland & Ellis LLP  
333 South Hope Street  
Los Angeles, California 90071

1           3.     “Challenged Claims” means the immunity-related, energy-related, and  
2 metabolism-related statements made by Alacer in the marketing, advertising and  
3 packaging of the Products during the Settlement Class Period, including all claims  
4 challenged by Plaintiffs in the various complaints filed in the Actions and the alleged  
5 facts relating to those claims.

6           4.     “Claim Form” means the document to be submitted by Claimants seeking  
7 payment pursuant to this Stipulation that will accompany the Class Notice and will be  
8 available online at the Settlement Website, substantially in the form of Exhibit A and  
9 discussed in § IV.E.1 of this Stipulation.

10          5.     “Claimant” means a Settlement Class Member who submits a claim for  
11 payment as described in § IV of this Stipulation.

12          6.     “Claim-In Period” means the period beginning when Notice is  
13 disseminated to the Class pursuant to a Preliminary Approval Order entered by the Court  
14 and ending 90 days later.

15          7.     “Class Counsel” means:

16                     Michael R. Reese (Cal. Bar No. 206773)  
17                     Reese Richman LLP  
18                     875 Avenue of the Americas, 18<sup>th</sup> Floor  
19                     New York, New York 10001  
20                     212/643-0500

21                     Patrick J. Sheehan  
22                     Whatley Kallas, LLP  
23                     60 State Street, 7<sup>th</sup> Floor  
24                     Boston, Massachusetts 02109  
25                     617/573-5118

26                     Stephen D’Angelo  
27                     D’Angelo & Hashem, LLC  
28                     2 Center Plaza, Suite 510  
                      Boston, Massachusetts 02108  
                      617/624-9777

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Brian T. Kreisler  
The Kreisler Law Firm, LLC  
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O'Fallon, Illinois 62269  
618/381-5116

8. "Class Notice" means, collectively, the "Long Form Notice" and the "Short Form Notice," substantially in the forms of Exhibit B and Exhibit C, respectively, and discussed in § V of this Stipulation.

9. "Court" means the California Superior Court for the County of San Francisco.

10. "Effective Date" means the date on which all of the conditions of settlement have been satisfied, as discussed in § IX of this Stipulation.

11. "Final Approval Hearing" means the hearing at which the Court will finally determine whether the terms of the Settlement are fair, reasonable, and adequate for the Settlement Class, and whether the Judgment approving the Settlement should be entered.

12. "Judgment" or "Final Judgment and Order" means the Final Judgment and Order to be entered by the Court, which shall be submitted to the Court substantially in the form attached as Exhibit D.

13. "Party" or "Parties" means Plaintiffs and/or Alacer.

14. "Person" means a natural person or individual.

15. "Preliminary Approval Order" means the "Order Granting Preliminary Approval of Class Action Settlement," substantially in the form of Exhibit E attached hereto, preliminarily approving the Settlement set forth herein, certifying the Settlement Class for settlement purposes only, appointing Plaintiffs Nicholas J. Gianino, Arnold Lee, Lori Risman and Crystle Wong, as the Settlement Class representatives, granting leave to Plaintiff Wong to file a First Amended Complaint in the *Wong* Action for the purposes of

1 adding Nicholas J. Gianino, Arnold Lee and Lori Risman as Settlement Class  
2 representatives and alleging a nationwide Class, providing for notification to the  
3 Settlement Class and seeking the scheduling of the Final Approval Hearing.

4 16. “Products” means the Emergen-C products that are the subject of the  
5 Actions, including the following products:

- 6 a. Emergen-C Original Formula;
- 7 b. Emergen-C Specialty Formula products: Heart Health, Joint  
8 Health, Immune Defense, Lite with MSM, MSM, Vitamin D &  
9 Calcium, and ElectroMIX;
- 10 c. Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, and Emergen-C  
11 Kidz;
- 12 d. Emergen-C Immune Plus; and
- 13 e. Super Gram tablets.

14 17. “Proof of Purchase” means a valid receipt or box packaging with UPC  
15 code, lot number, and Claimant’s name printed directly on box, evidencing the purchase  
16 of the Product(s) during the Settlement Class Period.

17 18. “Released Claims” means, with the exception of claims for personal  
18 injury, any and all actions, claims, demands, rights, suits, and causes of action of  
19 whatever kind or nature, seeking whatever kind or nature of remedy including, but not  
20 limited to, damages, costs, expenses, penalties, and attorneys’ fees, against the Released  
21 Persons, in law or in equity, arising out of or relating to the Challenged Claims made in  
22 or in connection with Alacer’s advertising, marketing, packaging, promotion, sale and  
23 distribution of the Products, whether known or unknown, direct or indirect, existing or  
24 potential, or suspected or unsuspected.

25 19. “Released Persons” means and includes Alacer and its direct and indirect  
26 corporate parents, affiliates, and subsidiaries, including the officers, directors, employees,  
27 shareholders, spokespersons, public relations firms, advertising and production agencies,  
28 agents, and assigns of all such persons or entities.

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20. “Settlement Administrator” means the company to be selected by Class Counsel and approved by Alacer in its reasonable discretion and the Court to provide Class Notice and to administer the claims process.

21. “Settlement Class” means all persons who during the Settlement Class Period purchased the 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.

22. “Settlement Class Member(s)” or “Member(s) of the Settlement Class” means member(s) of the Settlement Class who has not been properly excluded from the Settlement Class.

23. “Settlement Class Period” means the period from June 1, 2006 to February 27, 2012.

24. “Settlement Fund” means the \$6.45 million fund (discussed in § IV.B of this Stipulation).

25. “Settlement Website” means the website to be created for this Settlement that will include information about the Actions and the Settlement, relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed, and utilizing the address [www.emergencerefund.com](http://www.emergencerefund.com) or its substantial equivalent.

B. Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

### **III. CERTIFICATION OF THE NATIONAL SETTLEMENT CLASS**

#### **A. Conditional Certification**

For settlement purposes only, and without any finding or admission of liability or wrongdoing by Alacer, and solely pursuant to the terms of this Settlement, the Parties consent to and agree to the conditional certification of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, and to the conditional approval of Plaintiffs as adequate representatives of the Settlement Class. Certification of the Settlement Class is

1 conditional on the Court's approval of the Settlement. In the event the Court does not approve  
2 all terms of the Settlement, then the certification shall be void and this Stipulation and all orders  
3 entered in connection therewith, including but not limited to any order conditionally certifying  
4 the Settlement Class, shall become null and void and shall be of no further force or effect and  
5 shall not be used or referred to for any purposes whatsoever in the Actions or in any other case or  
6 controversy. And, in such an event, this Settlement and all negotiations and proceedings related  
7 thereto shall be deemed to be without prejudice to the rights of the Parties, who shall be restored  
8 to their respective positions as of the date of this Settlement, and Alacer shall not be deemed to  
9 have waived any opposition or defenses it has to any aspect of the claims asserted in the Actions  
10 or to whether those claims or the Actions may properly be maintained as class actions.

11 **B. Amendment to *Wong* Complaint**

12 No later than five days following execution of this Stipulation by the Parties, Plaintiffs  
13 shall move pursuant to California Code of Civil Procedure 473(a)(1) for leave to file a First  
14 Amended Complaint in the *Wong* Action, adding Nicholas J. Gianino, Arnold Lee and Lori  
15 Risman as proposed Settlement Class representatives and alleging the claims made in the *Wong*  
16 Action on behalf of a nationwide class. Alacer shall not oppose Plaintiff's motion, but shall be  
17 entitled to review the First Amended Complaint in advance of the filing.

18 **C. Motion to Stay and Request For Dismissal of *Gianino* Action**

19 No later than five days following execution of this Stipulation by the Parties, unless an  
20 extension is agreed to by the Parties, Class Counsel shall file a motion to stay the *Gianino* Action  
21 until the Effective Date. Alacer shall support this motion by stipulation for entry of an order  
22 thereon or in such other manner as the Parties agree. The motion shall advise the District Court  
23 for the Central District of California that within 10 days of the Effective Date, a request for  
24 dismissal with prejudice of the *Gianino* Action will be filed. Within five days of the Effective  
25 Date, Class Counsel and Alacer's counsel shall file a stipulation of dismissal with prejudice of  
26 the *Gianino* Action. In the event that the Effective Date does not occur such that no final  
27 judgment is issued, as described in § IX of this Stipulation, any party may move to lift the stay in  
28 the *Gianino* Action so that litigation may continue.

