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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

WANKYU CHOI and JAE K. LEE, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MARIO BADESCU SKIN CARE, INC.;
MARIO BADESCU SKIN CARE INC.;
and DOES 1 through 25, inclusive,

Defendants.

Case No. BC501173

(Class Action)

STIPULATION OF SETTLEMENT

Honorable William F. Highberger
Dept.: 307
Action Filed: February 15, 2013

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2 Plaintiffs Wankyu Choi and Jae K. Lee (collectively, “Plaintiffs”) and Defendant Mario
3 Badescu Skin Care, Inc. and nominally named Defendant Mario Badescu Skin Care Inc.
4 (collectively, “Mario Badescu”); Defendant Morris Cabasso, also known as Morise Cabasso
5 (hereafter, “Morise Cabasso”); and Defendant Joseph Cabasso (collectively, “Defendants”), by
6 and through their respective counsel, in consideration for and subject to the promises, terms, and
7 conditions contained in this Stipulation of Settlement, hereby stipulate and agree, subject to Court
8 approval, as follows:

9 **I. RECITALS**

10 WHEREAS, on or about February 15, 2013, Plaintiffs filed a putative class action lawsuit
11 against Mario Badescu in the Superior Court of the State of California County of Los Angeles,
12 Case No. BC501173 (the “Action”), asserting claims for alleged violations of California’s
13 Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (“CLRA”), Fraudulent Concealment,
14 False Advertising in Violation of California’s False Advertising Statute, Business & Professions
15 Code §§ 17500, *et seq.* (“FAL”), and Unfair Business Practices in Violation of California
16 Business & Professions Code §§ 17500, *et seq.* (“UCL”), arising out of Mario Badescu’s alleged
17 failure to disclose all of the ingredients used in the advertising, labeling, or marketing of Mario
18 Badescu Healing Cream (“Healing Cream”), through any medium (on-label, Internet, or
19 otherwise), on behalf of a putative nationwide class of consumers and subclass of California
20 consumers (the “Complaint”);

21 WHEREAS, on or about March 28, 2013, Plaintiffs filed a First Amended Complaint in
22 the Action against Mario Badescu asserting claims for alleged violations of the CLRA,
23 Fraudulent Concealment, FAL, UCL, Breach of Express Warranties, Breach of Implied
24 Warranties, Violation of Magnuson-Moss Warranty Act, 15 U.S.C. §§ 22301, *et seq.*
25 (“MMWA”), and Violation of RICO, 18 U.S.C. §§ 1961, *et seq.* (“RICO”) arising out of Mario
26 Badescu’s alleged failure to disclose all of the ingredients used in the advertising, labeling, or
27 marketing of the Healing Cream, through any medium (on-label, Internet, or otherwise), on behalf
28 of a putative nationwide class of consumers and subclass of California consumers (the “First

1 Amended Complaint”);

2 WHEREAS, on or about June 14, 2013, Mario Badescu filed a Demurrer to the First
3 Amended Complaint and Motion to Strike Class Allegations in the First Amended Complaint
4 which, on August 2, 2013, the Court granted in part with leave to amend (as to the Fraudulent
5 Concealment, FAL, Breach of Express and Implied Warranties, MMWA, and RICO claims) and
6 overruled in part (as to the CLRA and UCL claims), and denied without prejudice to latter
7 challenge the suitability of class treatment of Plaintiffs’ claims;

8 WHEREAS, on or about June 18, 2013, Plaintiffs filed an Amendment to Complaint
9 identifying Morise Cabasso as the defendant previously designated as Doe 1;

10 WHEREAS, on or about August 19, 2013, Plaintiffs filed an Amendment to Complaint
11 identifying Joseph Cabasso as the defendant previously designated as Doe 2;

12 WHEREAS, on or about September 3, 2013, Plaintiffs filed a Second Amended
13 Complaint in the Action against Defendants asserting claims for alleged violations of the CLRA,
14 Fraudulent Concealment, FAL, UCL, Breach of Express Warranties, Breach of Implied
15 Warranties, and MMWA arising out of Defendants’ alleged failure to disclose all of the
16 ingredients used in the advertising, labeling, or marketing of the Healing Cream, through any
17 medium (on-label, Internet, or otherwise), on behalf of a putative nationwide class of consumers
18 and subclass of California consumers (the “Second Amended Complaint”) (the Complaint, First
19 Amended Complaint, and Second Amended Complaint are hereinafter referred to as the
20 “Complaints”);

21 WHEREAS, Plaintiffs, by and through their counsel of record, conducted an extensive
22 investigation into the facts and law relating to the matters alleged in their Complaints, which
23 investigation included conducting pretrial discovery, testing of the Healing Cream, evaluation of
24 documents and information provided by third-parties and Defendants, legal research into the
25 sufficiency of the claims asserted against Defendants and the appropriateness of class
26 certification, as well as discovery into another product, Mario Badescu Control Cream (“Control
27 Cream”), for which Defendants are also alleged to have failed to disclose all of the ingredients
28 used in the advertising, labeling, or marketing of this product, through any medium (on-label,

1 Internet, or otherwise);

2 WHEREAS, this Stipulation of Settlement was reached as a result of arms'-length
3 negotiations between Plaintiffs and their counsel, and Defendants and their counsel, occurring
4 over the better part of October 9, 2013, during an in-person mediation session with the Honorable
5 Louis M. Meisinger, in Department 39 of the above-captioned Court, as well as settlement
6 discussions that continued after the mediation session. Before and during these settlement
7 discussions and mediation, the Parties had an arms'-length exchange of sufficient information to
8 permit Plaintiffs and their counsel to evaluate the claims set forth in the Complaints and potential
9 defenses thereto and to meaningfully conduct informed settlement discussions;

10 WHEREAS, Plaintiffs, as class representatives, believe that the claims settled herein have
11 merit, but they and their counsel recognize and acknowledge the expense and length of continued
12 proceedings necessary to prosecute the claims through trial, appeal, and ancillary actions.
13 Plaintiffs and their counsel have also taken into account the uncertain outcome and risk of any
14 litigation, as well as the difficulties and delay inherent in such litigation, and they believe that the
15 settlement set forth in this Stipulation of Settlement confers substantial benefits upon the Class
16 Members. Based upon their evaluation, they have determined that the settlement set forth in this
17 Stipulation of Settlement is in the best interests of the Class;

18 WHEREAS, based upon their review, investigation, and evaluation of the facts and law
19 relating to the matters alleged in the Complaints, Plaintiffs and Class Counsel, on behalf of
20 Plaintiffs and other members of the proposed Class, have agreed to settle the Action pursuant to
21 the provisions of this Stipulation of Settlement, after considering, among other things: (i) the
22 substantial benefits to Class Members under the terms of this Stipulation of Settlement; (ii) the
23 risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as
24 well as the difficulties and delays inherent in such litigation; and (iii) the desirability of
25 consummating the Stipulation of Settlement promptly in order to provide effective relief to Class
26 Members;

27 WHEREAS, Defendants have denied and continue to dispute the claims and contentions
28 alleged in the Action, and deny allegations of wrongdoing, fault, liability, or damage of any kind

1 to Plaintiffs and the putative Class. Defendants further deny that they have acted improperly or
2 wrongfully and believe that the Action has no merit. Defendants have also considered the risks
3 and potential costs of continued litigation of the Action, on the one hand, and the benefits of the
4 proposed settlement, on the other hand, and desire to settle the Action upon the terms and
5 conditions set forth in this Stipulation of Settlement; and

6 WHEREAS, Defendants have agreed to class action treatment of the claims alleged in the
7 Action solely for purposes of compromising and settling those claims on a class basis as set forth
8 herein.

9 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and between the
10 Parties, through their respective counsel, that: (a) the Action be fully and finally compromised,
11 settled, and released upon final settlement approval by the Court after the hearings provided for in
12 this Stipulation of Settlement; and that (b) upon such approval by the Court, a Final Order and
13 Final Judgment, substantially in the forms attached hereto as Exhibits “A” and “B,” respectively,
14 be entered dismissing the Action with prejudice upon the terms and conditions set forth herein.

15 II. DEFINITIONS

16 As used in this Stipulation of Settlement and the Exhibits hereto, capitalized terms shall
17 have the meaning ascribed to them in this Stipulation of Settlement and the following terms shall
18 have the following meanings, unless specifically provided otherwise:

19 1. “Action” means the class action lawsuit captioned *Wanky Choi and Jae K. Lee v.*
20 *Mario Badescu Skin Care, Inc. and Mario Badescu Skin Care Inc., et al.*, Case No. BC501173,
21 pending in the Superior Court of the State of California for the County of Los Angeles.

22 2. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the
23 Court to Plaintiffs’ Counsel to compensate Plaintiffs’ Counsel for fees and expenses incurred by
24 them in connection with the Action, as described in Paragraph 43 of this Stipulation of Settlement
25 and elsewhere herein.

26 3. “Bar Date” means the final time and date by which a Claim Form must be received
27 by the Settlement Administrator in order for a Class Member to be entitled to any of the
28 settlement consideration contemplated by this Stipulation of Settlement.

1 4. “Certificate” or “Certificates” mean the personalized certificate which entitles a
2 Class Member to Forty Five Dollars (\$45.00) off any purchase at www.mariobadescu.com or at
3 the Mario Badescu Salon located at 320 E. 52nd Street (between 1st Ave & 2nd Ave), New York,
4 NY, 10022 (the “Mario Badescu Salon”). Class Members who purchased Healing Cream and/or
5 Control Cream are entitled to one Certificate for their Healing Cream purchase and another for
6 their Control Cream purchase. A Class Member who purchased both Healing Cream and Control
7 Cream since February 15, 2009 shall be entitled to one (1) Certificate for their purchase of
8 Healing Cream and one (1) Certificate for their purchase of Control Cream, for a total of two (2)
9 Certificates. The Certificates are redeemable upon entry of Final Order and Final Judgment, and
10 continuing for a period of one hundred and eighty (180) days thereafter. Certificates cannot be
11 combined with each other or any other discounts and each Certificate must be redeemed in one
12 transaction, is only valid for purchases at www.mariobadescu.com or at the Mario Badescu Salon,
13 cannot be redeemed for cash or the purchase of Mario Badescu gift cards or ecards, and is not
14 transferrable. No change will be given in the event that the Class Member does not use the full
15 value of the Certificate. Counsel for Plaintiffs and Defendants agree that the Certificates do not
16 constitute “gift certificates” within the meaning of, and are not otherwise subject to, California
17 Civil Code § 1749.5.

18 5. “Claim Form” means the proof of claim and release form(s) substantially in the
19 form attached hereto as Exhibit “C,” which may be modified to meet the requirements of the
20 Settlement Administrator, pursuant to which Class Members can recover the benefits described in
21 Paragraph 40.

22 6. “Claim Period” means the time period from the Notice Date through the Bar Date,
23 which is the time period that Class Members have to claim the benefit contemplated by Paragraph
24 40 of this Stipulation of Settlement. The Claim Period shall run for a period of time ordered by
25 the Court, and last at least one hundred and eighty (180) days from the Notice Date.

26 7. “Class” means all persons in the United States who purchased one or more of
27 Defendants’ Healing Cream or Control Cream from February 15, 2009 up to and including the
28 Notice Date. Excluded from the Class are (a) all persons who are employees, directors, officers,

1 and agents of Defendants; (b) persons or entities who purchased the Healing Cream or Control
2 Cream primarily for resale purposes; (c) governmental entities; (d) persons who timely and
3 properly exclude themselves from the Class as provided in this Stipulation of Settlement; (e)
4 persons who purchased the Healing Cream or Control Cream via the Internet or other remote
5 means while not residing in the United States; and (f) the Court, the Court's immediate family,
6 and Court staff.

7 8. "Class Counsel" means the Law Office of Young W. Ryu and Law Offices of
8 Gerald S. Ohn, APC.

9 9. "Class Member(s)" means any member of the Class who does not elect exclusion
10 or opt out of the Class pursuant to the terms and conditions for exclusion and opt out set forth in
11 this Stipulation of Settlement and the Class Notice.

12 10. "Class Notice" shall mean the Long Form Notice and Summary Notice provided to
13 the Class as provided herein and directed by the Court.

14 11. "Class Representatives" means Plaintiffs Wankyu Choi and Jae K. Lee.

15 12. "Complaints" shall mean, collectively, the (a) Complaint filed by Plaintiffs on
16 February 15, 2013; (b) the First Amended Complaint filed by Plaintiffs on March 28, 2013; and
17 (c) the Second Amended Complaint filed by Plaintiffs on September 3, 2013.

18 13. "Court" means the Superior Court of the State of California for the County of Los
19 Angeles and the Judge assigned to the Action, the Honorable William F. Highberger.

20 14. "Defendants" means Mario Badescu Skin Care, Inc., nominally named Defendant
21 Mario Badescu Skin Care Inc., Morise Cabasso, and Joseph Cabasso.

22 15. "Defense Counsel" means the law firm of Edwards Wildman Palmer LLP.

23 16. "Doe Defendants" means Morise Cabasso and Joseph Cabasso, who were
24 designated as Doe Defendants 1 and 2, respectively, in the Action.

25 17. "Effective Date" means the date on which the Final Order and Final Judgment
26 (defined below) in the Action become "Final." As used in this Stipulation of Settlement, "Final"
27 means three (3) business days after all of the following conditions have been satisfied:

28 (a) the Final Order and Final Judgment have been entered; and

(b)(i) if reconsideration and/or appellate review is not sought from the Final Order and Final Judgment, the expiration of the time for filing or noticing any motion for reconsideration, appeal, petition, and/or writ; or

(b)(ii) if reconsideration and/or appellate review is sought from the Final Order and Final Judgment: (A) the date on which the Final Order and Final Judgment are affirmed and are no longer subject to judicial review, or (B) the date on which the motion for reconsideration, appeal, petition, or writ is dismissed or denied and the Final Order and Final Judgment are no longer subject to judicial review.

18. "Products" shall mean the Healing Cream and Control Cream manufactured and sold by Mario Badescu.

19. "Final Order and Final Judgment" means the Court's Final Order Approving Class Action Settlement and Final Judgment fully and finally approving the Settlement and dismissing the Action with prejudice, substantially in the forms attached hereto as Exhibits "A" and "B."

20. "Long Form Notice" means the long form notice of settlement, substantially in the form attached hereto as Exhibit "E."

21. "Mario Badescu" means Defendant Mario Badescu Skin Care, Inc. and nominally named Defendant Mario Badescu Skin Care Inc.

22. "Notice Date" means the first date upon which the Class Notice is disseminated.

23. "Parties" means Plaintiffs and Defendants collectively, as each of those terms is defined in this Stipulation of Settlement.

24. "Plaintiffs" means Wankyu Choi and Jae K. Lee.

25. "Plaintiffs' Counsel" means the Law Office of Young W. Ryu and Law Offices of Gerald S. Ohn, APC.

26. "Preliminary Approval Order" means the order preliminarily approving the Settlement and proposed Class Notice and notice plan, substantially in the form attached hereto as Exhibit "D."

27. "Release" means the release and waiver set forth in Paragraphs 58-60 of this Stipulation of Settlement, and in the Final Order and Final Judgment, Exhibits "A" and "B"

1 hereto.

2 28. "Released Claims" means and includes any and all claims, demands, rights,
3 damages, obligations, suits, debts, liens, and causes of action under common law or statutory law
4 (federal, state, or local) of every nature and description whatsoever, ascertained or unascertained,
5 suspected or unsuspected, existing or claimed to exist, including unknown claims (as described in
6 Paragraph 60 below) as of the Notice Date by Plaintiffs and all Class Members (and Plaintiffs'
7 and Class Members' respective heirs, guardians, executors, administrators, representatives,
8 agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

- 9 (i) were asserted or that could have been reasonably asserted in the
10 Action against the Released Parties (as hereinafter defined), and
11 any of them, and that arise out of or are related in any way to any or
12 all of the acts, omissions, facts, matters, transactions, or
13 occurrences that were or could have been directly or indirectly
14 alleged or referred to in the Action (including, but not limited to,
15 alleged violations of state consumer protection, unfair competition,
16 and/or false or deceptive advertising statutes (including, but not
17 limited to, California Business & Professions Code §§ 17200, *et*
18 *seq.*, California Business & Professions Code §§ 17500, *et seq.*,
19 California Civil Code §§ 1750, *et seq.*); RICO, 19 U.S.C. §§ 1961,
20 *et seq.*, breach of express or implied warranty (including, but not
21 limited to, claims arising under state law and/or the Magnuson-
22 Moss Warranty Act), fraud, negligence, product liability,
23 conspiracy, assault and battery, unjust enrichment, restitution,
24 declaratory or injunctive relief, and any other equitable claim or
25 claims sounding in contract or tort); and
26 (ii) relate in any way to the advertising, labeling, or marketing of the
27 Products and arising out of any statement made or not made
28 respecting the Products through any medium (on-label, Internet, or

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otherwise).

- (b) Notwithstanding any other provision of this Stipulation of Settlement, “Released Claims” does not include claims for personal injuries. Plaintiffs and Class Members are not releasing any claims, demands, rights, damages, obligations, suits, debts, liens, or causes of action relating to personal injuries arising from their use of any of the Products.
- (c) “Released Claims” shall be construed as broadly as possible to effect complete finality over the Action involving Healing Cream and Control Cream, and the advertising, labeling and/or marketing of the Products as set forth herein.

29. “Released Parties” shall be defined and construed as broadly as possible to effectuate a complete and comprehensive release, and means:

- (a) Defendant Mario Badescu Skin Care, Inc. and nominally named Defendant Mario Badescu Skin Care Inc., and each of their past, present, and future employees, assigns, attorneys, agents, advertising agencies, consultants, officers, and directors;
- (b) All of Mario Badescu Skin Care, Inc.’s and Mario Badescu Skin Care Inc.’s past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, and successors, and each of their respective employees, assigns, attorneys, agents, resellers, officers, and directors;
- (c) Any and all persons, entities, or corporations involved in any way in the development, creation, sale, advertising, labeling, or marketing of the Products or their ingredients, and any other vendor or any company that supplied any ingredients to Defendants or any of them;
- (d) Defendant Morise Cabasso; and
- (e) Defendant Joseph Cabasso.

30. “Releasing Parties” means Plaintiffs and Class Members, and each of their respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners,

1 successors, predecessors-in-interest, and assigns.

2 31. "Settlement" means the settlement embodied in this Stipulation of Settlement,
3 including all attached Exhibits (all of which are integral parts of this Stipulation of Settlement and
4 incorporated in their entirety by reference).

5 32. "Settlement Administrator" means the qualified third party administrator and agent
6 agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval
7 Order to administer the Settlement, including providing the Class Notice. The Parties agree that
8 the Court appoint Rust Consulting as Settlement Administrator to: (a) design, consult on, and
9 implement the notice and related requirements of this Stipulation of Settlement; and (b)
10 implement the notice, claim review, and related requirements of this Stipulation of Settlement,
11 subject to the Court's approval.

12 33. "Settlement Administration Protocol" means the protocol attached hereto as
13 Exhibit "F."

14 34. "Stipulation of Settlement" means this Stipulation of Settlement and all of the
15 Exhibits attached hereto and incorporated herein by reference, including all subsequent
16 amendments that may be agreed to in writing by the Parties and any exhibits to such amendments.

17 35. "Summary Notice" means the summary notice of the proposed class action
18 settlement, substantially in the form attached hereto as Exhibit "G."

19 **III. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR**
20 **REVIEW AND APPROVAL**

21 36. As soon as is practicable, Class Counsel shall apply to the Court for entry of the
22 Preliminary Approval Order substantially in the form attached hereto as Exhibit "D".

23 37. Following entry of the Preliminary Approval Order, Class Notice shall be given
24 and published in the manner directed and approved by the Court.

25 38. At the hearing on the Final Order and Final Judgment, the Parties shall seek to
26 obtain from the Court a Final Order and Final Judgment in the form substantially similar to
27 Exhibit "A" hereto.

28 39. The Parties agree that the notice plan contemplated by this Stipulation of

Settlement is valid and effective, that if effectuated, it would provide reasonable notice to the Class, and that it represents the best practicable notice under the circumstances.

IV. THE SETTLEMENT CONSIDERATION

A. Benefits to Class Members

40. Defendants will provide each Class Member who submits a valid and timely Claim Form one (1) Certificate for Healing Cream and one (1) Certificate for Control Cream purchased since February 15, 2009, each of which entitles that Class Member to Forty Five Dollars (\$45.00) off any purchase at www.mariobadescu.com or at the Mario Badescu Salon located at 320 E. 52nd Street (between 1st Ave & 2nd Ave), New York, NY, 10022 (the "Mario Badescu Salon"). Class Members who purchased both Healing Cream and Control Cream since February 15, 2009 shall be entitled to a total of two (2) Forty Five Dollar (\$45.00) Certificates. The Certificates are redeemable upon entry of the Final Order and Final Judgment and continuing for a period of one hundred and eighty (180) days thereafter. Certificates cannot be combined with each other or any other discounts and each Certificate must be redeemed in one transaction, is only valid for purchases at www.mariobadescu.com or the Mario Badescu Salon, cannot be redeemed for cash or the purchase of Mario Badescu gift cards or ecards, and is not transferrable. No change will be given in the event that the Class Member does not use the full value of the Certificate.

41. Class Members shall be eligible for Certificates as provided in this Stipulation of Settlement, provided Class Members complete and timely submit the Claim Form, which shall be included with the Class Notice and available on the Mario Badescu Internet website, www.mariobadescu.com, to the Settlement Administrator prior to the Bar Date, subject to the terms and conditions of this Stipulation of Settlement and the Settlement Administration Protocol attached hereto as Exhibit "F."

42. No Class Member shall be entitled to use a Certificate prior to the Effective Date.

43. Defense Counsel agrees not to oppose an application by Class Counsel to the Court seeking an award of attorneys' fees and expenses up to a maximum of One Million Two Hundred Thousand Dollars (\$1,200,000.00). Defendants also agree to tender an additional payment to Class Counsel of Three Thousand Dollars (\$3,000.00) for Plaintiff Lee and an

1 additional payment to Class Counsel of Two Thousand Dollars (\$2,000.00) for Plaintiff Choi.
2 After entry of the Final Order and Final Judgment, Class Counsel and the Class Representatives
3 shall each promptly complete a W-9 tax form and send it to Defense Counsel. Within thirty (30)
4 days of Defense Counsel's receipt of the completed forms, and assuming they contain valid,
5 verifiable social security and/or tax ID numbers, Defendants shall tender the designated payments
6 to each of these persons as set forth herein.

7 44. It is expressly agreed and understood that Defendants have entered into this
8 Stipulation of Settlement solely for the purpose of compromise and without admission or
9 concession of liability of any kind. It is further agreed and understood that no payment or
10 obligation undertaken by Defendants pursuant to this Agreement is to be considered a penalty,
11 fine, damage, punitive damage, or other form or assessment of any alleged offense. Defendants
12 expressly deny liability in regard to the claims asserted in the Action and are entering into this
13 Stipulation of Settlement solely to avoid the expense and uncertainty associated with pretrial and
14 trial proceedings in the Action.

15 **B. Injunctive Relief**

16 45. In consideration for the Release contained in this Stipulation of Settlement, and as
17 a result of the efforts of Plaintiffs and their counsel, Defendants agree that they will no longer
18 market, advertise, or sell Healing Cream or Control Cream unless the Products' labels and all
19 descriptions and advertisements for the Products (whether on the Internet or otherwise) disclose
20 all of the ingredients contained in the Products.

21 46. Plaintiffs and Class Counsel agree, on behalf of themselves and all Class
22 Members, that this Stipulation of Settlement does not preclude Defendants from making further
23 changes to the Products' labels that: (a) Defendants reasonably believe are necessary to comply
24 with any statute, regulation, or other law of any kind; (b) are necessitated by Product and/or
25 ingredient changes, and/or that are necessary to ensure that Defendants provide accurate
26 descriptions of the Products; or (c) are more detailed than those required by this Stipulation of
27 Settlement.

28 **V. NOTICE TO THE CLASS AND CLAIMS PROCEDURE**

1 47. The Parties shall jointly recommend and retain Rust Consulting to be the
2 Settlement Administrator. Following the Court's preliminary approval of this Stipulation of
3 Settlement and the Court's appointment of the proposed Settlement Administrator, the Settlement
4 Administrator shall disseminate the Class Notice as set forth in this Stipulation of Settlement in
5 order to comply with all applicable laws, including, but not limited to, the Due Process Clause of
6 the California Constitution. Notice shall be affected via e-mail for those Class Members for
7 whom Defendants have a valid e-mail address. If Defendants do not have a valid e-mail address
8 for a Class Member, but Defendants do have a valid street mailing address for that Class Member,
9 then notice shall be affected by sending notice to that Class Member via U.S. Mail. To this end,
10 within twenty-five (25) days after entry of the Preliminary Approval Order, Defendants shall
11 provide the Settlement Administrator with the name of each putative Class Member and the last
12 known e-mail address and street mailing address for those Class Members for whom Defendants
13 have such information. Notice shall be affected through publication as set forth herein for those
14 Class Members for whom Defendants have neither a valid e-mail nor street mailing address.

15 48. The Long Form Notice: The Long Form Notice shall be in the form substantially
16 similar to the document attached hereto as Exhibit "E" and shall comport with the following:

17 (a) General Terms: The Long Form Notice shall contain a plain and concise
18 description of the nature of the Action and the proposed Settlement, including information on the
19 definition of the Class, how the proposed Settlement would provide relief to Class Members,
20 what claims are released under the proposed Settlement, and other relevant information.

21 (b) Opt Out Rights: The Long Form Notice shall inform Class Members that
22 they have the right to opt out of the Settlement. The Long Form Notice shall provide the
23 deadlines and procedures for exercising this right.

24 (c) Objection to Settlement: The Long Form Notice shall inform Class
25 Members of their right to object to the proposed Settlement. The Long Form Notice shall provide
26 the deadlines and procedures for exercising this right.

27 (d) Fees and Expenses: The Long Form Notice shall inform Class Members
28 about the fees and expenses related to the Settlement Administrator, the amounts being sought by

1 Class Counsel as Attorneys' Fees and Expenses and individual Incentive Awards to Plaintiffs.

2 (e) Claim Form: The Long Form Notice shall include the Claim Form, which
3 shall inform Class Members that he or she must fully complete and timely return the Claim Form
4 prior to the Bar Date to be eligible to obtain relief pursuant to this Stipulation of Settlement.

5 49. The Summary Notice: The Settlement Administrator shall have the Summary
6 Notice published in a single, one-eighth page notice, which publication shall appear one time in
7 Parade Magazine. The form of Summary Notice agreed upon by the Parties is in the form
8 substantially similar to Exhibit "G" hereto.

9 50. Internet Website: Before the dissemination of the Class Notice, the Settlement
10 Administrator shall establish an Internet website, www.healingandcontrolcreamsettlement.com
11 that will inform Class Members of the terms of this Stipulation of Settlement, their rights, dates
12 and deadlines, and related information. The website shall include, in .pdf format, materials
13 agreed upon by the Parties and/or required by the Court.

14 51. Toll-Free Telephone Number: Prior to dissemination of the Class Notice, the
15 Settlement Administrator shall establish a toll-free telephone number that will provide
16 Settlement-related information to Class Members, pursuant to the terms and conditions of this
17 Stipulation of Settlement.

18 52. Within thirty (30) days after entry of the Preliminary Approval Order, the Parties
19 will coordinate with the Settlement Administrator to provide notice to the Class as follows:

20 (a) E-mail or U.S. Mail Notice: by e-mailing the Summary Notice (in the form
21 substantially similar to Exhibit "G" hereto) or, if an e-mail address is not available, by mailing via
22 first class U.S. mail the Long Form Notice (in the form substantially similar to Exhibit "E"
23 hereto) to Class Members for whom Defendants have such information;

24 (b) Publishing on or before the Notice Date as specified in the Preliminary
25 Approval Order, the Long Form Notice on the settlement website
26 www.healingandcontrolcreamsettlement.com and the Summary Notice as set forth in this
27 Stipulation of Settlement;

28 (c) Providing reference in the Long Form Notice and the Summary Notice of

1 the settlement website (www.healingandcontrolcreamsettlement.com) to be designed and
2 administered by the Settlement Administrator that will contain electronic copies of the Settlement
3 documents (including, but not limited to, the Long Form Notice, the Claim Form, the Preliminary
4 Approval Order, this Stipulation of Settlement (including all Exhibits hereto), the Second
5 Amended Complaint, a list of important dates, and any other information or documents to which
6 the Parties may agree; and

7 (d) Establishing a toll-free telephone number through which Class Members
8 may obtain information about the Action and the Settlement and request a copy via e-mail or U.S.
9 mail of the Long Form Notice and/or the Claim Form.

10 (e) Providing a link to the Claim Form on Mario Badescu's Internet website,
11 www.mariobadescu.com, on or before the Notice Date specified in the Preliminary Approval
12 Order.

13 **VI. ATTORNEYS' FEES AND EXPENSES AND**
14 **CLASS REPRESENTATIVE INCENTIVE AWARDS**

15 53. In recognition of the time and effort Plaintiffs expended in pursuing the Action and
16 in fulfilling their obligations and responsibilities as Class Representatives, and of the benefits
17 conferred on all Class Members by the Settlement, Class Counsel may ask the Court for the
18 payment of an Incentive Award to each Plaintiff. Defendants will not take a position on the
19 application for Incentive Awards by Class Counsel as long as the amount of the combined awards
20 does not exceed Five Thousand Dollars (\$5,000.00). Plaintiffs and Class Counsel agree that
21 Defendants shall not pay, and in no event shall be obligated to pay, in excess of any award of
22 incentive payments ordered by the Court.

23 54. Class Counsel will make an application to the Court for an award of Attorneys'
24 Fees and Expenses. Defendants agree not to oppose an application for Attorneys' Fees and
25 Expenses in an amount of up to One Million Two Hundred Thousand Dollars (\$1,200,000.00)
26 and agree to pay attorneys' fees and expenses awarded to Class Counsel up to that amount.

27 55. Any Attorneys' Fees and Expenses awarded by the Court shall be in lieu of
28 statutory fees Plaintiffs and/or their attorneys might otherwise have been entitled to recover from

1 Defendants. This amount shall be inclusive of all fees and costs to be paid to Class Counsel by
2 Defendants.

3 56. Class Counsel shall have the sole and absolute discretion to allocate the Attorneys'
4 Fees and Expenses among Class Counsel and any other attorneys for Plaintiffs. Defendants shall
5 have no liability or other responsibility for allocation of any such Attorneys' Fees and Expenses
6 awarded and, in the event that any dispute arises relating to the allocation of attorneys' fees and
7 costs, Class Counsel agree to hold Defendants harmless from any and all such liabilities, costs,
8 and expenses that may arise from such dispute.