1 **IV. SETTLEMENT RELIEF**

2 **A. Class Members' Cash Recovery**

3 1. Class members with Proof of Purchase may seek reimbursement as  
4 follows: Claimants with a receipt may seek reimbursement of the purchase price stated  
5 on the receipt. Claimants with box packaging may seek reimbursement ranging from  
6 \$4.36 to \$12.97, depending on product purchased. Claimants with Proof of Purchase  
7 may seek reimbursement up to a maximum recovery of \$36.

8 2. Class members without Proof of Purchase may seek reimbursement  
9 totaling 75% of the average price of the particular product they purchased during the  
10 Settlement Class Period, per box of the Product purchased during the Settlement Class  
11 Period, up to a maximum recovery of \$18 per consumer. Those average prices range  
12 from \$4.36 to \$12.97, depending on product purchased.

13 3. The actual amount paid to individual Claimants will depend upon the  
14 number of valid claims made, as discussed in § IV.C.1.

15 **B. Settlement Fund**

16 1. Within 30 days of an Order granting Preliminary Approval, Alacer shall  
17 pay \$6.45 million in trust to a third party institution to be selected by Alacer and  
18 approved by Class Counsel to establish an interest-bearing fund for payments made from  
19 the Settlement Fund pursuant to this section (the "Fund Account").

20 2. The Settlement Fund shall be applied to pay in full and in the following  
21 order: (i) all costs and payments associated with Class Notice and administration of the  
22 settlement, including all payments to the Settlement Administrator; (ii) any necessary  
23 taxes and tax expenses; (iii) any Fee and Expense Award made by the Court to Class  
24 Counsel under § VIII.A; (iv) any class representative incentive award made by the Court  
25 to Plaintiffs under § VIII.C; and (v) payments to eligible Claimants and any others as  
26 allowed by this Stipulation and to be approved by the Court.

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1       **C.       Settlement Fund: Insufficient or Excess Funds**

2               1.       If the total amount of eligible claims exceeds the Settlement Fund after  
3       payment of items (i) through (iv) in Paragraph B(2) above, then each Claimant's recovery  
4       shall be proportionately reduced.

5               2.       If after all valid claims are paid, money remains in the Settlement Fund,  
6       upon approval by the Court pursuant to the *cy pres* doctrine, the remaining amount shall  
7       be paid in equal shares to (1) Vitamin Angels, located in Santa Barbara, California, (2)  
8       Wellness In The Schools, located in New York City, New York, (3) ChangeLab Solutions,  
9       located in Oakland, California, and (4) Feeding America, located in Chicago, Illinois.

10      Any amount awarded to Vitamin Angels will be used in a domestic program to benefit  
11      individuals in the United States, and will not include distribution of any Alacer product.

12      **D.       Delivery of Payments to Settlement Class Members**

13              1.       Payment will be made directly to Claimants with eligible claims, or, as  
14      applicable, a letter explaining the rejection of the claim, by first class mail after  
15      entitlement to payment to all Claimants is determined, but within 30 days after the close  
16      of the Claim-In Period or the Effective Date, whichever is later, unless the Parties agree  
17      to an extension of time to complete the claims determination process.

18              2.       Failure to provide all information requested in the Claim Form will not  
19      result in nonpayment of a claim. Instead, the Class Action Settlement Administrator will  
20      take all adequate and customary steps to determine the Settlement Class Member's  
21      eligibility for payment and the amount of payment based on the information contained in  
22      the Claim Form or otherwise submitted, the amount of money available to pay all valid  
23      claims, and such other reasonably available information from which eligibility for  
24      payment can be determined.

25      **E.       Claim Form Availability**

26      The Claim Form will be available for downloading from the Settlement Website and may  
27      be completed and submitted online at the Settlement Website. The Claim Form may also be  
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requested by calling the toll-free number provided by the Settlement Administrator or by writing to the Settlement Administrator.

**F. Eligibility for Cash Payment**

To be eligible for a reimbursement, the Claim Form must be complete, postmarked (if sent by mail) and submitted within the Claim-In Period under penalty of perjury. Only one Claim Form per household may be submitted. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. Alacer is entitled to dispute claims if available records or other information indicate that the information contained on the Claim Form is inaccurate or incomplete, but the determination of the Settlement Administrator concerning the eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees with such a determination, the Settlement Administrator agrees to reconsider such determination, which includes consultation with Alacer's counsel and Class Counsel.

**G. Schedule of Payments into the Settlement Fund**

Subject to § IV.B above, Alacer shall make payments of \$6.45 million into the Fund Account within 30 days of an Order granting Preliminary Approval of the Settlement.

In the event the Effective Date does not occur, all amounts paid into the Settlement Fund, less amounts previously paid for Class Notice and administration of the settlement, taxes and tax expenses, shall be returned to Alacer.

**V. NOTICE TO THE CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS MEMBERS AND REDEMPTION OF SETTLEMENT RELIEF**

**A. Class Notice**

The Class Notice shall conform to all applicable legal requirements and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Class Notice shall set forth the following information:

**1. General Terms. The Class Notice shall:**

- a. contain a short, plain statement of the background of the Actions, the Class certification and the proposed settlement;

- b. describe the proposed settlement relief outlined in this Stipulation;
- c. inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- d. explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding; and
- e. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

2. Notice of Exclusion and Objection Rights. The Class Notice shall inform Settlement Class Members:

- a. that they may exclude themselves from the Class by submitting a written exclusion request postmarked no later than 30 days before the date of the Final Approval Hearing;
- b. that any Settlement Class Member who has not submitted a written request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving a written statement of objections no later than 14 days before the Final Approval Hearing.

The objection must contain:

- i. the full name, address and telephone number of the Settlement Class Member, and, if any, the Settlement Class Member's attorney's full name, address and telephone number;
- ii. a written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- iii. a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing;
- iv. proof of membership in the Class;

v. the signature of the Settlement Class Member or her/ his counsel.

c. that any Settlement Class Member who has filed and served written objections to the proposed settlement may enter an appearance at the Final Approval Hearing either personally or through counsel. Any settlement Class Member that fails to timely file and serve the written objection shall be foreclosed from making such objection and/or deemed to have waived any objection filed, and shall have no right and/or standing to file an appeal relating to the approval of this Settlement;

d. that any Judgment entered in the Actions, whether favorable or unfavorable to the Class, shall include, and be binding on, all Settlement Class Members who have not been excluded from the Class, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit or proceeding pending against Alacer; and

e. of the terms of the release.

3. Class Notice shall be posted on the Settlement Website 30 days following the entry of the Preliminary Approval Order. The Class Notice shall also be sent via electronic mail or regular mail to those Class Members who so request.

**B. Publication Notice**

Commencing 30 days following entry of the Preliminary Approval Order, the Settlement Administrator will cause to be published in accordance with the media plan to be agreed to by the Parties the Short Form Notice, a copy of which is attached as Exhibit C. The Long Form Notice and Short Form Notice shall also be posted on the Settlement Website until 30 days after the Effective Date.

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1           **C.       Retention of Settlement Administrator**

2           The Settlement Administrator shall be retained by Class Counsel and approved by Alacer  
3 in its reasonable discretion to help implement the terms of the proposed Stipulation. Prior to  
4 retention, the Settlement Administrator must provide a quote to the Parties itemizing the costs for  
5 notice administration, and processing of Settlement Class Member claims. The costs associated  
6 with the Settlement Administrator, including costs of providing notice to the Class Members and  
7 processing claims, shall be paid from the Settlement Fund.

8           1.       Settlement Administrator shall assist with various administrative tasks,  
9 including, without limitation, (a) arranging for publication of the Short Form Notice, (b)  
10 mailing or arranging for the mailing or other distribution of the Class Notice and Claim  
11 Forms to Settlement Class Members upon request, (c) answering written inquiries from  
12 Settlement Class Members and/or forwarding such inquiries to Class Counsel or their  
13 designee, (d) receiving and maintaining on behalf of the Court and the Parties any  
14 Settlement Class Member correspondence regarding requests for exclusion from the  
15 settlement, (e) establishing the Settlement Website that posts notices, Claim Forms and  
16 other related documents, (f) receiving and processing claims and distributing payments to  
17 Settlement Class Members, and (g) otherwise assisting with administration of the  
18 Stipulation.