9 57. The procedure for and allowance or disallowance by the Court of any application
10 for attorneys' fees, costs, expenses, or reimbursements to be paid to Class Counsel are not part of
11 the Settlement or of the Released Claims set forth in this Stipulation of Settlement, and are to be
12 considered by the Court separately from the Court's consideration of the fairness, reasonableness,
13 and adequacy of the Settlement as set forth in this Stipulation of Settlement. Any such separate
14 order, finding, ruling, holding, or proceeding relating to any such application for Attorneys' Fees
15 and Expenses, or any separate appeal from such separate order, finding, ruling, holding, or
16 proceeding relating to them or reversal or modification of them, shall not operate to terminate or
17 cancel this Stipulation of Settlement or otherwise affect or delay the finality of the Final Order
18 and Final Judgment or the Settlement. The Parties negotiated the Attorneys' Fees and Expenses
19 to be sought by Class Counsel only after reaching an agreement upon the relief provided to the
20 Class.

21 **VII. RELEASES AND DISMISSAL OF ACTION**

22 58. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by
23 operation of the Final Order and Final Judgment shall have, fully, finally, and forever released,
24 relinquished, and discharged all Released Claims against the Released Parties. Further,
25 Defendants will release, waive, and discharge, on the Effective Date, all legal claims, causes of
26 action, cross-claims, or counter-claims against Plaintiffs, the Class Members, and Class Counsel
27 (collectively, the "Plaintiff Released Parties") arising from or related to the Products and claims at
28 issue in the Action ("Plaintiff Released Claims"). The Released Claims shall be construed as

1 broadly as possible to affect complete finality over the Action as set forth herein.

2 59. Members of the Class who have opted out of the Settlement by the date set forth
3 by the Court do not release their claims and will not obtain any benefit from the Settlement.

4 60. The Released Claims and the Plaintiff Released Claims include known and
5 unknown claims relating to the Action, and this Stipulation of Settlement is expressly intended to
6 cover and include all such injuries and damages, including all rights of action thereunder.
7 Plaintiffs, Class Members, and Defendants hereby expressly, knowingly, and voluntarily waive
8 the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

15 Plaintiffs, Class Members, and Defendants expressly waive and relinquish any and all rights and
16 benefits they may have under, or that may be conferred upon them by, the provisions of Section
17 1542 of the California Civil Code, or any other law of any state or territory that is similar,
18 comparable, or equivalent to Section 1542, to the fullest extent they may lawfully waive such
19 rights and benefits pertaining to the Released Claims and the Plaintiff Released Claims. In
20 connection with such waiver and relinquishment, Plaintiffs, the Class Members, and Defendants
21 hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims
22 or facts in addition to those that they now know or believe to exist with respect to the Released
23 Claims and the Plaintiff Released Claims, but it is their intention to hereby fully, finally, and
24 forever settle and release all of the Released Claims and the Plaintiff Released Claims known or
25 unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of
26 such intention, the Releases herein given by Plaintiff, the Class Members, and Defendants to the
27 Released Parties and the Plaintiff Released Parties shall be and do remain in effect as a full and
28 complete general release notwithstanding the discovery or existence of any such additional

1 different claims or facts. Each of the Parties expressly acknowledges that he/she/it has been
2 advised by his/her/its attorney of the contents and effect of Section 1542 and, with knowledge,
3 each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to
4 such section. Plaintiffs and Class Members are not releasing any claims for personal injuries.
5 Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final
6 Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
7 material element of the Settlement of which this Release is a part.

8 61. Upon the Effective Date, the Action shall be dismissed with prejudice. Plaintiffs
9 and Class Counsel shall have the responsibility for ensuring that the Action is dismissed with
10 prejudice in accordance with the terms of this Stipulation of Settlement.

11 62. The Court shall enter an order retaining jurisdiction over the Parties to this
12 Stipulation of Settlement with respect to the future performance of the terms of this Stipulation of
13 Settlement. In the event that any application for relief is made, such applications shall be made to
14 the Court.

15 63. Upon the Effective Date: (a) this Stipulation of Settlement shall be the exclusive
16 remedy for any and all Released Claims of Plaintiffs and Class Members; and (b) Plaintiffs and
17 Class Members stipulate to be and shall be permanently barred and enjoined by Court order from
18 initiating, asserting, or prosecuting against the Released Parties in any federal or state court or
19 tribunal any and all Released Claims.

20 **VIII. ADMINISTRATION OF SETTLEMENT**

21 64. Because the names of Class Members and other personal information about them
22 will be provided to the Settlement Administrator for purposes of providing benefits and opt out
23 requests, the Settlement Administrator will execute a confidentiality and non-disclosure
24 agreement with Defendants and Class Counsel and will take all reasonable steps to ensure that
25 any information provided to it by Class Members will be used solely for the purpose of effecting
26 this Settlement.

27 65. In fulfilling its responsibilities in providing Class Notice, the Settlement
28 Administrator shall be responsible for, without limitation, consulting on and designing the notice

1 to the Class. In particular, the Settlement Administrator shall be responsible for: (a) arranging
2 for the publication of the Summary Notice and dissemination of the Class notice pursuant to the
3 requirements of this Stipulation of Settlement; (b) designing and implementing notice to the Class
4 by various electronic media pursuant to the requirements of this Stipulation of Settlement; (c)
5 responding to requests from Class Counsel and/or Defense Counsel; and (d) otherwise
6 implementing and/or assisting with the dissemination of the notice pursuant to the requirements
7 of this Stipulation of Settlement.

8 66. The Settlement Administrator also shall be responsible for, without limitation,
9 dissemination of Class notice and implementing the terms of the claim process and related
10 administrative activities that include communications with Class Members concerning the
11 Settlement, the claim process, and the options thereunder. In particular, the Settlement
12 Administrator shall be responsible for: (a) printing, e-mailing, mailing or otherwise arranging for
13 the mailing of the Class notice in response to Class Members' requests; (b) making any mailings
14 required under the terms of this Stipulation of Settlement; (c) establishing a website
15 (www.healingandcontrolcreamsettlement.com) that contains the Claim Form that can be
16 completed and submitted online; (d) establishing a toll-free telephone voice response unit with
17 message and interactive voice response (IVR) capabilities to which Class Members may refer for
18 information about the Action and the Settlement; (e) receiving and maintaining any Class
19 Member correspondence regarding requests for exclusion and objections to the Settlement; (f)
20 forwarding inquiries from Class Members to Class Counsel or their designee for a response, if
21 warranted; (g) establishing a post office box for the receipt of Claim Forms, exclusion requests,
22 and any correspondence; (h) reviewing Claim Forms according to the review protocols agreed to
23 by the Parties and set forth in this Stipulation of Settlement and the Settlement Administrator
24 Protocol attached hereto as Exhibit "F"; and (i) otherwise implementing and/or assisting with the
25 claim review process and issuance of Certificates.

26 67. The Settlement Administrator shall administer the Settlement in accordance with
27 the terms of this Stipulation of Settlement (including, but not limited to, the Settlement
28 Administrator Protocol attached hereto as Exhibit "F") and, without limiting the foregoing, shall:

1 (a) Treat any and all documents, communications, and other information and
2 materials received in connection with the administration of the Settlement as confidential and
3 shall not disclose any or all such documents, communications, or other information to any person
4 or entity other than as provided in this Stipulation of Settlement or by Court order;

5 (b) Receive opt out and other requests and correspondence from Class
6 Members to exclude themselves from the Settlement and provide to Class Counsel and Defense
7 Counsel a copy thereof within three (3) days of receipt. If the Settlement Administrator receives
8 any exclusion forms or other requests from Class Members to exclude themselves from the
9 Settlement after the deadline for the submission of such forms and requests, the Settlement
10 Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof;
11 and

12 (c) Receive and maintain all correspondence from any Class Member
13 regarding the Settlement.

14 68. The Settlement Administrator shall be reimbursed by Defendants for costs, fees,
15 and expenses and providing notice to the Class and administering the Settlement in accordance
16 with the Stipulation of Settlement. Class Counsel and Plaintiffs shall bear no financial
17 responsibility for payment to the Settlement Administrator or costs incurred by it in carrying out
18 its responsibilities as set forth herein.

19 69. Each Class Member shall submit a Claim Form pursuant to the instructions set
20 forth in the Claim Form. The Claim Form shall include an attestation, substantially in the
21 following form: "I declare or affirm, under penalty of perjury, that the information on this claim
22 form is true and accurate to the best of my knowledge, and that I purchased the Healing Cream
23 and/or Control Cream during the Claim Period. I understand that my claim form may be subject
24 to audit, verification, or Court review." Claim Forms will be: (a) included on the Settlement
25 website (www.healingandcontrolcreamsettlement.com) to be designed and administered by the
26 Settlement Administrator; and (b) made readily available from the Settlement Administrator, as
27 provided in the Preliminary Approval Order.

28 70. Any Class Member who, in accordance with the terms and conditions of this

1 Stipulation of Settlement, neither seeks exclusion from the Class nor files a Claim Form will not
2 be entitled to receive a Certificate pursuant to this Stipulation of Settlement, but will be bound
3 together with all Class Members by all of the terms of this Stipulation of Settlement, including the
4 terms of the Final Order and Final Judgment to be entered in the Action and the Releases
5 provided for herein, and will be barred from bringing any action in any forum (state or federal)
6 against any of the Released Parties concerning the Released Claims.

7 71. Claim Forms that do not meet the requirements set forth in this Stipulation of
8 Settlement and in the Claim Form instructions shall be rejected. Where a good faith basis exists,
9 the Settlement Administrator may reject a Class Member's Claim Form for, among other reasons:

10 (a) The Class Member purchased goods or products that are not covered by the
11 terms of this Stipulation of Settlement;

12 (b) Failure to fully complete and/or sign the Claim Form;

13 (c) Illegible Claim Form;

14 (d) The Claim Form is fraudulent;

15 (e) The Claim Form is duplicative of another Claim Form;

16 (f) The person submitting the Claim Form is not a Class Member;

17 (g) The person submitting the Claim Form requests that Certificate(s) be
18 issued to a person or entity other than the Class Member for whom the Claim Form is submitted;

19 (h) Failure to submit a Claim Form by the Bar Date; and/or

20 (i) The Claim Form otherwise does not meet the requirements of this
21 Stipulation of Settlement.

22 72. The Settlement Administrator shall determine whether a Claim Form meets the
23 requirements set forth in this Stipulation of Settlement. Each Claim Form shall be submitted to
24 and reviewed by the Settlement Administrator, who shall determine (in accordance with this
25 Stipulation of Settlement and the Settlement Administrator Protocol attached hereto as Exhibit
26 "F") the extent, if any, to which each claim shall be allowed. The Settlement Administrator shall
27 use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims,
28 including, without limitation, indexing all Certificates issued to Class Members.

1 73. Claim Forms that do not meet the terms and conditions of this Stipulation of
2 Settlement shall be promptly rejected by the Settlement Administrator. The Settlement
3 Administrator shall have thirty (30) days from the end of the Claim Period to exercise the right of
4 rejection. The Settlement Administrator shall notify the Class Member of the rejection using the
5 contact information provided in the Claim Form. Class Counsel and Defense Counsel shall be
6 provided with copies of all such notifications to Class Members. If any claimant whose Claim
7 Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must,
8 within ten (10) business days from receipt of the rejection, transmit to the Settlement
9 Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's
10 grounds for contesting the rejection, along with any supporting documentation, and requesting
11 further review by the Settlement Administrator, in consultation with Class Counsel and Defense
12 Counsel, of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a
13 resolution of the claimant's notice contesting the rejection, the disputed claim shall be presented
14 to the Court or a referee appointed by the Court for summary and non-appealable resolution.

15 74. No person shall have any claim against Defendants, Defense Counsel, Plaintiffs,
16 Plaintiffs' Counsel, the Class, Class Counsel, and/or the Settlement Administrator based on any
17 eligibility determinations, distributions, or awards made in accordance with this Stipulation of
18 Settlement. This provision does not affect or limit in any way the right of review by the Court or
19 referee of any disputed Claim Forms as provided in this Stipulation of Settlement.

20 75. Any Class Member who fails to submit a Claim Form by the Bar Date shall be
21 forever barred from receiving any benefit pursuant to this Stipulation of Settlement, but shall in
22 all other respects be bound by all of the terms of this Stipulation of Settlement, including the
23 terms of the Final Order and Final Judgment to be entered in the Action and the releases provided
24 herein, and will be barred from bringing any action in any forum (state or federal) against any of
25 the Released Parties concerning any of the Released Claims. A Claim Form shall be submitted
26 electronically at the settlement website (www.healingandcontrolcreamsettlement.com) to be
27 designed and administered by the Settlement Administrator. The Claim Form shall be deemed to
28 have been submitted when it is actually received by the Settlement Administrator.

1 76. Class Counsel and Defense Counsel shall have the right to inspect the Claim
2 Forms received by the Settlement Administrator at any time upon reasonable notice.

3 77. Not later than seven (7) calendar days before the date of the hearing on the Final
4 Order and Final Judgment, the Settlement Administrator shall file with the Court: (a) a list of
5 those persons who have opted out of or excluded themselves from the Settlement; and (b) the
6 details regarding the number of valid Claim Forms received and processed by the Settlement
7 Administrator.

8 78. The Settlement Administrator may retain one or more persons in the completion of
9 its responsibilities.

10 79. The Settlement Administrator shall prepare and distribute the Certificates to
11 eligible Class Members via e-mail or U.S. mail after the Effective Date pursuant to the term of
12 this Stipulation of Settlement.

13 80. If the Settlement is not approved or for any reason the Effective Date does not
14 occur, no distribution of Certificates shall be made pursuant to this Stipulation of Settlement.

15 81. In the event the Settlement Administrator fails to perform its duties, and/or makes
16 a material or fraudulent misrepresentation to, or conceals requested material information from,
17 Class Counsel, Defendants, and/or Defense Counsel, then the party to whom the
18 misrepresentation is made shall, in addition to any other appropriate relief, have the right to
19 demand that the Settlement Administrator immediately be replaced. No party shall unreasonably
20 withhold consent to remove the Settlement Administrator. The Parties will attempt to resolve any
21 disputes regarding the retention or dismissal of the Settlement Administrator in good faith, and, if
22 they are unable to do so, will refer the matter to the Court for resolution.

23 82. Defendants and the Released Parties are not obligated to (and will not be obligated
24 to) compute, estimate, or pay any taxes on behalf of any Plaintiff, any Class Member, Plaintiffs'
25 Counsel, Class Counsel, and/or the Settlement Administrator.

26 **IX. OBJECTIONS AND OPT OUTS BY CLASS MEMBERS**

27 83. Members of the Class who fail to file with the Court, through the Court's
28 Electronic Service (or any other method in which the Court will accept filings, if any), and serve

1 upon the Settlement Administrator, Class Counsel, and Defense Counsel, timely written
2 objections in the manner specified in this Stipulation of Settlement and the Class notice shall be
3 deemed to have waived all objections and shall be foreclosed from making any objection
4 (whether by appeal or otherwise) to the Settlement. Any Class Member who intends to object to
5 the Settlement must, in addition to filing a written objection with the Court through the Court's
6 Electronic Service (or any other method in which the Court will accept filings, if any), send the
7 written objection by U.S. mail to an address to be provided by the Settlement Administrator or e-
8 mail (to the following email address: info@healingandcontrolcreamsettlement.com) to the
9 Settlement Administrator with a copy by U.S. mail or e-mail to Class Counsel and Defense
10 Counsel (at the addresses set forth below) postmarked no later than the date specified in the
11 Preliminary Approval Order. Class Members who object must set forth: (a) their full name; (b)
12 current address; (c) a written statement of their objection(s) and the reasons for each objection;
13 (d) a statement of whether they intend to appear at the hearing on the Final Order and Final
14 Judgment; (e) their signature; and (f) the case name and case number (*Choi, et al. v. Mario*
15 *Badescu Skin Care, Inc., et al.*, Case No. BC501173). Objections must be served on Class
16 Counsel and Defense Counsel as follows:

17 Upon Class Counsel at:

18 Young W. Ryu
19 Law Office of Young W. Ryu
20 9595 Wilshire Boulevard, Suite 900
21 Beverly Hills, CA 90212
22 E-mail: young.ryu@youngryulaw.com

23 Gerald S. Ohn
24 Law Offices of Gerald S. Ohn, APC
25 1875 Century Park East, Suite 700
26 Los Angeles, CA 90067
27 E-mail: Gerald@ohnlaw.com

28 Upon Defense Counsel at:

 Ronie M. Schmelz
 Edwards Wildman Palmer LLP
 1901 Century Park East, Suite 1700
 Los Angeles, CA 90067
 E-mail: rschmelz@edwardswildman.com

1 84. Objecting Class Members must state in writing all objections and the reasons for
2 each objection, and state whether the objecting Class Member intends to appear at the hearing on
3 the Final Order and Final Judgment either with or without separate counsel. No member of the
4 Class shall be entitled to object to the Settlement, and no written objections or briefs submitted by
5 any Class Member shall be received or considered by the Court at the hearing on the Final Order
6 and Final Judgment, unless written notice of the objecting Class Member's intention to appear at
7 the hearing on the Final Order and Final Judgment and copies of any written objections and/or
8 briefs shall have been filed with the Court pursuant to the Court's electronic filing system (or any
9 other method in which the Court will accept filings, if any) and served on the Settlement
10 Administrator, Class Counsel, and Defense Counsel on or before the date specified in the
11 Preliminary Approval Order. Objections that are mailed to the Court (and not filed pursuant to
12 the Court's electronic filing system, or any other method in which the Court will accept filings,
13 if any), or objections that are served on the Parties but not filed with the Court, shall not be
14 received or considered by the Court at the hearing on the Final Order and Final Judgment.

15 85. The Parties shall request that the Court allow any interested party to file a reply or
16 objection, as described in Paragraph 83 and 84, no later than seven (7) calendar days before the
17 hearing on the Final Order and Final Judgment, or as the Court may otherwise direct.

18 86. Members of the Class may elect to opt out of the Settlement, relinquishing their
19 rights to benefits hereunder. Members of the Class who opt out of the Settlement will not release
20 their claims pursuant to this Stipulation of Settlement. Putative Class Members wishing to opt
21 out of the Settlement must send to the Settlement Administrator by U.S. mail (to an address to be
22 provided by the Settlement Administrator) a personally signed letter including: (a) their full
23 name; (b) current address; (c) a clear statement communicating that they elect to be excluded
24 from the Class, do not wish to be a Class Member, and elect to be excluded from any judgment
25 entered pursuant to the Settlement; (d) their signature; and (e) the case name and case number
26 (*Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*, Case No. BC501173). Any request for
27 exclusion or opt out must be postmarked on or before the exclusion or opt out deadline provided
28 in the Court's Preliminary Approval Order. The date of the postmark on the return-mailing

1 envelope shall be the exclusive means used to determine whether a request for exclusion has been
2 timely submitted. Members of the Class who fail to submit a valid and timely request for
3 exclusion on or before the date specified in the Court's Preliminary Approval Order shall be
4 bound by the terms of this Stipulation of Settlement and Final Order and Final Judgment,
5 regardless of whether they have requested an exclusion from the Settlement.

6 87. Any Class Member who submits a timely request for exclusion or opts out may not
7 file an objection to the Settlement and shall be deemed to have waived any rights or benefits
8 under this Stipulation of Settlement.

9 88. The Settlement Administrator shall promptly provide copies of all requests for
10 exclusion, objections, and/or related correspondence from Class Members to Class Counsel and
11 Defense Counsel. Not later than three (3) business days after the deadline for submissions of
12 requests for exclusion or opt out, the Settlement Administrator shall provide to Class Counsel and
13 Defense Counsel a complete opt out list together with copies of the opt out requests.
14 Notwithstanding any other provision of this Stipulation of Settlement, if more than five percent
15 (5%) of Class Members opt out of the Settlement, Defendants, in their sole discretion, may
16 rescind and revoke the entire Settlement and this Stipulation of Settlement, thereby rendering the
17 Settlement null and void in its entirety, by sending written notice that Defendants revoke the
18 Settlement pursuant to this paragraph to Class Counsel within ten (10) business days following
19 the date the Settlement Administrator informs Defendants of the number of Class Members who
20 have opted out of the Settlement pursuant to the provisions set forth herein. If Defendants rescind
21 the Settlement pursuant to this paragraph, they shall have no further obligation to pay Attorneys'
22 Fees and Expenses and Incentive Awards and shall be responsible for only the fees and expenses
23 actually incurred by the Settlement Administrator, and for which Plaintiffs and their Counsel are
24 not liable.

25 89. On the date set forth in the Preliminary Approval Order, a hearing on the Final
26 Order and Final Judgment shall be conducted to determine final approval of the Settlement. A
27 motion in support of the Final Order and Final Judgment shall be filed no later than fourteen (14)
28 calendar days before the hearing on final approval of the Settlement or as otherwise ordered by

1 the Court. Upon final approval of the Settlement by the Court at or after the hearing on the Final
2 Order and Final Judgment, the Parties shall present the Final Order and Final Judgment,
3 substantially in the form attached to this Stipulation of Settlement as Exhibits “A” and “B,” and a
4 final order approving Attorneys’ Fees and Expenses and the Incentive Awards, to the Court for
5 approval and entry. Class Members who wish to be heard at the hearing on the Final Order and
6 Final Judgment (whether individually or through separate counsel) and are objecting to the
7 Settlement shall comply with the provisions of this Stipulation of Settlement (including
8 Paragraphs 83 and 84). Class Members who wish to be heard at the hearing on the Final Order
9 and Final Judgment (whether individually or through separate counsel) and are not objecting to
10 the Settlement shall file a notice of appearance with the Court’s electronic system or through any
11 other method in which the Court will accept filings, if any, and serve upon Class Counsel and
12 Defense Counsel at the addresses indicated above at least fourteen (14) calendar days before the
13 hearing on the Final Order and Final Judgment.

14 **X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION**
15 **OF THE CLASS SOLELY FOR PURPOSES OF SETTLEMENT**

16 90. For purposes of settlement only, the Parties agree to seek provisional certification
17 of the Class. The Parties further agree that the Court should make preliminary findings and enter
18 the Preliminary Approval Order (substantially in the form attached hereto as Exhibit “D”)
19 granting provisional certification of the Class subject to final findings and ratification in the Final
20 Order and Final Judgment, and appointing the representative Plaintiffs as the representatives of
21 the Class and Class Counsel as counsel for the Class.

22 91. Defendants do not consent to certification of the Class for any purpose other than
23 to effectuate the Settlement of the Action. Defendants’ agreement to conditional certification
24 does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to
25 Plaintiffs or any of the putative Class Members.

26 92. If this Stipulation of Settlement is terminated pursuant to its terms, disapproved by
27 any court (including any appellate court), and/or not consummated for any reason, or the
28 Effective Date for any reason does not occur, the order certifying the Class for purposes of

1 effectuating this Stipulation of Settlement, and all preliminary and/or final findings regarding that
2 class certification order, shall be automatically vacated upon notice of the same to the Court, the
3 Action shall proceed as though the Class had never been certified pursuant to this Stipulation of
4 Settlement and such findings had never been made, and the Action shall return to the procedural
5 status quo in accordance with this paragraph. Class Counsel shall not refer to or invoke the
6 vacated findings and/or order relating to class settlement in the event this Stipulation of
7 Settlement is not consummated and the case is later litigated and contested by Defendants.

8 **XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

9 93. The terms and provisions of this Stipulation of Settlement may be amended,
10 modified, or expanded by written agreement of the Parties and approval of the Court; provided,
11 however, that after entry of the Final Order and Final Judgment, the Parties may by written
12 agreement effect such amendments, modifications, or expansions of this Stipulation of Settlement
13 and its implementing documents (including all Exhibits hereto) without further notice to the Class
14 or approval by the Court if such changes are consistent with the Court's Final Order and Final
15 Judgment and do not materially alter, reduce, or limit the rights of Class Members under this
16 Stipulation of Settlement.

17 94. In the event the terms or conditions of this Stipulation of Settlement, other than
18 terms pertaining to Attorneys' Fees and Expenses and/or Incentive Awards, are materially
19 modified by any court, either party in its sole discretion to be exercised within fourteen (14) days
20 after such a material modification may declare this Stipulation of Settlement null and void. For
21 purposes of this paragraph, material modifications include, but are not limited to, any
22 modifications to the definitions of the Class, Class Members, or Released Claims, changes to the
23 notice plan described in Paragraphs 47-52 or any Exhibit hereto, and/or any modifications to the
24 terms of the Settlement consideration described in Paragraph 40. In the event that a Party
25 exercises his/her/its option to withdraw from and terminate this Stipulation of Settlement, then the
26 Settlement proposed herein shall become null and void and shall have no force or effect, the
27 Parties shall not be bound by this Stipulation of Settlement, and the Parties will be returned to
28 their respective positions existing immediately before execution of this Stipulation of Settlement.

1 Notwithstanding the foregoing Paragraph 94, in the event this Stipulation of Settlement is not
2 approved by any court, or the Settlement set forth in this Stipulation of Settlement is declared null
3 and void, or in the event that the Effective Date does not occur, Class Members, Plaintiffs, Class
4 Counsel, and Plaintiffs' Counsel shall not in any way be responsible or liable for any costs of
5 notice and administration associated with this Settlement or this Stipulation of Settlement, except
6 that such Party shall bear its own attorneys' fees and costs and Defendants' future payment
7 obligations shall cease.

8 **XII. SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

9 95. The Parties expressly acknowledge and agree that this Stipulation of Settlement
10 and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and
11 correspondence, constitute an offer of compromise and a compromise within the meaning of
12 California Code of Civil Procedure Section 998 and any equivalent law or rule. In no event shall
13 this Stipulation of Settlement, any of its provisions or any negotiations, statements, or court
14 proceedings relating to its provisions in any way be construed as, offered as, received as, used as,
15 or deemed to be evidence of any kind in the Action, any other action, or in any judicial,
16 administrative, regulatory or other proceeding, except in a proceeding to enforce this Stipulation
17 of Settlement or the rights of the Parties or their counsel. Without limiting the foregoing, neither
18 this Stipulation of Settlement nor any related negotiations, statements, or court proceedings shall
19 be construed as, offered as, received as, used as, or deemed to be evidence or an admission or
20 concession of any liability or wrongdoing whatsoever on the part of any person or entity,
21 including, but not limited to, Defendants, the Released Parties, Plaintiffs, or the Class, or as a
22 waiver by Defendants, the Released Parties, Plaintiffs, or the Class of any applicable privileges,
23 claims, or defenses.

24 96. The provisions contained in this Stipulation of Settlement are not and shall not be
25 deemed a presumption, concession, or admission by Defendants, or any of them, of any default,
26 liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any
27 actions or proceedings, nor shall they be interpreted, construed, deemed, invoked, offered, or
28 received in evidence or otherwise used by any person in the Action, or in any other action or

1 proceeding, whether civil, criminal, or administrative. Defendants and each of them expressly
2 deny the allegations in the Action. Defendants do not admit that they or any of the Released
3 Parties have engaged in any wrongful activity or that any person has sustained any damage by
4 reason of any of the facts complained of in the Action. Defendants do not consent to certification
5 of the Class for any reason other than to effectuate the Settlement of the Action.

6 **XII. BEST EFFORTS**

7 97. Class Counsel shall take all necessary actions to accomplish approval of the
8 Settlement, the Class Notice, and dismissal of the Action. The Parties (including their counsel,
9 successors, and assigns) agree to cooperate fully and in good faith with one another and to use
10 their best efforts to effectuate the Settlement, including, without limitation, in seeking preliminary
11 and final Court approval of this Stipulation of Settlement and the Settlement embodied herein,
12 carrying out the terms of this Stipulation of Settlement, and promptly agreeing upon and
13 executing all such other documentation as may be reasonably necessary or required to obtain final
14 approval by the Court of the Settlement. In the event the Court fails to approve the Settlement or
15 fails to issue the Final Order and Final Judgment, the Parties shall use all reasonable efforts,
16 consistent with this Stipulation of Settlement, to cure any defect identified by the Court.

17 98. Each Party will cooperate with the other Party in connection with effectuating the
18 Settlement or the administration of claims thereunder. Any requests for cooperation shall be
19 narrowly tailored and reasonably necessary for the requesting Party to recommend the Settlement
20 to the Court, and to carry out its terms.

21 **XIV. MISCELLANEOUS PROVISIONS**

22 99. The Parties agree that the recitals are contractual in nature and form a material part
23 of this Stipulation of Settlement.

24 100. This Stipulation of Settlement and its accompanying Exhibits set forth the entire
25 understanding of the Parties. No change or termination of this Stipulation of Settlement shall be
26 effective unless in writing and signed by Plaintiffs' Counsel and Defense Counsel. No extrinsic
27 evidence or parol evidence shall be used to interpret this Stipulation of Settlement.

28 101. Any and all previous agreements and understandings between or among the Parties

1 regarding the subject matter of this Stipulation of Settlement, whether written or oral, are
2 superseded and hereby revoked by this Stipulation of Settlement. The Parties expressly agree that
3 the terms and conditions of this Stipulation of Settlement will control over any other written or
4 oral agreements.

5 102. All of the Parties warrant and represent that they are agreeing to the terms of this
6 Stipulation of Settlement based upon the legal advice of their respective attorneys, that they have
7 been afforded the opportunity to discuss the contents of this Stipulation of Settlement with their
8 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
9 accepted.

10 103. The waiver by any Party of a breach of any term of this Stipulation of Settlement
11 shall not operate or be construed as a waiver of any subsequent breach by any Party. The failure
12 of a Party to insist upon strict adherence to any provision of this Stipulation of Settlement shall
13 not constitute a waiver or thereafter deprive such Party of the right to insist upon strict adherence.

14 104. The headings in this Stipulation of Settlement are inserted merely for the purpose
15 of convenience and shall not affect the meaning or interpretation of this document.

16 105. This Stipulation of Settlement may be executed in counterparts, each of which
17 shall be deemed an original and all of which, when taken together, shall constitute one and the
18 same instrument. The date of execution shall be the latest date on which any Party signs this
19 Stipulation of Settlement.

20 106. This Stipulation of Settlement has been negotiated among and drafted by Class
21 Counsel, Plaintiffs' Counsel, and Defense Counsel. Plaintiffs, Class Members, and Defendants
22 shall not be deemed to be the drafter of this Stipulation of Settlement or of any particular
23 provision, nor shall they argue that any particular provision should be construed against the
24 drafter or otherwise resort to the *contra proferentem* canon of construction. Accordingly, this
25 Stipulation of Settlement should not be construed in favor of or against any Party as the drafter,
26 and the Parties agree that the provisions of California Civil Code Section 1654 and common law
27 principles of construing ambiguities against the drafter shall have no application. All Parties
28 agree that counsel for the Parties drafted this Stipulation of Settlement during arms' length

1 negotiations. No parol or other evidence may be offered to explain, construe, contradict, or
2 clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this
3 Stipulation of Settlement was made or executed.