19           2.       The contract with the Settlement Administrator shall obligate the  
20 Settlement Administrator to abide by the following performance standards:

- 21           a.       The Settlement Administrator shall accurately and objectively describe,  
22 and shall train and instruct its employees and agents to accurately and  
23 objectively describe, the provisions of this Stipulation in  
24 communications with Settlement Class Members;
- 25           b.       The Settlement Administrator shall provide prompt, accurate and  
26 objective responses to inquiries from Class Counsel or their designee,  
27 Alacer and/or Alacer's Counsel.

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1 **VI. APPROVAL PROCEDURES AND RELATED PROVISIONS**

2 **A. Preliminary Approval and Final Approval Hearing**

3 Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the  
4 Court and shall jointly apply for entry of a Preliminary Approval Order (i) preliminarily  
5 approving this Stipulation, (ii) providing for the dissemination of the Class Notice, (iii) granting  
6 leave to Plaintiff Wong to file a First Amended Complaint in the *Wong* Action for the purposes  
7 of adding Nicholas J. Gianino, Arnold Lee and Lori Risman as class representatives and alleging  
8 a nationwide Class to be certified for purposes of settlement only, and (iv) scheduling a Final  
9 Approval Hearing.

10 **B. Requests for Exclusion**

11 1. Any potential Settlement Class Member who wishes to be excluded from  
12 the Class must mail or deliver a written request for exclusion to the Settlement  
13 Administrator, care of the address provided in the Class Notice, postmarked or delivered  
14 no later than 14 days before the Final Approval Hearing, or as the Court otherwise may  
15 direct. The written request for exclusion must request exclusion from the Class, contain  
16 the full name, address and telephone number of the Settlement Class Member; proof of  
17 membership in the Class; the signature of the Settlement Class Member or her/his  
18 counsel. A list reflecting all requests for exclusion shall be filed with the Court by Class  
19 Counsel at or before the Final Approval Hearing.

20 2. Any potential Settlement Class Member who does not file a timely written  
21 request for exclusion as provided in the preceding § VI.B.1 shall be bound by all  
22 subsequent proceedings, orders and the Judgment in the *Wong* Action relating to this  
23 Stipulation, even if he or she has pending, or subsequently initiates, litigation, arbitration  
24 or any other proceeding against Alacer relating to the Released Claims.

25 **VII. RELEASES**

26 As of the Effective Date, Plaintiffs and each Settlement Class Member who has not  
27 validly excluded himself or herself from the Settlement Class pursuant to § VI.B of this  
28 Stipulation shall be deemed to have, and by operation of the Judgment shall have, fully, finally,

1 and forever released, relinquished, and discharged all Released Claims against the Released  
2 Persons. In connection with the Released Claims, each Settlement Class Member shall be  
3 deemed as of the Effective Date to have waived any and all provisions, rights, and benefits  
4 conferred by §1542 of the California Civil Code and any statute, rule, and legal doctrine from  
5 any other state or jurisdiction that is similar, comparable, or equivalent to California Civil Code  
6 §1542, which reads as follows:

7           A general release does not extend to claims which the creditor does  
8           not know or suspect to exist in his or her favor at the time of  
9           executing the release, which if known by him or her must have  
              materially affected his or her settlement with the debtor.

10           As of the Effective Date, each Settlement Class Member shall be deemed to have  
11 expressly waived and fully, finally, and forever settled and released any known or unknown,  
12 suspected or unsuspected, contingent or noncontingent claim with respect to the Released Claims  
13 defined herein, whether or not concealed or hidden, without regard to subsequent discovery or  
14 existence of different or additional facts

15 **VIII. CLASS COUNSEL’S ATTORNEYS’ FEES, COSTS AND EXPENSES AND CLASS**  
16 **REPRESENTATIVE INCENTIVE AWARDS**

17           A.     The parties agree that Class Counsel may apply for, and Alacer will not oppose,  
18           an award from the Settlement Fund of attorneys’ fees not to exceed thirty percent  
19           (30%) of the Settlement Fund (“Attorneys’ Fees”). The parties also agree that  
20           Class Counsel may additionally apply for, and that Alacer will not oppose,  
21           payment from the Settlement Funds for reasonable, actual out-of-pocket expenses  
22           (“Expenses”). Attorneys’ Fees and Expenses shall be referred to collectively as  
23           “Class Counsel’s Fees and Expenses Payment”. Subject to the terms and  
24           conditions of this Stipulation and any order of the Court, such Class Counsel’s  
25           Fees and Expenses Payment ordered by the Court shall be paid to Class Counsel  
26           from the Settlement Fund within twenty (20) business days after the Effective  
27           Date. The Parties agree that the Court’s Final Judgment and Order shall not be  
28           conditioned on the Court’s approval of Class Counsel’s application for Class

Counsel's Fees and Expenses Payment. The Court may reduce Class Counsel's Fees and Expenses Payment without otherwise affecting the Final Judgment and Order.

B. Class Counsel, in their sole discretion, shall allocate and distribute the Court's Fee and Expense Award among Class Counsel.

C. Alacer further agrees that it will not oppose, in any way, a class representative incentive award of \$10,000 each to Crystle Wong, Nicholas J. Gianino, Arnold Lee and Lori Risman to be paid from the Settlement Fund.

**IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

A. The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

1. The Court has preliminarily approved this Stipulation;
2. The Court has entered the Judgment; and
3. Unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) in the event there is a properly and timely filed objection to entry of the Final Judgment and Order, the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment and Order; (ii) the final dismissal of any and all appeals from the Final Judgment and Order; (iii) affirmance on appeal of the Final Judgment and Order in substantial form, and no petition for a writ of certiorari is filed before the deadline to petition for a writ of certiorari; or (iv) if a petition for a writ of certiorari with respect to the Final Judgment and Order is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment and Order in substantial form.

B. If all of the conditions specified in § IX.A of this Stipulation are not met, then this Stipulation shall be canceled and terminated unless Class Counsel and Alacer mutually agree in writing to proceed with this Stipulation.

///

1 C. In the event that this Stipulation is not approved by the Court or the settlement set  
2 forth in this Stipulation is terminated or fails to become effective in accordance  
3 with its terms, the Parties shall be restored to their respective pre-settlement  
4 positions in the Actions, including with regard to any agreements concerning  
5 tolling and similar agreements, and this entire Stipulation shall become null and  
6 void. Defendant shall be responsible for any due and unpaid administrative and  
7 notice costs and expenses, including the costs of notifying the Class and any  
8 claims administration costs.

9 **X. MISCELLANEOUS PROVISIONS**

10 A. The Parties hereto and their undersigned counsel agree to undertake their best  
11 efforts and mutually cooperate to promptly effectuate this Stipulation and the  
12 terms of the settlement set forth herein, including taking all steps and efforts  
13 contemplated by this Stipulation and any other steps and efforts which may  
14 become necessary by order of the Court or otherwise.

15 B. The undersigned counsel represent that they are fully authorized to execute and  
16 enter into the terms and conditions of this Stipulation on behalf of their respective  
17 clients.

18 C. This Stipulation contains the entire agreement among the Parties hereto and  
19 supersedes any prior agreements or understandings between them. All terms of  
20 this Stipulation are contractual and not mere recitals and shall be construed as if  
21 drafted by all Parties. The terms of this Stipulation are and shall be binding upon  
22 each of the Parties, their agents, attorneys, employees, successors and assigns, and  
23 upon all other Persons claiming any interest in the subject matter through any of  
24 the Parties, including any Settlement Class Member.