4 107. Except in connection with any proceeding or court filing, or the dissemination of
5 notice to the Class, Plaintiffs, Plaintiffs' Counsel, and Class Counsel will not issue any press
6 releases or communicate with the media regarding the Settlement or the Action without the prior
7 approval of Defendants. However, if Plaintiffs, Plaintiffs' Counsel, or Class Counsel receive an
8 inquiry from any third party, they may decline to comment, refer to the Class Notice, refer to the
9 Complaints, make accurate statements regarding the Settlement (including the status of the
10 approval process), or defer to the Court file. Plaintiffs, Plaintiffs' Counsel, and Class Counsel
11 agree not to make disparaging public statements about Defendants, or any of them, or
12 Defendants' Products, and/or Defense Counsel out-of-court. Plaintiffs and Class Counsel are free
13 to (a) respond in a truthful and non-disparaging manner to Class Members' inquiries regarding
14 the Action and/or Settlement; and (b) state they served as legal counsel in this lawsuit and discuss
15 the terms and amount of the Settlement on their firm websites, biographies, or similar marketing
16 materials, and in connection with speaking engagements and future applications to serve as
17 interim-class or lead counsel, or as otherwise required by law. Defendants and Defense Counsel
18 agree not to make disparaging public statements about Plaintiffs, Plaintiffs' Counsel, Class
19 Counsel, or the Settlement.

20 108. Defendants represent and warrant that the individual(s) executing this Stipulation
21 of Settlement are authorized to enter into this Stipulation of Settlement on behalf of Defendants.

22 109. Any disagreement and/or action to enforce this Stipulation of Settlement shall be
23 commenced and maintained only in the Court in which this Action is pending.

24 110. Whenever this Stipulation of Settlement requires or contemplates that one of the
25 Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day
26 (excluding Saturdays, Sundays, and Legal Holidays) express delivery service as follows:

27 Upon Class Counsel at:

28 Young W. Ryu

1 Law Office of Young W. Ryu
2 9595 Wilshire Boulevard, Suite 900
3 Beverly Hills, CA 90212
4 E-mail: young.ryu@youngryulaw.com

5 Gerald S. Ohn
6 Law Offices of Gerald S. Ohn, APC
7 1875 Century Park East, Suite 700
8 Los Angeles, CA 90067
9 E-mail: Gerald@ohnlaw.com

10 Upon Defense Counsel at:

11 Ronie M. Schmelz
12 Edwards Wildman Palmer LLP
13 1901 Century Park East, Suite 1700
14 Los Angeles, CA 90067
15 E-mail: rschmelz@edwardswildman.com

16 By written notice given in accordance herewith, each Party and its counsel may modify or change
17 the addressee and/or address of any person identified above or pursuant hereto as the person or
18 persons to whom all future notices shall be sent.

19 111. The Parties reserve the right, subject to Court approval, to agree to any reasonable
20 extensions of time that might be necessary to carry out any of the provisions of this Stipulation of
21 Settlement.

22 112. Plaintiffs Choi and Lee, and each of them, expressly affirm that the allegations
23 contained in the Complaints were made in good faith and have a basis in fact, but consider it
24 desirable for the Action to be settled and dismissed because of the substantial benefits that the
25 proposed Settlement will provide to Class Members.

26 113. This Stipulation of Settlement may be signed with a facsimile or e-mailed
27 signature and in counterparts, each of which shall constitute a duplicate original.

28 114. The Parties believe that this Stipulation of Settlement is a fair, adequate, and
reasonable settlement of the Action, and they have arrived at this Settlement through arms'-length
negotiations, taking into account all relevant factors, present and potential.

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2 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys,
3 intending to be legally bound hereby, have duly executed this Stipulation of Settlement as of the
4 dates set forth below.

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PLAINTIFFS

Dated: November __, 2013

WANKYU CHOI

Dated: November 20, 2013



JAE K. LEE

DEFENDANTS

Dated: November __, 2013

By: _____
MARIO BADESCU SKIN CARE, INC.

Dated: November __, 2013

By: _____
NOMINALLY NAMED DEFENDANT MARIO
BADESCU SKIN CARE INC.

Dated: November __, 2013

MORISE CABASSO

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IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys,
intending to be legally bound hereby, have duly executed this Stipulation of Settlement as of the
dates set forth below.

PLAINTIFFS

 (wankyu Choi)

Dated: November 20, 2013

WANKYU CHOI

Dated: November __, 2013

JAE K. LEE

DEFENDANTS

Dated: November __, 2013

By: _____
MARIO BADESCU SKIN CARE, INC.

Dated: November __, 2013

By: _____
NOMINALLY NAMED DEFENDANT MARIO
BADESCU SKIN CARE INC.

Dated: November __, 2013

MORISE CABASSO

1 ///

2 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys,
3 intending to be legally bound hereby, have duly executed this Stipulation of Settlement as of the
4 dates set forth below.

5

6

PLAINTIFFS

7

8 Dated: November __, 2013

WANKYU CHOI

9

10

11 Dated: November __, 2013

JAE K. LEE

12

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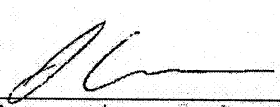
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DEFENDANTS

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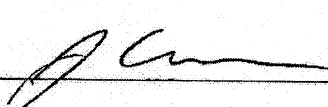
18 Dated: November 19, 2013


By: Joseph Cabasso
MARIO BADESCU SKIN CARE, INC.

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21 Dated: November 19, 2013


By: Joseph Cabasso
NOMINALLY NAMED DEFENDANT MARIO
BADESCU SKIN CARE INC.

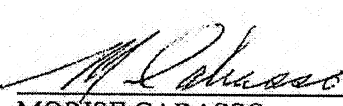
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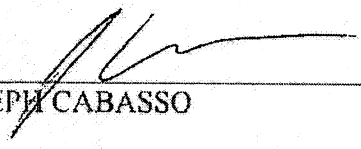
26 Dated: November 19, 2013


MORISE CABASSO

27

28

1 Dated: November 19, 2013


JOSEPH CABASSO

2
3
4
5 **PLAINTIFFS' COUNSEL**

6
7 Dated: November __, 2013

8 By: Young W. Ryu
9 Law Office of Young W. Ryu
10 Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

11 Dated: November __, 2013

12 By: Gerald S. Ohn
13 Law Offices of Gerald S. Ohn, APC
14 Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

15
16 **DEFENSE COUNSEL**

17
18 Dated: November 20, 2013


19 By: Ronie M. Schmelz
20 Edwards Wildman Palmer LLP
21 Attorney for Defendants Mario Badescu Skin Care,
22 Inc. and Nominally Named Defendant Mario
23 Badescu Skin Care Inc., Morise Cabasso, and Joseph
24 Cabasso
25
26
27
28

1 Dated: November __, 2013

2 JOSEPH CABASSO

3
4
5 PLAINTIFFS' COUNSEL

6
7 Dated: November 20 2013

8 By: Young W. Ryu
9 Law Office of Young W. Ryu
10 Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

11 Dated: November __, 2013

12 By: Gerald S. Ohn
13 Law Offices of Gerald S. Ohn, APC
14 Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

15
16 DEFENSE COUNSEL

17
18 Dated: November __, 2013

19 By: Ronie M. Schmelz
20 Edwards Wildman Palmer LLP
21 Attorney for Defendants Mario Badescu Skin Care,
22 Inc. and Nominally Named Defendant Mario
23 Badescu Skin Care Inc., Morise Cabasso, and Joseph
24 Cabasso

1 Dated: November __, 2013

JOSEPH CABASSO

2
3
4
5 **PLAINTIFFS' COUNSEL**

6
7 Dated: November __, 2013

By: Young W. Ryu
Law Office of Young W. Ryu
Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

8
9
10
11 Dated: November 20, 2013



By: Gerald S. Ohn
Law Offices of Gerald S. Ohn, APC
Attorney for Plaintiffs Wankyu Choi and Jae K. Lee

12
13
14
15
16 **DEFENSE COUNSEL**

17
18 Dated: November __, 2013

By: Ronie M. Schmelz
Edwards Wildman Palmer LLP
Attorney for Defendants Mario Badescu Skin Care,
Inc. and Nominally Named Defendant Mario
Badescu Skin Care Inc., Morise Cabasso, and Joseph
Cabasso

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EXHIBIT A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

WANKYU CHOI and JAE K. LEE, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MARIO BADESCU SKIN CARE, INC.;
MARIO BADESCU SKIN CARE INC.;
and DOES 1 through 25, inclusive,

Defendants.

Case No. BC501173

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT**

Honorable William F. Highberger
Dept.: 307
Class Action Filed: February 15, 2013

WHEREAS, the Parties have entered into a Stipulation of Settlement, with is attached hereto as Exhibit A (the “Stipulation of Settlement”), signed and filed with this Court on November __, 2013, to settle *Wankyu Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*, Case No. BC501173, pending in the Superior Court of the State of California County of Los Angeles (the “Action”);

WHEREAS, by order dated _____, 2013, this Court granted preliminary approval of the proposed class action settlement between the Parties in the Action, ordered publication notice to potential Class Members, and provided potential Class Members with an opportunity either to exclude themselves from the Class or to object to the proposed Settlement;

1 WHEREAS, the Court also provisionally certified a Class for settlement purposes only,
2 approved a procedure for giving notice and forms of notice, and set a final fairness hearing to take
3 place on _____, 2014. On that date, the Court held a duly noticed final fairness hearing
4 to consider: (1) whether the terms and conditions of the Stipulation of Settlement are fair,
5 reasonable, and adequate; (2) whether a judgment should be entered dismissing the named
6 Plaintiffs' complaints on the merits and with prejudice in favor of Defendants Mario Badescu
7 Skin Care, Inc., nominally named Defendant Mario Badescu Skin Care Inc., and Defendants
8 Morise Cabasso and Joseph Cabasso, and against all persons or entities who are Class Members
9 pursuant and subject to the terms of the Stipulation of Settlement; (3) whether and in what
10 amount to award incentive awards to Plaintiffs; and (4) whether and in what amount to award
11 attorneys' fees and expenses to Class Counsel;

12 WHEREAS, the Court considered all matters submitted to it at the hearing and otherwise,
13 and it appears that notice substantially in the form approved by the Court was given in the manner
14 that the Court ordered. ;

15 WHEREAS, the Parties reached a Settlement as a result of extensive arms'-length
16 negotiations that occurred over the course of several months and in an in-person mediation
17 session with a respected mediator – the Honorable Louis M. Meisinger – who is experienced in
18 adjudicating and mediating class action disputes, as well as during settlement discussions that
19 continued after the mediation. Counsel for the Parties are highly experienced in this type of
20 litigation, with full knowledge of the risks inherent in the Action. The extent of written
21 discovery, motions, consultation with industry personnel and experts, witness interviews, legal
22 research, and independent investigations by counsel for the Parties, and the factual record
23 compiled, suffices to enable the Parties to make informed decisions as to the fairness and
24 adequacy of the Settlement;

25 WHEREAS, the Court has determined that the proposed Settlement of the claims of Class
26 Members against Defendants, and each of them, as well as the release of Defendants and the
27 Released Parties, the significant relief provided to Class Members – in the form of Defendants'
28 agreement to distribute Forty Five Dollar (\$45.00) Certificates to eligible Class Members and

1 engage in the injunctive relief as described in the Stipulation of Settlement – and the award of the
2 requested attorneys’ fees and expenses and incentive awards to the representative Plaintiffs, are
3 fair, reasonable, and adequate;

4 WHEREAS, the Court has considered the papers submitted by the Parties and all other
5 persons who timely submitted papers in accordance with the Preliminary Approval Order, and has
6 heard oral presentations by the Parties and all persons who complied with the Preliminary
7 Approval Order; and

8 WHEREAS, based on all of the foregoing, together with this Court’s familiarity with the
9 Action, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

10 1. Incorporation of Other Documents. This Final Order Approving Class Action
11 Settlement incorporates and makes a part hereof: (a) the Stipulation of Settlement, including all
12 Exhibits thereto, and definitions included therein, which was signed and filed with this Court on
13 November __, 2013; (b) the briefs, affidavits, declarations, and other materials filed in support of
14 the Settlement and Class Counsel’s request for an award of attorneys’ fees and reimbursement of
15 expenses; (c) the record at the Fairness Hearing; (d) the documents listed on the docket sheet or
16 otherwise submitted to the Court; and (e) all prior proceedings in the Action. Except as otherwise
17 noted, all capitalized terms used in this Final Order Approving Class Action Settlement shall have
18 the meanings attributed to them in the Stipulation of Settlement.

19 2. Jurisdiction. The Court has personal jurisdiction over the Parties, and because due,
20 adequate, and the best practicable notice has been disseminated and all potential Class Members
21 have been given the opportunity to exclude themselves from or object to this Settlement, the
22 Court has personal jurisdiction over all Class Members (as defined below and in the Stipulation of
23 Settlement). The Court has subject-matter jurisdiction over the claims asserted in the Action to
24 approve the proposed Settlement and Stipulation of Settlement and all Exhibits attached thereto,
25 grant final certification of the Class for settlement purposes, settle and release all claims arising
26 out of the transactions alleged in the Action, and dismiss the Action on the merits and with
27 prejudice and issue related orders.

28 3. Final Class Certification for Settlement Purposes Only. The Court finds, for

1 settlement purposes only, that the prerequisites for a class action under Section 382 of the
2 California Code of Civil Procedure and Section 1781 of the California Civil Code, as applicable,
3 have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all
4 Members thereof is impracticable; (b) there are questions of law and fact common to the Class;
5 (c) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent for
6 purposes of Settlement; (d) Plaintiffs have fairly and adequately represented the interests of the
7 Class and will continue to do so, and Plaintiffs have retained experienced Counsel to represent
8 them; (e) the questions of law and fact common to Class Members predominate over any
9 questions affecting any individual Class Member; and (f) a class action is superior to the other
10 available methods for the fair and efficient adjudication of the controversy.

11 The Court also concludes that, because this Action is being settled rather than litigated,
12 the Court need not consider manageability issues that might be presented by the trial of a class
13 action involving the issues in the Action. In making these findings, the Court has considered,
14 among other facts: (i) the interests of Class Members in individually controlling the prosecution
15 or defense of separate actions; (ii) the impracticability or inefficiency of prosecuting or defending
16 separate actions; (iii) the extent and nature of any litigation concerning these claims already
17 commenced; and (iv) the desirability of concentrating litigation of the claims in a particular
18 forum.

19 This Court hereby finally certifies for settlement purposes only, a Class consisting of all
20 persons in the United States who purchased Mario Badescu Healing Cream and/or Control Cream
21 from February 15, 2009 up to and including the Notice Date. Excluded from the Class are (a) all
22 persons who are employees, directors, officers, and agents of Defendants; (b) persons or entities
23 who purchased the Healing Cream and Control Cream primarily for resale purposes; (c)
24 governmental entities; (d) persons who timely and properly excluded themselves from the Class
25 as provided in the Stipulation of Settlement; (e) persons who purchased Healing Cream and
26 Control Cream via the Internet or other remote means while not residing in the United States; and
27 (f) the Court, the Court's immediate family, and Court staff.

28 4. As defined in the Stipulation of Settlement, "Class Member(s)" means any

1 member of the Class who did not elect exclusion or opt out from the Class pursuant to the terms
2 and conditions for exclusion and opt out as set forth in the Stipulation of Settlement and the Class
3 Notice.

4 5. Requests for Exclusion. Attached hereto as Exhibit “A” is a list of persons or
5 entities who submitted timely and valid requests for exclusion from the Class. The Court finds
6 that those persons and entities listed on Exhibit “A” are the only persons and entities that are not
7 bound by this Final Order and the accompanying Final Judgment.

8 6. Adequacy of Representation. The Court designates Plaintiffs Wankyu Choi and
9 Jae K. Lee as Representatives of the Class, and finds that these Plaintiffs have adequately
10 represented the Class for purposes of entering into and implementing the Stipulation of
11 Settlement. The Court appoints the Law Office of Young W. Ryu and the Law Offices of Gerald
12 S. Ohn, APC as counsel for the Class (“Class Counsel”). The Court previously appointed interim
13 Class Counsel by order dated _____, 2013. For purposes of these settlement proceedings, the
14 Court finds that the Law Office of Young W. Ryu and the Law Offices of Gerald S. Ohn, APC
15 are experienced and adequate Class Counsel.

16 7. Class Notice. The Court finds that dissemination of the Class Notice in
17 accordance with the terms of the Stipulation of Settlement and this Court’s Preliminary Approval
18 Order constituted:

19 (a) the best practicable notice to Class Members under the circumstances of
20 the Action;

21 (b) notice that was reasonably calculated, under the circumstances, to apprise
22 Class Members of (i) the pendency of the Action; (ii) the terms of the proposed Settlement; (iii)
23 their rights under the proposed Settlement; (iv) their right to exclude themselves from the Class
24 and the proposed Settlement; (v) their right to object to any aspect of the proposed Settlement
25 (including, but not limited to, final certification of the Class, the fairness, reasonableness, and
26 adequacy of the proposed Settlement, the adequacy of the Class’s representation by Plaintiffs and
27 Class Counsel and/or the award of attorneys’ fees and expenses and incentive awards); (vi) their
28 right to appear at the Fairness Hearing – either on their own or through counsel hired at their own

1 expense – if they did not exclude themselves from the Class; and (vii) the binding effect of the
2 Orders and Final Judgment in the Action, whether favorable or unfavorable, on all persons and
3 entities who did not request exclusion from the Class;

4 (b) notice that was reasonable, due, adequate, and sufficient notice to all
5 Parties and entities entitled to be provided with notice; and

6 (c) notice that fully satisfied all applicable requirements of California Code of
7 Civil Procedure Section 382, California Civil Code Section 1781, California Rules of Court 3.766
8 and 3.769, the Constitutions of California and the United States, and any other applicable law.

9 8. Final Settlement Approval. The terms and conditions of the Stipulation of
10 Settlement, including all Exhibits thereto, have been entered into in good faith and are hereby
11 fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, the
12 Plaintiffs and Class Members, and in full compliance with California law, including the
13 provisions of California Code of Civil Procedure Section 382, California Rules of Court, Rule
14 3.769, and any other applicable law. The Court finds that the Stipulation of Settlement is fair,
15 adequate, and reasonable based on the following factors, among others:

16 (a) There is no fraud or collusion underlying this Settlement, and it was
17 reached as a result of arms'-length negotiations occurring over the course of several months and
18 an in-person mediation session with a respected mediator, warranting a presumption in favor of
19 approval;

20 (b) The complexity, expense, and likely duration of the Action favor
21 settlement – which provides meaningful benefits on a much shorter time frame than otherwise
22 possible – on behalf of the Settlement Class. Based on the stage of the Action and the amount of
23 investigation completed, the Parties had developed a sufficient factual record to evaluation their
24 chances of success at trial and the proposed Settlement. In addition, the Parties negotiated the
25 benefits to the Class before discussing Plaintiffs' claim to attorneys' fees;

26 (c) The support of Class Counsel, who are skilled in class action litigation
27 such as this, and the Plaintiffs, who have participated in the Action and evaluated the proposed
28 Settlement, also favor final approval; and

1 (d) The Settlement provides meaningful relief to the Class, including
2 injunctive relief, and certainly falls within the range of possible recoveries by the Class.

3 The Settlement is approved and all objections to the Settlement are overruled as without
4 merit. The Parties and Class Members are hereby directed to implement and consummate the
5 Stipulation of Settlement in accordance with its terms and conditions. Class Counsel shall take
6 all steps necessary and appropriate to provide Class Members with the benefits to which they are
7 entitled under the terms of the Stipulation of Settlement.

8 9. Binding Effect. The terms of the Stipulation of Settlement and of this Final Order
9 and the accompanying Final Judgment shall be forever binding on the Parties and all Class
10 Members, as well as Class Members' heirs, guardians, executors, administrators, representatives,
11 agents, attorneys, successors, predecessors-in-interest, and assigns, and those terms shall have *res*
12 *judicata* and other preclusive effect in all pending and future claims, lawsuits, or other
13 proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits,
14 or other proceedings involve matters that were or could have been raised in the Action or are
15 otherwise encompassed by the Release.

16 10. Settlement Consideration.

17 (a) As described in the Stipulation of Settlement, Defendants have agreed to e-
18 mail or mail each Class Member for which it has an e-mail or street address, one personalized
19 Certificate which entitles that Class Member to Forty Five Dollars (\$45.00) off any purchase at
20 www.mariobadescu.com or at the Mario Badescu Salon located at 320 E. 52nd Street (between
21 1st Ave & 2nd Ave), New York, NY, 10022 (the "Mario Badescu Salon"). The Certificates are
22 redeemable upon entry of this Order and the accompanying Final Judgment in this Action, and
23 continuing for a period of one hundred and eighty (180) days thereafter. Certificates cannot be
24 combined with each other or any other discounts and each Certificate must be redeemed in one
25 transaction, is only valid for purchases at www.mariobadescu.com or at the Mario Badescu Salon,
26 cannot be redeemed for cash or the purchase of Mario Badescu gift cards or ecards, and is not
27 transferrable. No change will be given in the event that the Class Member does not use the full
28 value of the Certificate.

1 (b) In addition, Defendants agree that they will no longer market, advertise, or
2 sell Healing Cream or Control Cream unless the Products' label and all descriptions and
3 advertisements for the Products (whether on the Internet or otherwise) discloses all of the
4 ingredients contained in the Products.

5 (c) The terms and requirements of the injunctive relief described in the
6 preceding subparagraph (b) shall expire on the date upon which there are any changes to any
7 applicable statute, regulation, or other law that Defendants reasonably believe would require a
8 modification to the labeling, advertising, and/or marketing described in subparagraph (b) in order
9 to comply with the applicable statute, regulation, or law.

10 11. Nothing in this Order or the accompanying Final Judgment shall prevent
11 Defendants from making further changes to its Products' labels: (a) that Defendants reasonably
12 believe are necessary to comply with any statute, regulation, or other law of any kind; (b) that are
13 necessitated by Product and/or ingredient changes, and/or that are necessary to ensure that
14 Defendants provide accurate descriptions of their Products; and (c) that are more detailed than
15 those required by the Stipulation of Settlement.

16 12. Release. The following Release, which is also set forth in Section VII of the
17 Stipulation of Settlement, and provided in return for the Settlement consideration set forth above
18 and in the Stipulation of Settlement (Section IV) is expressly incorporated herein in all respects,
19 including all defined terms used in the Stipulation of Settlement, is effective as of the date of this
20 Final Order and the accompanying Final Judgment, and finally and forever releases, relinquishes,
21 and discharges all Released Claims against the Released Parties. Released Claims means and
22 includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes
23 of action under common law or statutory law (federal, state, or local) of every nature and
24 description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or
25 claimed to exist, including unknown claims (as described in Paragraph 12(b) below) as of the
26 Notice Date by Plaintiffs and all Class Members (and Plaintiffs' and Class Members' respective
27 heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors,
28 predecessors-in-interest, and assigns) that:

1 (a) were asserted or that could have been reasonable asserted in the Action
2 against the Released Parties (as hereinafter defined), and any of them, and that arise out of or
3 related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences
4 that were or could have been directly or indirectly alleged or referred to in the Action (including,
5 but not limited to, alleged violations of state consumer protection, unfair competition, and/or false
6 or deceptive advertising statutes (including, but not limited to, California Business & Professions
7 Code §§ 17200, *et seq.*, California Business & Professions Code §§ 17500, *et seq.*, California
8 Civil Code §§ 1750, *et seq.*); breach of express or implied warranty (including, but not limited to,
9 claims arising under state law and/or the Magnuson-Moss Warranty Act), fraud, negligence,
10 product liability, conspiracy, assault and battery, unjust enrichment, restitution, declaratory or
11 injunctive relief, and any other equitable claims or claims sounding in contract and tort); and

12 (b) relate in any way to the advertising, labeling, or marketing of the Products
13 and arising out of any statement made or not made respecting the Products through any medium
14 (on-label, Internet, or otherwise).

15 Plaintiffs and Class Members are not releasing claims relating to personal injuries.

16 Class Members who have opted out of the Settlement are not releasing their claims and
17 will not obtain any benefits of the Settlement.

18 The Released Claims and the Plaintiff Released Claims include known and unknown
19 claims relating to the Action, and this Stipulation of Settlement is expressly intended to cover and
20 include all such injuries and damages, including all rights of action thereunder. Plaintiffs, Class
21 Members, and Defendants hereby expressly, knowingly, and voluntarily waive the provisions of
22 Section 1542 of the California Civil Code, which provides as follows:

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

1 Plaintiffs, Class Members, and Defendants expressly waive and relinquish any and all
2 rights and benefits they may have under, or that may be conferred upon them by, the provisions of
3 Section 1542 of the California Civil Code, or any other law of any state or territory that is similar,
4 comparable, or equivalent to Section 1542, to the fullest extent they may lawfully waive such
5 rights or benefits pertaining to the Released Claims and the Plaintiff Released Claims. In
6 connection with such waiver and relinquishment, Plaintiffs, the Class Members, and Defendants
7 hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims
8 or facts in addition to those that they now know or believe to exist with respect to the Released
9 Claims and the Plaintiff Released Claims, but it is their intention to hereby fully, finally, and
10 forever settle and release all of the Released Claims and the Plaintiff Released Claims known or
11 unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of
12 such intention, the Releases herein given by Plaintiffs, the Class Members, and Defendants to the
13 Released Parties and the Plaintiff Released Parties shall be and remain in effect as a full and
14 complete general release notwithstanding the discovery or existence of any such additional or
15 different claims or facts. Each of the Parties expressly acknowledges that he/she/it has been
16 advised by his/her/its attorney of the contents and effect of Section 1542 and, with knowledge,
17 each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to
18 such section. Plaintiffs and Class Members are not releasing any claims for personal injuries.
19 Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final
20 Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
21 material element of the Settlement of which this Release is a part.

22 13. Permanent Injunction. The Court orders that, upon the Effective Date, the Stipulation
23 of Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and
24 Class Members. Plaintiffs and all Class Members and/or their representatives, and all persons
25 acting on behalf of, or in concert or participation with such Plaintiffs or Class Members
26 (including, but not limited to, the Released Parties), who have not been timely excluded from the
27 Class are hereby permanently barred and enjoined from: (a) filing, commencing, asserting,
28 prosecuting, maintaining, pursuing, continuing, intervening in, or participating in, or receiving

1 any benefits from, any lawsuit, arbitration, or administrative, regulatory, or other proceeding or
2 order in any jurisdiction based upon or asserting any of the Released Claims; (b) bringing an
3 individual action or class action on behalf of Plaintiffs or Class Members, seeking to certify a
4 class that includes Plaintiffs or Class Members, or continuing to prosecute or participate in any
5 previously filed and/or certified class action, in any lawsuit based upon or asserting any of the
6 Released Claims. The Court finds that issuance of this permanent injunction is necessary and
7 appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

8 14. Enforcement of Settlement. Nothing in this Final Order or the accompanying
9 Final Judgment shall preclude any action to enforce the terms of the Stipulation of Settlement, nor
10 shall anything in this Final Order or the accompanying Final Judgment preclude Plaintiffs or
11 other Class Members from participating in the Claims Process described in the Stipulation of
12 Settlement if they are entitled to do so under the terms of the Stipulation of Settlement.

13 15. Attorneys' Fees and Incentive Awards. The Court is concurrently issuing a
14 separate Order with respect to attorneys' fees and expenses and incentive awards to the
15 representative Plaintiffs, entitled Final Order Approving Attorneys' Fees and Expenses and
16 Incentive Awards.

17 16. Modification of Settlement Agreement. The Parties are hereby authorized, without
18 needing further approval from the Court, to agree to written amendments, modifications, or
19 expansions of the Stipulation of Settlement and its implementing documents (including all
20 Exhibits thereto) without further notice to the Class or approval by the Court if such changes are
21 consistent with this Final Order and the accompanying Final Judgment and do not materially
22 alter, reduce, or limit the rights of Class Members under the Stipulation of Settlement.

23 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order, the
24 Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and the
25 accompanying Final Judgment. Without in any way affecting the finality of these Final Orders
26 and/or the accompanying Final Judgment, the Court expressly retains jurisdiction as to all matters
27 relating to the administration, consummation, enforcement, and interpretation of the Stipulation
28 of Settlement and of these Final Orders and the accompanying Final Judgment, and for any other

1 necessary purpose, including, without limitation:

2 (a) enforcing the terms and conditions of the Stipulation of Settlement and
3 resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise
4 out of the Stipulation of Settlement, this Final Order, the Final Order Approving Attorneys' Fees
5 and Expenses and Incentive Awards, or the accompanying Final Judgment (including, without
6 limitation, whether a person or entity is or is not a Class Member, and whether claims or causes
7 of action related to this case are or are not barred by this Final Judgment and the accompanying
8 Final Judgment, and whether persons or entities are enjoined from pursuing any claims against
9 Defendants or any of them);

10 (b) entering such additional orders, if any, as may be necessary or appropriate
11 to protect or effectuate this Final Order, the Final Order Approving Attorneys' Fees and Expenses
12 and Incentive Awards, or the accompanying Final Judgment (including, without limitation, orders
13 enjoining persons or entities from pursuing any claims against Defendants or any of them), or
14 dismissing all claims on the merits with prejudice, and permanently enjoining Class Members
15 from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of
16 the Settlement; and

17 (c) entering any other necessary or appropriate orders to protect and effectuate
18 this Court's retention of jurisdiction, provided, however, that nothing in this paragraph is intended
19 to restrict the ability of the Parties to exercise their rights as provided in the Stipulation of
20 Settlement.

21 18. No Admissions. Neither the Stipulation of Settlement, nor any of its provisions,
22 nor any negotiations, statements, or court proceedings relating to its provisions in any way, shall
23 be:

24 (a) construed as, offered as, received as, used as, deemed to be evidence of any
25 kind in the Action, any other action, or in any judicial, administrative, regulatory, or other
26 proceeding, except in a proceeding to enforce the Stipulation of Settlement or the rights of the
27 Parties or their Counsel;

28 (b) construed as, offered as, received as, used as, or deemed to be evidence or

1 an admission or concession of any liability or wrongdoing whatsoever on the part of any person
2 or entity, including, but not limited to, Defendants, and each of them, the Released Parties,
3 Plaintiffs, the Class, or Class Counsel, or as a waiver by Defendants or any of them, the Released
4 Parties, Plaintiffs, or the Class of any applicable privileges, claims, or defenses;

5 (c) deemed a presumption, concession, or admission by Defendants, or any of
6 them, of any default, liability, or wrongdoing as to any facts or claims alleged or asserted, or that
7 could have been alleged or asserted, in the Action, or in any actions or proceedings; and/or

8 (d) interpreted, construed, deemed, invoked, offered, or received in evidence
9 or otherwise used by any person in the Action, or in any other action or proceeding, whether civil,
10 criminal, or administrative.

11 Notwithstanding the foregoing, Defendants may file the Stipulation of Settlement, this
12 Final Order and accompanying Final Judgment, and/or any of the documents or statements
13 referred to therein in support of any defense or claim that is binding on and shall have *res*
14 *judicata*, *collateral estoppel*, and/or preclusive effect in all pending and future lawsuits or other
15 proceedings maintained by or on behalf of Plaintiffs and/or any other Class Member, and each of
16 them, as well as their heirs.

17 19. Dismissal of Action. The Action is hereby dismissed on the merits and with
18 prejudice, without fees or costs to any Party except as otherwise provided for in this Final Order,
19 the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and the
20 accompanying Final Judgment, and the Stipulation of Settlement.