25 D. Whenever this Stipulation requires or contemplates that one Party shall or may  
26 give notice to the other, notice shall be provided by facsimile, email and/or next  
27 day (excluding Sunday) express delivery service as follows:

28 1. If to Plaintiffs, then to:

1 Michael R. Reese (Cal. Bar No. 206773)  
2 Reese Richman LLP  
3 875 Avenue of the Americas, 18<sup>th</sup> Floor  
4 New York, New York 10001  
5 212/643-0500 telephone  
6 213/253-4272 facsimile  
7 mreese@reeserichman.com

8 and

9 Patrick J. Sheehan  
10 Whatley Kallas, LLP  
11 60 State Street, 7<sup>th</sup> Floor  
12 Boston, Massachusetts 02109  
13 617/573-5118 telephone  
14 617/371-2950 facsimile  
15 psheehan@whatleykallas.com

16 and

17 Jeffrey A. Leon  
18 Complex Litigation Group LLC  
19 513 Central Avenue, Suite 300  
20 Highland Park, Illinois 60035  
21 847/433-4500 telephone  
22 847/433-2500 facsimile  
23 jeff@complexlitigationgroup.com

24 2. If to Alacer, then to:

25 Robyn E. Bladow  
26 Kirkland & Ellis LLP  
27 333 South Hope Street  
28 Los Angeles, California 90071  
213/680-8400 telephone  
213/680-8500 facsimile  
robyn.bladow@kirkland.com

E. All time periods set forth herein shall be computed in business days if seven days or less and calendar days if eight days or more unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a

1 day in which weather or other conditions have made the Office of the Clerk or the  
2 Court inaccessible, in which event the period shall run until the end of the next  
3 day if not one of the aforementioned days. As used in this subsection, “legal  
4 holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday,  
5 Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus  
6 Day, Veterans’ Day, Thanksgiving Day, Christmas Day and any other day  
7 appointed as a holiday by the President or the Congress of the United States.

8 F. The Parties, their successors and assigns, and their attorneys undertake to  
9 implement the terms of this Stipulation in good faith and to use good faith in  
10 resolving any disputes that may arise in the implementation of the terms of this  
11 Stipulation.

12 G. This Stipulation may be amended or modified only by a written instrument signed  
13 by any of the Class Counsel and any of Alacer’s Counsel. Amendments and  
14 modifications may be made without additional notice to the Settlement Class  
15 Members unless such notice is required by the Court.

16 H. The exhibits to this Stipulation are an integral part of the Settlement and are  
17 hereby incorporated and made a part of this Stipulation, in substantially the form  
18 attached.

19 I. Neither this Stipulation nor the settlement, nor any act performed or document  
20 executed pursuant to or in furtherance of this Stipulation or the settlement: (i) is or  
21 may be deemed to be or may be used as an admission of, or evidence of, the  
22 validity of any Released Claim, or of any wrongdoing or liability of Alacer, or of  
23 the propriety of maintaining any of the Actions as class actions; or (ii) is or may  
24 be deemed to be or may be used as an admission of, or evidence of, any fault or  
25 omission of Alacer in any civil, criminal, or administrative proceeding in any  
26 court, administrative agency, or other tribunal, except that Alacer may file this  
27 Stipulation or the Judgment in any action that may be brought against any  
28 Released Person in order to support a defense or counterclaim based on principles

1 of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or  
2 reduction or any other theory of claim preclusion or issue preclusion or similar  
3 defense or counterclaim.

4 J. The Court shall retain jurisdiction with respect to the implementation and  
5 enforcement of the terms of this Stipulation, and all Parties hereto submit to the  
6 jurisdiction of the Court for purposes of implementing and enforcing the  
7 settlement embodied in this Stipulation.

8 K. This Stipulation shall be deemed to have been executed upon the last date of  
9 execution by all of the undersigned.

10 L. This Stipulation may be executed in counterparts, each of which shall constitute  
11 an original.

12 IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed  
13 by their duly authorized representatives.

14 Dated: 11/ 26/ 2013, 2013



CRYSTLE WONG

16 Dated: \_\_\_\_\_, 2013

NICHOLAS J. GIANINO

18 Dated: \_\_\_\_\_, 2013

ARNOLD LEE

20 Dated: \_\_\_\_\_, 2013

LORI RISMAN

22 Dated: \_\_\_\_\_, 2013

REESE RICHMAN LLP

Michael R. Reese (Cal. Bar No. 206773)

875 Avenue of the Americas, 18<sup>th</sup> Floor

New York, New York 10001

212/643-0500

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\_\_\_\_\_  
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15  
16 Dated: 11/26, 2013

\_\_\_\_\_  
NICHOLAS J. GIANINO

17  
18 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
ARNOLD LEE

19  
20 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
LORI RISMAN

21  
22 Dated: November 26, 2013

\_\_\_\_\_  
REESE RICHMAN/LLP

23 Michael R. Reese (Cal. Bar No. 206773)  
24 875 Avenue of the Americas, 18<sup>th</sup> Floor  
25 New York, New York 10001  
26 212/643-0500  
27  
28



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Dated: July \_\_, 2013

CRYSTLE WONG

Dated: July \_\_, 2013

NICHOLAS J. GIANINO

*Nov 25, 2013*  
Dated: ~~July \_\_, 2013~~

ARNOLD LEE

Dated: July \_\_, 2013

LORI RISMAN

Dated: July \_\_, 2013

REESE RICHMAN LLP

Michael R. Reese (Cal. Bar No. 206773)  
875 Avenue of the Americas, 18<sup>th</sup> Floor  
New York, New York 10001  
212/643-0500

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15 CRYSTLE WONG

16 Dated: July \_\_, 2013

17 NICHOLAS J. GIANINO

18 Dated: July \_\_, 2013

19 ARNOLD LEE

20 Nov 25, 2013  
21 Dated: July \_\_, 2013

22 Lori Risman  
23 LORI RISMAN

24 Dated: July \_\_, 2013

25 REESE RICHMAN LLP  
26 Michael R. Reese (Cal. Bar No. 206773)  
27 875 Avenue of the Americas, 18<sup>th</sup> Floor  
28 New York, New York 10001  
212/643-0500

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NICHOLAS J. GIANINO

18 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
ARNOLD LEE


20 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
LORI RISMAN


22 Dated: November 26, 2013

\_\_\_\_\_  
REESE RICHMAN LLP  
Michael R. Reese (Cal. Bar No. 206773)  
875 Avenue of the Americas, 18<sup>th</sup> Floor  
New York, New York 10001  
212/643-0500

1                    Nov. 25, 2013  
2                    Dated: July \_\_, 2013

  
\_\_\_\_\_  
**WHATLEY KALLAS, LLP**  
Patrick J. Sheehan (*pro hac vice*)  
60 State Street, 7<sup>th</sup> Floor  
Boston, MA 02109  
Telephone: 617/573-5118

5  
6                    Nov. 25, 2013  
7                    Dated: July \_\_, 2013

  
\_\_\_\_\_  
**D'ANGELO & HASHEM, LLC**  
Stephen D'Angelo  
2 Center Plaza, Suite 510  
Boston, Massachusetts 02108  
617/624-9777

10  
11                    Dated: July \_\_, 2013

\_\_\_\_\_  
**COMPLEX LITIGATION GROUP LLC**  
Jeffrey A. Leon  
513 Central Avenue, Suite 300  
Highland Park, Illinois 60035  
847/433-4500

14  
15                    Dated: July \_\_, 2013

\_\_\_\_\_  
**BECKER, PAULSON, HOERNER &  
THOMPSON, P.C.**  
Kevin T. Horner  
5111 West Main Street  
Belleville, Illinois 62226  
618/235-0020

18  
19  
20                    Dated: July \_\_, 2013

\_\_\_\_\_  
**THE KREISLER LAW FIRM, LLC**  
Brian T. Kreisler  
P.O. Box 1353  
O'Fallon, Illinois 62269  
618/381-5116

23  
24                    *Attorneys for Plaintiffs*

1 Dated: \_\_\_\_\_, 2013

**WHATLEY KALLAS, LLP**

Patrick J. Sheehan (*pro hac vice*)  
60 State Street, 7<sup>th</sup> Floor  
Boston, MA 02109  
Telephone: 617/573-5118

6 Dated: \_\_\_\_\_, 2013

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Stephen D'Angelo  
2 Center Plaza, Suite 510  
Boston, Massachusetts 02108  
617/624-9777

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Jeffrey A. Leon  
513 Central Avenue, Suite 300  
Highland Park, Illinois 60035  
847/433-4500

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Kevin T. Horner  
5111 West Main Street  
Belleville, Illinois 62226  
618/235-0020