21 20. In the event that the Effective Date does not occur, certification shall be
22 automatically vacated and this Final Order, the Final Order Approving Attorneys' Fees and
23 Expenses and Incentive Awards, and the accompanying Final Judgment, and all other orders
24 entered and releases delivered in connection herewith, shall be vacated and shall become null and
25 void.

26 Dated: _____

27 The Honorable William F. Highberger

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EXHIBIT A

List of Persons Who Requested Exclusion

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EXHIBIT B

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5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **COUNTY OF LOS ANGELES**
7

8 WANKYU CHOI and JAE K. LEE, on
9 behalf of themselves and all others
10 similarly situated,

11 Plaintiffs,

12 v.

13 MARIO BADESCU SKIN CARE, INC.;
14 MARIO BADESCU SKIN CARE INC.;
15 and DOES 1 through 25, inclusive,

16 Defendants.

Case No. BC501173

[PROPOSED] FINAL JUDGMENT

Honorable William F. Highberger
Dept.: 307
Class Action Filed: February 15, 2013

17 IT IS on this ____ day of _____, 2014, HEREBY ADJUDGED AND DECREED, THAT:

18 1. The Settlement of *Wankyu Choi, et al. v Mario Badescu Skin Care, Inc., et al.*,
19 Case No. BC501173, pending in the Superior Court of the State of California County of Los
20 Angeles (the "Action"), on the terms set forth in the Parties' Stipulation of Settlement, with
21 Exhibits attached thereto (collectively, the "Stipulation of Settlement"), and definitions included
22 therein, signed and filed with this Court on November __, 2013, is finally approved.

23 2. The following Class is granted final certification for settlement purposes only: All
24 persons or entities in the United States who purchased Mario Badescu Healing Cream and
25 Control Cream from February 15, 2009, up to and including the Notice Date. Excluded from the
26 Class are (a) all persons who are employees, directors, officers, and agents of Defendants; (b)
27 persons or entities who purchased the Healing Cream and Control Cream primarily for resale
28 purposes; (c) governmental entities; (d) persons who timely and properly excluded themselves
from the Class as provided in the Stipulation of Settlement; (e) persons who purchased Healing

1 Cream and Control Cream via the Internet or other remote means while not residing in the United
2 States; and (f) the Court, the Court's immediate family, and Court staff.

3 3. The dissemination of the Class notice in accordance with the terms of the
4 Stipulation of Settlement and this Court's Preliminary Approval Order: (a) constituted the bests
5 practicable notice to Class Members under the circumstances; (b) constituted notice that was
6 reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the
7 Action, the terms of the Settlement, and their rights under the Settlement, including, but not
8 limited to, their right to object to any aspect of the Settlement and exclude themselves from the
9 proposed Settlement and to appear at the Fairness Hearing, and the binding effect of the Final
10 Orders and this Final Judgment on all persons and entities who did not request exclusion from the
11 Class; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons
12 entitled to be provided with notice; and (d) met all applicable requirements of law, including, but
13 not limited to, the California Civil Procedure Code Section 382, California Civil Code Section
14 1781, California Rules of Court 3.766 and 3.769, and the Constitutions of California and the
15 United States.

16 4. Only those persons and entities listed in the Final Order Approving Class Action
17 Settlement and issued concurrently herewith, a copy of which is attached hereto as Exhibit "A,"
18 have submitted timely and valid requests for exclusion from the Class and are therefore not bound
19 by this Final Judgment and the accompanying Final Order Approving Class Action Settlement.

20 5. The claims in this Action are dismissed on the merits and with prejudice pursuant
21 to the terms (including the Releases) set forth in the Parties' Stipulation of Settlement and in the
22 Court's Final Order Approving Class Action Settlement and Final Order Approving Attorneys'
23 Fees and Expenses and Incentive Awards, without costs to any party except as provided for in
24 these Final Orders.

25 6. All Plaintiffs and Class Members and/or their representatives, and all persons
26 acting on behalf of, or in concert or participation with such Plaintiffs or Class Members
27 (including, but not limited to, the Releasing Parties), who have not been timely excluded from the
28 Class are hereby permanently barred and enjoined from: (a) filing, commencing, asserting,

1 prosecuting, maintaining, pursuing, continuing, intervening in, or participating in, or receiving
2 any benefits from, any lawsuit, arbitration, or administrative, regulatory, or other proceeding or
3 order based upon or asserting any of the Released Claims; and (b) bringing an individual action or
4 class action on behalf of Plaintiffs or Class Members seeking to certify a class that includes
5 Plaintiffs or Class Members, or continuing to prosecute or participate in any previously filed
6 and/or certified class action, in any lawsuit based upon or asserting any of the Released Claims.
7 The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of
8 the Court's continuing jurisdiction and authority over the Action.

9 7. Class Counsel shall take all steps necessary and appropriate to provide Class
10 Members with the benefits to which they are entitled under the terms of the Stipulation of
11 Settlement and pursuant to the Orders of the Court.

12 8. Class Counsel shall be awarded \$_____ in Attorneys' Fees and
13 Expenses, which amount is approved as fair and reasonable.

14 9. Plaintiff Wankyu Choi shall be awarded \$_____ and Jae K. Lee shall be awarded
15 \$_____ as incentive awards in their capacity as representative Plaintiffs in the
16 Action.

17 10. The Court will retain jurisdiction over the Parties and the Action and for the
18 reasons and purposes set forth in this Final Judgment, the Final Order Approving Class Action
19 Settlement, and the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards.
20 Without in any way affecting the finality of this Final Order and/or this Final Judgment, this
21 Court expressly retains jurisdiction as to all matters relating to the administration, consummation,
22 enforcement, and interpretation of the Stipulation of Settlement and of these Final Orders and this
23 Final Judgment, and for any other necessary purpose.

24 Dated: _____

The Honorable William F. Highberger

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EXHIBIT C

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

**MARIO BADESCU HEALING CREAM AND CONTROL CREAM
CLAIM FORM**

To receive a Certificate, you must accurately complete this Claim Form and submit it by _____, 2014. Failure to do so will result in denial of your Claim. Claim Forms may be submitted online at www.healingandcontrolcreamsettlement.com or by mail to:

A. CLASS MEMBER INFORMATION

First Name

Last Name

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Street Address

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City

State

Zip Code

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E-mail Address (optional)

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1 **This Claim Form is being submitted in connection with my purchase of one or both of the**
2 **following products (you must check one or both to qualify for a Certificate):** ____Mario
3 Badescu Healing Cream; and/or ____Control Cream.

4
5 **B. SIGN AND DATE YOUR CLAIM FORM**

6
7 I declare, under penalty of perjury under the laws of California and the United States, that I
8 purchased (check one or both) ____Mario Badescu Healing Cream and/or ____Control Cream
9 sometime between February 15, 2009 and the date of this Claim Form.

10
11 I understand that my claim may be subject to audit, verification, and Court review. Also, I agree
12 to be bound by the provisions of the Stipulation of Settlement, including granting to Mario
13 Badescu Skin Care, Inc. and other Released Parties a release of all Released Claims as defined
14 and set forth in the Stipulation of Settlement and in any Final Order of the Court that may be
15 entered pursuant to the Settlement.

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16
17
18 Signature

Type/Print Name

Date

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21
22 **Claim Forms must be electronically submitted no later than _____, 2014, or**
23 **postmarked no later than _____, 2014.**

24
25 **Questions: Visit www.healingandcontrolcreamsettlement.com or call, toll-free, (____) ____-**

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EXHIBIT D

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

WANKYU CHOI and JAE K. LEE, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MARIO BADESCU SKIN CARE, INC.;
MARIO BADESCU SKIN CARE INC.;
and DOES 1 through 25, inclusive,

Defendants.

Case No. BC501173

**[PROPOSED] ORDER PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT, PROVISIONALLY
CERTIFYING A SETTLEMENT CLASS
FOR SETTLEMENT PURPOSES,
APPOINTING CLASS COUNSEL,
DIRECTING THE ISSUANCE OF NOTICE
TO THE CLASS, AND SCHEDULING A
FAIRNESS HEARING**

Honorable William F. Highberger
Dept.: 307

Class Action Filed: February 15, 2013

WHEREAS, this Order addresses the Settlement reached in *Wanky Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*, Case No. BC501173, pending in the Superior Court of the State of California County of Los Angeles (the “Action”);

WHEREAS, the Parties have entered into a Stipulation of Settlement, which is preliminarily approved as fair, reasonable, and adequate, and in which the Parties have agreed to settle the Action pursuant to the terms and conditions of the Stipulation of Settlement;

WHEREAS, Class Counsel have conducted a thorough examination, investigation, and

1 evaluation of the relevant law, facts, and allegations to assess the merits of the claims and
2 potential claims in the Action to determine the strength of both defenses and liability, including
3 pretrial discovery, an inspection of Mario Badescu Healing Cream and Control Cream,
4 consultation of industry personnel, worked with experts and testing of the Healing Cream by
5 those experts, numerous interviews of witnesses and putative Class Members, the evaluation of
6 data and information provided by current employees of Mario Badescu, legal research as to the
7 sufficiency of the claims and appropriateness of class certification, and an evaluation of the risks
8 associated with continued litigation, trial, and/or appeal; and

9 WHEREAS, the Parties reached the Settlement as a result of arms'-length negotiations
10 that occurred over the course of several months and in an in-person mediation with a respected
11 mediator – the Honorable Louis M. Meisinger – who is experienced in adjudicating and
12 mediating class action disputes, as well as settlement discussions that continued after the
13 mediation. Counsel for the Parties are highly experienced in this type of litigation, with full
14 knowledge of the risks inherent in the Action;

15 WHEREAS, the Settlement terms confer substantial benefits upon the Class, particularly
16 in light of the damages that Plaintiffs and their Counsel believe are potentially recoverable or
17 provable at trial, without the costs, uncertainties, delays, and other risks associated with continued
18 litigation, trial, and/or appeal; and

19 WHEREAS, the Court has carefully reviewed the Stipulation of Settlement, including the
20 Exhibits attached thereto, and all files, records, and prior proceedings to date in the Action, and
21 good cause appearing based on the record.

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

23 1. Defined Terms. For purposes of this Order, except as otherwise indicated herein,
24 the Court adopts and incorporates the definitions contained in the Stipulation of Settlement.

25 2. Stay of the Action. Pending the Fairness Hearing, all proceedings in the Action,
26 other than proceedings necessary to carry out or enforce the terms and conditions of the
27 Stipulation of Settlement and this Order, are hereby stayed.

28 3. Provisional Class Certification for Settlement Purposes Only. The Court

1 provisionally finds, for settlement purposes only and conditioned upon the entry of this Order,
2 that the prerequisites for a class action under Section 382 of the California Code of Civil
3 Procedure and Section 1781 of the California Civil Code, as applicable, have been satisfied in
4 that: (a) the Class certified herein numbers at least tens of thousands of persons, and joinder of all
5 such persons would be impracticable; (b) there are questions of law and fact that are common to
6 the Class, and those questions of law and fact common to the Class predominate over any
7 questions affecting any individual Class Member; (c) the claims of Plaintiffs are typical of the
8 claims of the Class they seek to represent for purposes of settlement; (d) a class action on behalf
9 of the Class is superior to other available means of adjudicating the Action; and (e) as set forth
10 below, Plaintiffs and Class Counsel are adequate representatives of the Class. Defendants retain
11 all rights to assert that the Action may not be certified as a class action, other than for settlement
12 purposes.

13 The Court also concludes that, because the Action is being settled rather than litigated, the
14 Court need not consider manageability issues that might be presented by the trial of a nationwide
15 class action involving the issues in the Action.

16 4. Class Definition. This Court hereby finally certifies for settlement purposes only,
17 a Class consisting of all persons in the United States who purchased Mario Badescu Healing
18 Cream and/or Control Cream from February 15, 2009 up to and including the Notice Date.
19 Excluded from the Class are (a) all persons who are employees, directors, officers, and agents of
20 Defendants; (b) persons or entities who purchased the Healing Cream and Control Cream
21 primarily for resale purposes; (c) governmental entities; (d) persons who timely and properly
22 exclude themselves from the Class as provided in the Stipulation of Settlement; (e) persons who
23 purchased Healing Cream and Control Cream via the Internet or other remote means while not
24 residing in the United States; and (f) the Court, the Court's immediate family, and Court staff.

25 5. Class Representatives and Class Counsel. Plaintiffs Wanky Choi and Jae K. Lee
26 are designated as Representatives of the provisionally certified Class. The Court preliminarily
27 finds that they are similarly situated to absent Class Members and therefore typical of the Class,
28 and that they will be adequate Class Representatives. Young W. Ryu, of the Law Office of

1 Young W. Ryu, and Gerald S. Ohn, of the Law Offices of Gerald S. Ohn, APC, whom the Court
2 finds are experienced and adequate counsel for purposes of these Settlement approval
3 proceedings, are hereby designated as Class Counsel.

4 6. Preliminary Settlement Approval. Upon preliminary review, the Court finds that
5 the Stipulation of Settlement and the Settlement it incorporates, appears fair, reasonable, and
6 adequate. Accordingly, the Stipulation of Settlement is preliminarily approved and is sufficient to
7 warrant sending notice to the Class.

8 7. Jurisdiction. The Court has subject matter jurisdiction over the Parties, personal
9 jurisdiction over the Parties before it, and venue is proper in this Court.

10 8. Fairness Hearing. A Fairness Hearing shall be held before this Court on _____,
11 2014, at _____ at the Superior Court for the County of Los Angeles, 600 South Commonwealth,
12 Los Angeles, California 90005, to determine whether the settlement of the Action pursuant to the
13 terms of the Stipulation of Settlement should be approved as fair, reasonable, and adequate, and
14 finally approved. The Court will rule on Class Counsel's application for an award of attorneys'
15 fees, costs, and expenses, and incentive awards for Plaintiffs (the "Fee Application") at that time.
16 Papers in support of final approval of the Stipulation of Settlement and the Fee Application shall
17 be filed with the Court according to the schedule set forth below. The Fairness Hearing may be
18 postponed, adjourned, or continued by order of the Court without further notice to the Class.
19 After the Fairness Hearing, the Court may enter a Final Order and Final Judgment in accordance
20 with the Stipulation of Settlement that will adjudicate the rights of Class Members (as defined in
21 the Stipulation of Settlement) with respect to the claims being settled.

22 Class Counsel shall file their Fee Application on or before _____, 2014. Class Counsel
23 shall file their papers in support of final approval of the Stipulation of Settlement by _____,
24 2014.

25 Objections to the Stipulation of Settlement or the Fee Application shall be filed with the
26 Court on or before _____, 2014, and papers in response to objections to the Stipulation
27 of Settlement or the Fee Application shall be filed with the Court on or before _____,
28 2014.

1 9. Administration. In consultation with and with the approval of Defendants, Class
2 Counsel is hereby authorized to establish the means necessary to administer to proposed
3 Settlement and implement the claim process in accordance with the Stipulation of Settlement.

4 10. Class Notice. The form and content of the proposed Long Form Notice and
5 Summary Notice, attached as Exhibits “E” and “G,” respectively, to the Stipulation of Settlement,
6 and the notice methodology described in the Stipulation of Settlement, are hereby approved.
7 Pursuant to the Stipulation of Settlement, the Court appoints Rust Consulting to be the Settlement
8 and Notice Administrator to help implement the terms of the Stipulation of Settlement.

9 (a) Notice Date. As soon as possible after entry of this Order, but not later
10 than thirty (30) days after the entry of this Order, the Settlement Administrator shall
11 provide notice to the Settlement Class pursuant to the terms of the Stipulation of
12 Settlement, in accordance with the notice program set forth therein. The Parties shall
13 coordinate with the Settlement Administrator to provide notice to the Settlement Class
14 pursuant to the terms therein.