20 Dated: Nov. 26, 2013

**THE KREISLER LAW FIRM, LLC**

Brian T. Kreisler  
P.O. Box 1353  
O'Fallon, Illinois 62269  
618/381-5116

*Attorneys for Plaintiffs*

1 Dated:

---

2 **WHATLEY KALLAS, LLP**

3 Patrick J. Sheehan (*pro hac vice*)  
4 60 State Street, 7<sup>th</sup> Floor  
5 Boston, MA 02109  
6 Telephone: 617/573-5118

6 Dated:

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7 **D'ANGELO & HASHEM, LLC**

8 Stephen D'Angelo  
9 2 Center Plaza, Suite 510  
10 Boston, Massachusetts 02108  
11 617/624-9777

10 Dated:

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11 **COMPLEX LITIGATION GROUP LLC**

12 Jeffrey A. Leon  
13 513 Central Avenue, Suite 300  
14 Highland Park, Illinois 60035  
15 847/433-4500

15 Dated: 11/26, 2013

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16 **BECKER, PAULSON, HOERNER &  
17 THOMPSON, P.C.**

18 Kevin T. Horner *Hoerner*  
19 5111 West Main Street  
20 Belleville, Illinois 62226  
21 618/235-0020

20 Dated:

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21 **THE KREISLER LAW FIRM, LLC**

22 Brian T. Kreisler  
23 P.O. Box 1353  
24 O'Fallon, Illinois 62269  
25 618/381-5116

26 *Attorneys for Plaintiffs*

1 Dated: \_\_\_\_\_, 2013

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**WHATLEY KALLAS, LLP**

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60 State Street, 7<sup>th</sup> Floor  
Boston, MA 02109  
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6 Dated: \_\_\_\_\_, 2013

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Kevin T. Horner  
5111 West Main Street  
Belleville, Illinois 62226  
618/235-0020

20 Dated: NOV. 26, 2013

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Brian T. Kreisler  
P.O. Box 1353  
O'Fallon, Illinois 62269  
618/381-5116

*Attorneys for Plaintiffs*

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DATED: 11/26, 2013

**ALACER CORP.**

By: \_\_\_\_\_

*Lawrence R. Miller*  
LAWRENCE R. MILLER

DATED: 11/26/, 2013

*Robyn E. Bladow*  
**KIRKLAND & ELLIS LLP**

Robyn E. Bladow  
333 South Hope Street  
Los Angeles, CA 90071  
213-680-8400



# EXHIBIT A

## **EMERGEN-C SETTLEMENT CLAIM FORM**

If you wish to file a claim to receive monetary compensation as described in the Settlement Agreement, you must submit this Claim Form to the Settlement Administrator. The Claim Form must be completed, signed, and received or postmarked on or before **March 27, 2014** for it to be valid. To qualify for monetary compensation, you must have purchased one or more of the Emergen-C products that are the subject of the Actions, including Emergen-C Original Formula, Emergen-C Specialty Formula products (Heart Health, Joint Health, Immune Defense, Lite with MSM, MSM, Vitamin D & Calcium, and ElectroMIX), Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, Emergen-C Kidz, Emergen-C Immune Plus, and Super Gram tablets ("Products") in the United States between June 1, 2006 and February 27, 2012 (the "Settlement Class Period"). A complete definition of the class qualifications is provided in the Settlement Agreement, which is available at [www.EmergenCRefund.com](http://www.EmergenCRefund.com) or by calling 1-866-833-7924. There is a limit of one Claim Form per household. Claim Forms must be submitted to:

Emergen-C Settlement Administrator  
PO Box 4655  
Portland, OR 97208-4655

Email: [info@EmergenCRefund.com](mailto:info@EmergenCRefund.com)

### **Claimant Information:**

Please Type or Print in the Boxes Below; Do Not use Red Ink, Pencil, or Staples.

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Telephone Number		
<input type="text"/>	<input type="text"/>	<input type="text"/>

**It is your responsibility to keep a current address on file with the Settlement Administrator. Please make sure to notify the Settlement Administrator of any changes in address.**

### **Qualification Information:**

Please respond to the following questions, and attach Proof of Purchase (receipt or box packaging) if you have it. You must sign the bottom of this Claim Form for your claim to be valid. If you do not have Proof of Purchase, please enter the appropriate price(s) from the attached Price List in the space(s) provided to indicate the Total Price Paid. **Incomplete or unsigned Claim Forms will not be considered.**

1. I purchased one or more of the Products that are the subject of the Actions, including Emergen-C Original Formula, Emergen-C Specialty Formula products (Heart Health, Joint Health, Immune Defense, Lite with MSM, MSM, Vitamin D & Calcium, and ElectroMIX), Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, Emergen-C Kidz, Emergen-C Immune Plus, and Super Gram tablets, in the United States between June 1, 2006 and February 27, 2012. I am not an employee, officer, director, agent or representative of Alacer, and I did not purchase the Product(s) for the purpose of resale.

☐ Yes    ☐ No



**EMERGEN-C SETTLEMENT PRICE LIST**

DESCRIPTION	SIZE	AVG PRICE
EMERGEN-C RASPBERRY/TANG/PINK 30CT VP	30 CT	\$ 8.35
EMERGEN-C SPR ORANGE/TROPICAL/BL 30CT VP	30 CT	\$ 8.35
EMERGEN-C RASBRY/TANG/SPR ORANGE 30CT VP	30 CT	\$ 8.35
EM-C IMMUN+ SS W/VITAMIN D - CITRUS	30 CT	\$ 12.97
EM-C IMMUN+ SS W/VIT D - BLBRY-ACAI	10 CT	\$ 6.15
EM-C IMMUN+ SS W/VIT D - BLBRY-ACAI	30 CT	\$ 12.97
EMERGEN-C IMMUNE+ CITRUS	10 CT	\$ 6.15
EMERGEN-C ADLT MULTI POMEGRAN CHRY	30 CT	\$ 12.97
EMERGEN-C ADULT MULTI MANGO APRICOT	30 CT	\$ 12.97
EMERGEN-C CRANBERRY POMEGRANATE	30 CT	\$ 9.69
EMERGEN-C BLUE	30 CT	\$ 9.69
EMERGEN-C RASPBERRY	30 CT	\$ 9.69
EMERGEN-C TANGERINE	30 CT	\$ 9.69
EMERGEN-C SUPER ORANGE	30 CT	\$ 9.69
EMERGEN-C PINK LEMONADE	30 CT	\$ 9.69
EMERGEN-C LEMON LIME	30 CT	\$ 9.69
EMERGEN-C ACAI BERRY	30 CT	\$ 9.69
EMERGEN-C TROPICAL	30 CT	\$ 9.69
EMERGEN-C JOINT HEALTH TANGERINE	30 CT	\$ 12.97
EMERGEN-C LITE	30 CT	\$ 9.69
EMERGEN-C LITE MSM	30 CT	\$ 12.97
EMERGEN-C HEART HEALTH BLACK CHERRY	30 CT	\$ 12.97
EMERGEN-C VIT D + CALCIUM MIXED BRY	30 CT	\$ 12.97
EMERGEN-C ELECTRO-MIX	30 CT	\$ 11.06
EMERGEN-C SUPER ORANGE	10 CT	\$ 4.36
EMERGEN-C RASPBERRY	10 CT	\$ 4.36
EMERGEN-C TANGERINE	10 CT	\$ 4.36
EMERGEN-C TROPICAL	10 CT	\$ 4.36
EMERGEN-C PINK LEMONADE	10 CT	\$ 4.36
EMERGEN-C BLUE	10 CT	\$ 4.36
EMERGEN-C LEMON LIME	10 CT	\$ 4.36
EMERGEN-C CRANBERRY POMEGRANATE	10 CT	\$ 4.36
EMERGEN-C ACAI BERRY	10 CT	\$ 4.36
EMERGEN-C MANGOSTEEN	30 CT	\$ 9.69
EMERGEN-C SUPER ORANGE (BILINGUAL)	10 CT	\$ 4.36
EMERGEN-C CRNBRY POMEGRANATE (BIL)	10 CT	\$ 4.36
EMERGEN-C TROPICAL 10CT (BILINGUAL)	10 CT	\$ 4.36
EMERGEN-C KIDZ FRUIT PUNCH	30 CT	\$ 9.69
EMERGEN-C KIDZ ORANGE	30 CT	\$ 9.69
EMERGEN-C KIDZ GRAPE	30 CT	\$ 9.69
EMERGEN-C FIVE STRAWBERRY KIWI	30 CT	\$ 9.69
EMERGEN-C FIVE MANDARIN ORANGE	30 CT	\$ 9.69
EMERGEN-C FIVE PEACH PASSION FRUIT	30 CT	\$ 9.69
EMERGEN-C FIVE STRAWBERRY KIWI	10 CT	\$ 4.36
EMERGEN-C FIVE MANDARIN ORANGE	10 CT	\$ 4.36

DESCRIPTION	SIZE	AVG PRICE
EMERGEN-C FIVE PEACH PASSION FRUIT	10 CT	\$ 4.36
EMERGEN-C FRONT END TRAYS	10 CT	\$ 4.36
EMERGEN-C LITE	36 CT	\$ 9.69
EMERGEN-C RASPBERRY	36 CT	\$ 9.69
EMERGEN-C SUPER ORANGE	36 CT	\$ 9.69
EMERGEN-C CRANBERRY	36 CT	\$ 9.69
EMERGEN-C TANGERINE	36 CT	\$ 9.69
EMERGEN-C TROPICAL	36 CT	\$ 9.69
EMERGEN-C LEMON LIME	36 CT	\$ 9.69
EMERGEN-C ACAI BERRY	36 CT	\$ 9.69
EMERGEN-C PINK	36 CT	\$ 9.69
EMERGEN-C KIDS MULTI-VITAMIN STRAWBERRY	36 CT	\$ 8.35
EMERGEN-C LITE MSM	36 CT	\$ 8.35
EMERGEN-C MULTI-VITAMIN STRAWBERRY	36 CT	\$ 8.35
EMERGEN-C JOINT HEALTH TANGERINE	36 CT	\$ 8.35
EMERGEN-C BONE HEALTH MIXED BERRY	36 CT	\$ 8.35
EMERGEN-C HEART HEALTH BLACK CHERRY	36 CT	\$ 8.35
EMERGEN-C IMMUNE DEFENSE DRINK MIX	36 CT	\$ 8.35
EMERGEN-C TANGERINE TWO PACK (18 2-PACKS/BOX)	36 CT	\$ 9.35
SUPER GRAM III (90 TABLETS)	90 CT	\$ 17.09
SUPER GRAM III (180 TABLETS)	180 CT	\$ 32.43
SUPER GRAM II (90 TABLETS)	90 CT	\$ 13.42
SUPER GRAM II (180 TABLETS)	180 CT	\$ 24.26
ESSENTIALLY ALL (90 TABLETS)	90 CT	\$ 24.99
SLEEP HEALTH (180 TABLETS)	180 CT	\$ 14.95
SLEEP HEALTH (90 TABLETS)	90 CT	\$ 13.36
ELECTRO-MIX (36 PACKET)	36 CT	\$ 11.06

# EXHIBIT B

# **If you purchased an Emergen-C product from June 1, 2006 to February 27, 2012 you may be eligible for a payment from a class action settlement.**

*A state court directed this notice. This is not a solicitation from a lawyer.*

- A \$6.45 million Settlement has been reached in a class action lawsuit challenging various statements that Alacer Corp. (“Alacer”) allegedly made in the marketing, advertising and packaging of its Emergen-C products, including immunity-related, energy-related, and metabolism-related statements. Alacer denies the allegations in the lawsuit and maintains that all statements it has made about the Emergen-C products were proper. The Court has not decided which side is right. The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to those who qualify.
- The Settlement offers payments to anyone who purchased any of the following Emergen-C products from June 1, 2006 to February 27, 2012.

Emergen-C Original Formula;

Emergen-C Specialty Formula products: Heart Health, Joint Health, Immune Defense, Lite with MSM, MSM, Vitamin D & Calcium, and ElectroMIX;

Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, and Emergen-C Kidz;

Emergen-C Immune Plus; and

Super Gram tablets.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.

PLEASE READ THIS NOTICE CAREFULLY.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	Submit a Claim Form seeking cash payment and/or other benefits.
<b>EXCLUDE YOURSELF</b>	Request to be excluded and get no benefits from the Settlement. This is the only option that allows you to start or continue a lawsuit against Alacer about the marketing of the Emergen-C products.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no benefits. Give up any rights you might have to sue Alacer over its marketing of the Emergen-C products.

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**  
**Si desea recibir esta notificación en español, llámenos o visite nuestra página web.**

- These rights and options—and the deadlines to exercise them—are explained in this notice.

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**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**



## BASIC INFORMATION

### 1. Why is there a notice?

A Court authorized this notice because you have a right to know about a proposed Settlement of a class action lawsuit known as *Crystle Wong v. Alacer Corp.*, Case No. CGC-12-519221, and about all of your options before the Court decides whether to give Final Approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Marla J. Miller of the Superior Court of California, County of San Francisco is overseeing this case. The people who sued are called the “Plaintiffs.” Alacer is the “Defendant.”

### 2. What is this litigation about?

The lawsuit raises multiple legal claims against Alacer, including (1) unfair and deceptive acts and practices in violation of the California Consumers Legal Remedies Act (“CLRA”), California Civil Code §1750, *et seq.*; (2) false and misleading advertising in violation of the California False Advertising Law (“FAL”), California Business & Professions Code § 17500, *et seq.*; (3) unlawful, unfair and fraudulent conduct in violation of the California Unfair Competition Law (“UCL”), California Business & Professions Code § 17200, *et seq.*; (4) unjust enrichment; (5) intentional misrepresentation/fraud; (6) negligent misrepresentation; (7) breach of express warranty; (8) breach of implied warranty; and (9) breach of contract, all in connection with immunity-related, energy-related, and metabolism-related statements allegedly made by Alacer in the marketing, advertising and packaging of its Emergen-C products. The complaint in the lawsuit is posted on the website, [www.EmergenCRefund.com](http://www.EmergenCRefund.com), and contains all of the allegations and claims asserted against Alacer. Alacer denies the allegations and legal claims in the lawsuit and maintains that all statements it has made about the Emergen-C products were proper. The Court has not decided who is right.

### 3. What are the Emergen-C products?

The Emergen-C products (the “Products”) included in the Settlement are:

- Emergen-C Original Formula;
- Emergen-C Specialty Formula products: Heart Health, Joint Health, Immune Defense, Lite with MSM, MSM, Vitamin D & Calcium, and ElectroMIX;
- Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, and Emergen-C Kidz;
- Emergen-C Immune Plus; and
- Super Gram tablets.

### 4. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Plaintiffs Crystle Wong, Nicholas Gianino, Arnold Lee and Lori Risman) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims (except those who exclude themselves) are members of a “Settlement Class.”

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

## **5. Why is there a Settlement?**

The Court has not decided in favor of the Plaintiffs or Alacer. Instead, both sides have agreed to a Settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Alacer did anything wrong. Alacer denies all legal claims in this case. Plaintiffs and their lawyers think the proposed Settlement is best for everyone who is affected.

## **WHO IS PART OF THE SETTLEMENT**

### **6. Who is included in the Settlement?**

The Settlement Class includes all persons who, from June 1, 2006 to February 27, 2012, purchased the 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.

The June 1, 2006 to February 27, 2012 date range is known as the "Settlement Class Period."

### **7. What if I am not sure whether I am included in the Settlement?**

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at [www.EmergenCRefund.com](http://www.EmergenCRefund.com) or call the toll free number, 1-866-833-7924. You also may send questions to the Settlement Administrator at [info@EmergenCrefund.com](mailto:info@EmergenCrefund.com) or Emergen-C Settlement Administrator, PO Box 4655, Portland, OR 97208-4655.

## **THE SETTLEMENT BENEFITS**

### **8. What does the Settlement provide?**

Alacer paid \$6.45 million to create a "Settlement Fund."

The Settlement Fund is to be used to pay, in order: (1) all costs and payments associated with the notice and administration of the Settlement, including all payments to the Settlement Administrator; (2) any necessary taxes and tax expenses; (3) any Fee and Expense Award made by the Court to Class Counsel; (4) any class representative service award made by the Court to Plaintiffs; and (5) payments to eligible Claimants and any others as approved by the Court.

### **9. How much will my payment be?**

If you have Proof of Purchase (valid receipt or box packaging), you can claim the full purchase price you paid for the Products during the Settlement Class Period. If you have a receipt you may seek reimbursement of the purchase price stated on the receipt. If you have box packaging you may seek

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

reimbursement ranging from \$4.36 to \$12.97, depending on the Product(s) purchased. Claimants with Proof of Purchase may seek reimbursement up to a maximum recovery of \$36.

If you do not have Proof of Purchase, you may file a claim for 75% of the average price, per box of the particular Product(s) you purchased during the Settlement Class Period, up to a maximum recovery of \$18. Those average prices range from \$4.36 to \$12.97, depending on Product purchased.

The actual amount paid to individual Claimants will depend upon the number of valid Claims made and may be reduced pro rata if the total value of all valid Claims is greater than the money available in the Settlement Fund.

## 10. How do I file a Claim?

If you qualify for the benefits described above you must complete and submit a Claim Form and any required documentation (receipts or box packaging). You can file your Claim Form online at [www.EmergenCRefund.com](http://www.EmergenCRefund.com). The deadline to file a Claim online is 11:59 p.m. PST on **Month Day, 2014**. You also can download a Claim Form from the website or request one be sent to you by calling 1-866-833-7924, emailing to [info@EmergenCrefund.com](mailto:info@EmergenCrefund.com), or writing to Emergen-C Settlement Administrator, PO Box 4655, Portland, OR 97208-4655. Claim Forms submitted by mail must be postmarked on or by **Month Day, 2014**.

Please read all instructions carefully, fill out the Claim Form, attach the required documentation and, if you are mailing in a paper Claim Form, mail it postmarked no later than the date noted above, to:

Emergen-C Settlement Administrator  
PO Box 4655  
Portland, OR 97208-4655

Only one Claim Form per household may be submitted.

## 11. When will I receive my payment?

Payments to valid Claimants will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* “Final Approval Hearing” below). If there are appeals, resolving them can take time. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep any right you might have to sue Alacer about the issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself or “opting-out” of the Settlement Class.

## 12. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter or other written document by mail to:

Emergen-C Settlement Administrator  
PO Box 4655  
Portland, OR 97208-4655

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

Your request must include your full name, address, telephone number, proof that you purchased an Emergen-C product during the Settlement Class Period (statement in writing or copy of receipt or packaging) and signature:

Your exclusion request must be postmarked no later than **Month XX, 2014**. You cannot ask to be excluded on the phone, by email, or at the website.

### **13. If I do not exclude myself, can I sue Alacer for the same thing later?**

No. Unless you exclude yourself, you give up any right you might have to sue Alacer for legal claims that the Settlement resolves. You must exclude yourself from the Settlement Class in order to try to maintain your own lawsuit. If you start your own lawsuit, you will have to hire your own lawyer and you will have to prove your claims.

### **14. What am I giving up to stay in the Settlement Class?**

Unless you exclude yourself from the Settlement, you cannot sue or be part of any other lawsuit against Alacer about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you. If you file a Claim Form for benefits or do nothing at all, you will be releasing Alacer from all of the claims described and identified in section VII. of the Settlement Agreement.

The Settlement Agreement is available at [www.EmergenCRefund.com](http://www.EmergenCRefund.com) or by calling 1-866-833-7924. The Settlement Agreement provides more detail regarding the release and describes the released claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Class listed in Question 16 for free or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

### **15. If I exclude myself, can I still get a payment?**

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement.

## **THE LAWYERS REPRESENTING YOU**

### **16. Do I have a lawyer in the case?**

The Court has appointed a number of lawyers as “Class Counsel” to represent all members of the Settlement Class. They include: Michael R. Reese, Reese Richman LLP, New York, New York; Patrick J. Sheehan, Whatley Kallas, LLP, Boston, Massachusetts; Stephen D’Angelo, D’Angelo & Hashem, LLC, Boston, Massachusetts; Jeffrey A. Leon, Complex Litigation Group LLC, Highland Park, Illinois; Kevin T. Horner, Becker, Paulson, Hoerner & Thompson, P.C., Belleville, Illinois; and Brian T. Kreisler, The Kreisler Law Firm, LLC, O’Fallon, Illinois.

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

## 17. How will the lawyers be paid?

Class Counsel intend to request up to thirty percent (30%) of the value of the Settlement for attorneys' fees, plus reimbursement of reasonable, actual out-of-pocket expenses in prosecuting the class action. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will decide the amount of fees to award.

Class Counsel also will request that Service Awards of up to \$10,000.00 each be paid from the Settlement Fund to the Class Representatives for their service as representatives on behalf of the whole Settlement Class.

## OBJECTING TO THE SETTLEMENT

### 18. How do I tell the Court if I do not like the Settlement?

If you are and choose to remain a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's request for fees and expenses, and/or the Service Awards to the Class Representatives. To object, you must submit a letter or other written document that includes the following:

- 1) Your full name, address and telephone number, and if you hire your own attorney, your attorney's full name, address and telephone number;
- 2) A written statement of all grounds for your objection accompanied by any legal support for the objection (if any);
- 3) A statement of whether you intend to appear at the Final Approval Hearing;
- 4) Proof of membership in the Class; and
- 5) Your signature or that of your attorney (if you hire one).

The requirements to object to the Settlement are described in detail in the Settlement Agreement in Section V.A.2. You must mail your objection to each of the following three (3) addresses, and your objection must be postmarked by **Month XX, 2014**:

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 <sup>th</sup> Floor Boston, Massachusetts 02109	Robyn E. Bladow Kirkland & Ellis LLP 333 South Hope Street Los Angeles, California 90071

### 19. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

## THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses (“Final Approval Hearing”).

### 20. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing on **Month XX, 2014 at [REDACTED] pm/am**, at the Superior Court of California County of San Francisco, Civic Center Courthouse, 400 McCallister Street, San Francisco, California 94102-4514, before the Honorable Marla J. Miller, Department 302. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.EmergenCRefund.com](http://www.EmergenCRefund.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys’ fees and expenses, and for Service Awards to the Class Representatives. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

### 21. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements set forth above, the Court will consider it. You also may pay your own lawyer to attend the hearing, but it is not necessary.

### 22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, your filed objection must include a statement of whether you intend to appear at the Final Approval Hearing (*See* question 18 above).

You cannot speak at the hearing if you exclude yourself from the Settlement.

## IF YOU DO NOTHING

### 23. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not get benefits from the Settlement. And, unless you exclude yourself, you will be bound by the judgment entered by the Court. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against Alacer about the statements and claims at issue in this case.

## GETTING MORE INFORMATION

### 24. How do I get more information?

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.EmergenCRefund.com](http://www.EmergenCRefund.com). You also may write with questions to the Settlement Administrator at [info@EmergenCrefund.com](mailto:info@EmergenCrefund.com), or Emergen-C Settlement Administrator, PO Box 4655, Portland, OR 97208-4655, or call the toll-free number, 1-866-833-7924.

**QUESTIONS? CALL 1-866-833-7924 OR VISIT [www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

# EXHIBIT C



# **If you purchased an Emergen-C product you may be eligible for a payment from a class action settlement.**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A Settlement has been reached in a class action lawsuit challenging various statements that Alacer Corp. (“Alacer”) allegedly made in the marketing, advertising and packaging of its Emergen-C products, including immunity-related, energy-related, and metabolism-related statements. Alacer denies the allegations in the lawsuit and maintains that all statements it has made about the Emergen-C products were proper. The Court has not decided which side is right.

**Who’s Included?** The Settlement Class includes all persons who, from June 1, 2006 to February 27, 2012, purchased the Emergen-C products in the United States.

**What are the Emergen-C Products?** The Emergen-C products (the “Products”) included in the Settlement are: Emergen-C Original Formula; Emergen-C Specialty Formula products (Heart Health, Joint Health, Immune Defense, Lite with MSM, MSM, Vitamin D & Calcium, and ElectroMIX); Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, and Emergen-C Kidz; Emergen-C Immune Plus; and Super Gram tablets.

**What are the Settlement Terms?** Alacer has established a Settlement Fund of \$6.45 million. If you have Proof of Purchase (valid receipt or box packaging), you can claim the full purchase price you paid for the Products, up to a total maximum recovery of \$36. If you do not have Proof of Purchase, you may file a claim for 75% of the average price, per box package of the particular Product(s) you purchased during the Settlement Class Period, up to a maximum recovery of \$18. The details of the Settlement are fully set forth in the Settlement Agreement, which is available on the Settlement website [www.EmergenCRefund.com](http://www.EmergenCRefund.com) or by calling 1-866-833-7924. The deadline to file a Claim Form is **Month/Date, 2014**. You may file your Claim online at the website below or call to request a Claim Form.

**Your Other Options.** If you do not want to be bound by the Settlement, you must exclude yourself by **Month/Date, 2014**. If you do not exclude yourself, you will be bound to the judgment entered by the Court and will release any claims against Alacer relating to the statements at issue in this case. You may object to the Settlement by **Month/Date, 2014**. The Detailed Notice available at the Settlement website explains how to exclude yourself or object. The Court will hold a hearing on **Month/Date, 2014** to consider whether to approve the Settlement and a request for attorneys’ fees of up to 30% of the value of the Settlement. You do not need to appear at the hearing or hire your own attorney, although you have the right to do so at your own expense.

**[www.EmergenCRefund.com](http://www.EmergenCRefund.com)**

**1-866-833-7924**

# EXHIBIT D

1 Michael R. Reese (Cal. Bar No. 206773)  
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2 **REESE RICHMAN LLP**  
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5 Alan Mansfield (Cal. Bar No. 125998)  
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9 Jeffrey A. Leon  
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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**

**FINAL APPROVAL ORDER,  
DECREE AND JUDGMENT**

21 Compl. Filed: March 16, 2012

22  
23 THIS MATTER having been brought before the Court jointly by Plaintiffs Nicholas J.  
24 Gianino, Arnold Lee, Lori Risman and Crystle Wong and by Defendant Alacer Corp. ("Alacer"),  
25 through their respective attorneys, pursuant to Rule 3.769 of the California Rules of Court, for an  
26 Order granting final approval of a class action settlement (the "Motion"); and the Court having

27 ///

28 ///

1 reviewed the submissions of the Parties,<sup>1</sup> all properly and timely filed objections to the proposed  
2 class action settlement, and the Parties' responses to such objections, having held a hearing on  
3 [REDACTED], 2014 and having found that the Parties are entitled to the relief they seek; and  
4 for good cause shown;

5 The Court makes the following findings:

- 6 1. The Court has jurisdiction over the subject matter of this action and over  
7 all claims raised therein and all Parties thereto, including the Settlement  
8 Class.
- 9 2. With respect to the Settlement Class, the Court finally finds and  
10 concludes, for settlement purposes only, that: (a) the Settlement Class  
11 Members are so numerous as to make joinder of them impracticable;  
12 (b) there are questions of law and fact common to the Settlement Class,  
13 and such questions predominate over any questions affecting only  
14 individual Settlement Class Members; (c) Class Representatives' claims  
15 and the defenses asserted thereto are typical of the claims of Settlement  
16 Class Members and the defenses asserted thereto; (d) Class  
17 Representatives and Settlement Class Counsel have fairly and adequately  
18 protected the interests of Settlement Class Members throughout this  
19 action; and (e) a class action is superior to all other available methods for  
20 fairly and efficiently resolving this action and provides substantial benefits  
21 to both the litigants and the Court.<sup>2</sup> The Court therefore determines that  
22 this action satisfies the prerequisites for class certification for settlement  
23 purposes pursuant to California Code of Civil Procedure Section 382 and

24 <sup>1</sup> Unless otherwise defined herein, all capitalized terms set forth in this Order shall have the same  
25 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.

26 <sup>2</sup> 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.

California Civil Code Section 1781, and finally certifies the Settlement Class for settlement purposes.

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. 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.

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- 1           5.     Through [REDACTED], 2014, [REDACTED] purported members of the Settlement  
2           Class have opted out of the Settlement Class and are listed on Attachment  
3           “1” hereto.
- 4           6.     The Stipulation of Settlement dated as of November 26, 2013 (the  
5           “Stipulation”) was arrived at after extensive arm’s-length negotiations  
6           conducted in good faith by counsel for all Parties in the above-captioned  
7           action, including several private mediations among the Parties.
- 8           7.     This litigation presents difficult and complex issues as to liability and  
9           damages, as to which there are substantial grounds for difference of  
10          opinion.
- 11          8.     The settlement terms set forth in the Stipulation are fair, reasonable and  
12          adequate in light of the complexity, expense and duration of the litigation,  
13          and the risks inherent and involved in establishing liability and damages,  
14          and in maintaining the class action through trial and appeal.
- 15          9.     The promises and commitments of the Parties under the terms of the  
16          Stipulation, including the creation of the Settlement Fund, constitute fair  
17          value given in exchange for the releases of the Released Claims against  
18          the Released Persons.
- 19          10.    The Parties and each Settlement Class Member have submitted to the  
20          jurisdiction of this Court for any suit, action, proceeding, or dispute arising  
21          out of the Stipulation, permitting the Court to retain continuing  
22          jurisdiction over this action pursuant to Rule 3.769 of the California Rules  
23          of Court. It is in the best interests of the Parties and the Settlement Class  
24          Members, and consistent with principles of judicial economy, that any  
25          dispute between any Settlement Class Member (including any dispute as  
26          to whether any person is a Settlement Class Member) and any of the  
27          Released Persons that in any way relates to the applicability or scope of  
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the Stipulation, or of this Final Judgment and Order, should be presented exclusively to this Court for resolution by this Court.

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

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

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

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

2. The proposed method for providing relief to Settlement Class Members, as set forth in the Stipulation, is finally approved as fair, reasonable, adequate, just, and in the best interests of the Settlement Class, and the Parties are hereby ordered to provide and comply with the relief described in the Stipulation in accordance with the terms of the Stipulation.

3. The proposed fee award to Settlement Class Counsel and the payment to the Class Representatives, as set forth in Settlement Class Counsel's application, are both approved. These amounts shall be paid directly to Settlement Class Counsel and distributed in accordance with the provisions of the Stipulation.

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

1 permanent injunction barring and enjoining the Parties, the Released Persons, and the Settlement  
2 Class Members from bringing, filing, commencing, prosecuting, continuing to prosecute,  
3 maintaining, intervening in, participating in, or receiving any benefits from any lawsuit,  
4 arbitration, or administrative, regulatory, or other proceeding in law or equity that asserts, arises  
5 from, concerns, or is in any way related to the claims as set forth in this Paragraph and as  
6 described in the 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  
23 DATED: [REDACTED], 2014 \_\_\_\_\_  
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# EXHIBIT E

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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 5, 2013

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Marla J. Miller

Compl. Filed: March 16, 2012

26 THIS MATTER having been brought before the Court on Motion jointly by Plaintiff  
27 Crystle Wong 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

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 5, 2013, and having found that the parties are entitled to the  
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 Risan 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 \_\_\_\_\_ at  
17 \_\_\_\_\_ 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 <sup>th</sup> 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 the best  
18 notice practicable under the circumstances and provides sufficient notice to members of the  
19 Settlement Class. All costs incurred in connection with the preparation and dissemination of any  
20 settlement notices to the Settlement Class shall be promptly paid out of the Settlement Fund. The  
21 Court hereby also approves the appointment of Epiq Systems as the settlement administrator for  
22 the purpose of disseminating the Class Notice.

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.

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

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

14. The dates of performance are as follows:

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

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

(c) The deadlines for filing or submitting objections and requests for exclusion by Settlement Class Members shall be \_\_\_\_\_.

(d) The Parties shall file and serve papers in support of final approval of the settlement, including the provision for payment of attorneys' fees and reimbursement of litigation expenses to Settlement Class Counsel and payment to the Class Representatives, by \_\_\_\_\_.

Any responses by the Parties to any objections that may

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be timely and validly filed will be filed by \_\_\_\_\_  
\_\_\_\_\_.

(e) The Final Approval Hearing shall be held before this Court  
on \_\_\_\_\_, 2014, at \_\_\_\_\_ a.m.

DATED: November \_\_\_\_, 2013

\_\_\_\_\_  
HON. MARLA J. MILLER  
Judge of the Superior Court