15 (b) Findings Concerning Notice. The Court finds that the Settlement is fair,
16 adequate, and reasonable such that the Long Form Notice and Summary Notice should be
17 provided pursuant to the Stipulation of Settlement and this Order.

18 (c) The Court finds that the form, content, and method of disseminating notice
19 to the Class as described in the Stipulation of Settlement: (i) is the best practicable notice under
20 the circumstances, and is reasonable calculated, under the circumstances, to apprise Class
21 Members of the pendency of the Action, the terms of the Settlement, and their right to object to
22 the Settlement and exclude themselves from the Settlement Class; (ii) constitutes due, adequate,
23 and sufficient notice to all Class Members and other persons entitled to receive notice; and (iii)
24 meets all applicable requirements of California Code of Civil Procedure Section 382, California
25 Civil Code Section 1781, California Rules of Court 3.766 and 3.769, the Constitutions of
26 California and United States, and other applicable law. The Court further finds that all of the
27 notices are written in simple terminology and are readily understandable by Class Members.

28 11. Deadline to Submit Claim Forms. Class Members will have until February 28,

1 2014 to submit their Claim Forms, which is due, adequate, and sufficient time.

2 12. Exclusion from Class: Any Class Member who wishes to be excluded from the
3 Class must send to the Settlement Administrator by U.S. Mail a personally signed letter including
4 their (a) full name, (b) current address, (c) a clear statement communicating that they elect to be
5 excluded from the Class, do not wish to be a Class Member, and elect to be excluded from any
6 judgment entered pursuant to the Settlement, (d) their signature, and (e) the case name and case
7 number (*Wanky Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*, Case No. BC501173)). A
8 Class Member can exclude only himself or herself from the Class, and shall not be allowed to
9 request that another individual or a group be excluded. “Mass” or “class” opt outs are not
10 permitted. Any request for exclusion or opt out must be postmarked on or before January 31,
11 2014. The date of the postmark on the return-mailing envelope shall be the exclusive means used
12 to determine whether a request for exclusion has been timely submitted. The Settlement
13 Administrator shall forward copies of any written requests for exclusion to Class Counsel and
14 Defense Counsel. The Settlement Administrator shall file a list reflecting all timely requests for
15 exclusion with the Court no later than seven (7) days before the Fairness Hearing. If the proposed
16 Settlement is finally approved, any potential Class Member who has not submitted a timely
17 written request for exclusion from the Class on or before January 31, 2014, shall be bound by all
18 the terms of the Stipulation of Settlement and the Final Order and Final Judgment, regardless of
19 whether they have requested exclusion from the Settlement, even if the potential Class Member
20 previously initiated or subsequently initiates any litigation against any or all of the Released
21 Parties relating to the Released Claims. All persons or entities who properly exclude themselves
22 from the Class shall not be Class Members and shall relinquish their rights or benefits under the
23 Stipulation of Settlement, should it be approved, and may not file an objection to the Settlement.

24 13. Objections and Appearances. Class Members may object to the terms contained in
25 the Stipulation of Settlement, the certification of the Class, the entry of the Final Order and Final
26 Judgment, the amount of fees requested by Class Counsel, and/or the amount of the incentive
27 awards requested by the Plaintiffs, by filing a written objection with the Court through the
28 Court’s electronic filing system (or through any other method in which the Court will accept

1 filings, if any), and serving by U.S. Mail or e-mail, the written objection upon the Settlement
2 Administrator, Class Counsel, and Defense Counsel. Class Members who fail to file with the
3 Court and notify the Settlement Administrator, Class Counsel, and Defense Counsel (as defined
4 in the Stipulation of Settlement) of timely written objections in the manner specified in the
5 Stipulation of Settlement, the Long Form, and the Summary Notice shall be deemed to have
6 waived all objections and shall be foreclosed from making any objection (whether by appeal or
7 otherwise) to the Settlement.

8 Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy
9 of the Settlement must, in addition to timely filing a written objection with the Court, send the
10 written objection by U.S. Mail to the Settlement Administrator and send by U.S. Mail or e-mail a
11 copy to Class Counsel and Defense Counsel at the addresses set forth below postmarked no later
12 than January 31, 2014. Class Members who object must set forth their (a) full name, (b) current
13 address, (c) a written statement of their objection(s) and the reasons for the objection(s), (d) a
14 statement of whether they intend to appear at the Fairness Hearing, (e) their signature, and (f) the
15 case name and number (*Wankyu Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*, Case No.
16 BC501173). Objections must be served:

17 Upon Class Counsel at:

18 Young W. Ryu
19 Law Office of Young W. Ryu
20 9595 Wilshire Boulevard, Suite 900
21 Beverly Hills, CA 90212
22 E-mail: young.ryu@youngryulaw.com

23 Gerald S. Ohn
24 Law Offices of Gerald S. Ohn, APC
25 1875 Century Park East, Suite 700
26 Los Angeles, CA 90067
27 E-mail: Gerald@ohnlaw.com

28 Upon Defense Counsel at:

Ronie M. Schmelz
Edwards Wildman Palmer LLP
1901 Century Park East, Suite 1700
Los Angeles, CA 90067
E-mail: rschmelz@edwardswildman.com

1 Objecting Class Members must state in writing all objections and the reasons for each
2 objection, and state whether the objecting Class Member intends to appear at the Fairness Hearing
3 either with or without separate counsel. No Class Member shall be entitled to be heard at the
4 Fairness Hearing (whether individually or through separate counsel) or to object to the
5 Settlement, and no written objections or briefs submitted by any Member of the Class shall be
6 received or considered by the Court at the Fairness Hearing, unless written notice of the objecting
7 Class Member's intention to appear at the Fairness Hearing and copies of any written objections
8 and/or briefs shall have been filed with the Court pursuant to the Court's electronic filing system
9 (or any other method in which the Court will accept filings, if any) and served on the Settlement
10 Administrator, Class Counsel, and Defense Counsel on or before January 31, 2014. Objections
11 that are mailed to the Court (and not filed pursuant to the Court's electronic filing system, or any
12 other method in which the Court will accept filings, if any), or objections that are served on the
13 Parties but not filed with the Court, shall not be received or considered by the Court at the
14 Fairness Hearing. The Settlement Administrator, Defense Counsel, and Class Counsel shall
15 promptly furnish each other with copies of any and all objections that might come into their
16 possession.

17 14. Preliminary Injunction. Pending final determination of whether the proposed
18 Settlement should be approved, all Plaintiffs and Class Members and their representatives, and
19 any of them, who do not timely and properly exclude themselves from the Class are barred and
20 enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other
21 capacity, filing, commencing, prosecuting, maintaining, intervening in, participating in,
22 conducting, or continuing any action in any forum (state or federal) as individual actions, class
23 actions, putative class members, or otherwise against the Released Parties (as that term is defined
24 in the Stipulation of Settlement) in any court or tribunal asserting any of the Released Claims (as
25 that terms is defined in the Stipulation of Settlement), and/or from receiving any benefits from
26 any lawsuit, administrative or regulatory proceeding, or order in any jurisdiction based on or
27 relating to the Released Claims. In addition, all such persons are hereby barred and enjoined
28 from filing, commencing, or prosecuting a lawsuit against Defendants or any of them (or against

1 any of their related parties, parents, subsidiaries, or affiliates) as a class action, a separate class, or
2 group for purposes of pursuing a putative class action (including by seeking to amend a pending
3 complaint to include class allegations or seeking class certification in a pending action in any
4 jurisdiction) on behalf of Class Members who do not timely exclude themselves from the Class,
5 arising out of, based on, or relating to the Released Claims. This Court finds that the issuance of
6 this preliminary injunction is necessary and appropriate in aid of the Court's continuing
7 jurisdiction and authority over the Action.

8 15. Summary of Deadlines. In summary, the deadlines set by this Order are as
9 follows:

10 (a) The Long Form Notice shall be published within thirty (30) days after the
11 entry of this Order;

12 (b) The Summary Notice shall be published within thirty (30) days after entry
13 of this Order;

14 (c) Motion in support of Final Approval of the Settlement shall be filed on or
15 before _____, 2014;

16 (d) Class Counsel shall file their Fee Application on or before _____, 2014;

17 (e) Settlement Class members who desire to be excluded shall submit requests
18 for exclusion postmarked (or the equivalent for e-mail) no later than January 31, 2014;

19 (f) All written objections to the Stipulation of Settlement and written notices
20 of the objecting Class Member's intention to appear at the Fairness Hearing shall be filed with the
21 Court and served on Class Counsel and Defense Counsel no later than January 31, 2014;

22 (g) All documents in support of final approval of the Stipulation of Settlement,
23 and in response to objections to the Stipulation of Settlement or the Fee Application, shall be filed
24 with the Court on or before _____2014; and

25 (h) The Fairness Hearing shall be held on _____, 2014, at __:00 __.m.

26 These deadlines may be extended by order of the Court, for good cause shown, without
27 further notice to the Class. Class Members must check the Settlement website
28 (www.healingandcontrolcreamsettlement.com) regularly for updates and further details regarding

1 extensions of these deadlines.

2 16. Termination of Settlement. In the event the Court does not grant final approval of
3 the Settlement, or for any reason the Parties fail to obtain a Final Order and Final Judgment as
4 contemplated in the Stipulation of Settlement, or the Stipulation of Settlement is terminated
5 pursuant to its terms for any reason or the Effective Date does not occur for any reason, then the
6 following shall apply:

7 (a) All orders and findings entered in connection with the Stipulation of
8 Settlement shall become null and void and have no force and effect whatsoever, shall not be used
9 or referred to for any purposes whatsoever, and shall not be admissible or discoverable in the
10 Action or any other proceeding;

11 (b) The provisional certification of the Class pursuant to this Order shall be
12 vacated automatically, and the Action shall proceed as though the Class had never been certified
13 pursuant to the Stipulation of Settlement and such findings had never been made;

14 (c) Nothing contained in this Order is, or may be construed as, a presumption,
15 concession, or admission by or against Defendants, or any of them, or Plaintiffs of any default,
16 liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any
17 actions or proceedings, whether civil, criminal, or administrative, including, but not limited to,
18 factual or legal matters relating to any effort to certify the Action as a class action;

19 (d) Nothing in this Order or pertaining to the Stipulation of Settlement,
20 including any of the documents or statements generated or received pursuant to the claims
21 administration process, shall be used as evidence in any further proceeding in the Action,
22 including, but not limited to, motions or proceedings seeking treatment of the Action as a class
23 action; and

24 (e) All of the Court's prior Orders having nothing whatsoever to do with the
25 Settlement shall, subject to this Order, remain in full force and effect.

26 17. Use of Order. This Order shall be of no force or effect if the Settlement does not
27 become final and shall not be construed or used as an admission, concession, or declaration by or
28 against Defendants, or any of them, of any fault, wrongdoing, breach, or liability. Nor shall this

1 Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or
2 other Class Members that their claims lack merit or that the relief requested is inappropriate,
3 improper, or unavailable, or as a waiver by any Party of any defenses or claims he, she, or it may
4 have in the Action or in any other lawsuit.

5 18. Class Counsel and Defense Counsel are hereby authorized to use all reasonable
6 procedures in connection with approval and administration of the Settlement that are not
7 materially inconsistent with this Order or the Stipulation of Settlement, including making, without
8 further approval of the Court, minor changes to the form or content of the Long Form Notice,
9 Summary Notice, and other Exhibits attached to the Stipulation of Settlement that they jointly
10 agree are reasonable or necessary.

11 19. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over
12 these Settlement proceedings to assure the effectuation thereof for the benefit of the Class, and for
13 any other necessary purpose.

14 20. Extension of Deadlines. Upon application of the Parties and good cause shown,
15 the deadlines set forth in this Order may be extended by order of the Court without further notice
16 to the Class. Class Members must check the Settlement website
17 (www.healingandcontrolcreamsettlement.com) regularly for updates and further details regarding
18 extensions of these deadlines.

19 In the event that the Effective Date does not occur, certification shall be automatically
20 vacated and this Preliminary Approval, and all other orders entered and releases delivered in
21 connection herewith, shall be vacated and shall become null and void.

22
23 IT IS SO ORDERED.

24
25 DATED: _____, 2013

26 The Honorable William F. Highberger
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EXHIBIT E

1 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES**

2
3 **If You Bought Mario Badescu Healing Cream or Control Cream At**
4 **Any Time From February 15, 2009 to the _____**

5
6 ***You Could Get One or Two \$45 Certificates From A Proposed Class Action***
7 ***Settlement***

8
9 **READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE**
10 **AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE CHECK**
11 **THE SETTLEMENT WEBSITE AT**
12 **WWW.HEALINGANDCONTROLCREAMSETTLEMENT.COM**
13 **REGULARLY FOR UPDATES AND FURTHER DETAILS.**

14 *A California State Court has authorized this notice. This is not a solicitation from a lawyer.*

- 15
- 16 • There is a proposed Settlement in a class action lawsuit that alleges that Mario Badescu
17 Skin Care, Inc. violated state and federal laws regarding the marketing and sale of its
18 Healing Cream and Control Cream products by failing to disclose all of their ingredients
19 (see Question 2). Mario Badescu denies it did anything wrong and denies all of the claims
20 made in this lawsuit. The Court did not rule in favor of either party. Instead, the parties
21 agreed to a proposed Settlement in order to avoid the expense and risks of continuing the
22 lawsuit.
 - 23 • Anyone who bought Mario Badescu Healing Cream or Control Cream from February 15,
24 2009 to _____ is included in the proposed Settlement.
 - 25 • If you are eligible, you may be entitled to one or two \$45 Certificates that you can use off
26 of any Mario Badescu product or at the Mario Badescu spa in New York City.
 - 27 • The proposed Settlement will provide for the (1) cost of the Certificates issued to Class
28 Members, (2) the costs of notice and administration, (3) a special service payment to Class
Representatives, and (4) attorneys' fees and costs. Mario Badescu has also agreed to
implement certain changes in connection with labeling of Healing Cream and Control
Cream.
 - Your legal rights are affected whether you act or not. **Read this notice carefully because
it explains decisions you must make and actions you must take now.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Get no Certificate. Give up your rights.
SUBMIT A CLAIM FORM	Submitting a Claim Form by February 28, 2014 is the only way to get a settlement Certificate (<i>see</i> Question 14).
EXCLUDE YOURSELF	Exclude yourself by January 31, 2014 and get no Certificate from the proposed Settlement. This is the only choice that allows you to ever be part of any other lawsuit against Mario Badescu about the claims in this case (<i>see</i> Question 17).
OBJECT	You can write to the Court by January 31, 2014 about why you don't agree with any aspect of the proposed Settlement (<i>see</i> Question 22).
GO TO THE HEARING	You can ask by January 31, 2014 to speak in Court about the fairness of the proposed Settlement (<i>see</i> Question 26).

- These rights and options – **and the deadlines to exercise them** – are explained in this notice. The deadlines may be moved, cancelled, or otherwise modified, so please check the Settlement website at www.healingandcontrolcreamsettlement.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the proposed Settlement. If it does, and after any appeals are resolved in favor of the Settlement, Certificates will be distributed to those who qualify. Please be patient.
- If you do not exclude yourself from the Class, the proposed Settlement (if approved) will release certain claims and will affect your right to start or continue any other lawsuit or proceeding involving the Healing Cream and Control Cream. The release is set forth in a settlement agreement called the “Stipulation of Settlement,” available at www.healingandcontrolcreamsettlement.com, and has been reprinted in full below (*see* Question 12).

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....5-6

1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a proposed Settlement?

WHO IS PART OF THE SETTLEMENT?.....6

5. Who is included in the proposed Settlement?
6. Are there exceptions to being included?
7. What if I'm still not sure if I'm included?

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET.....7-9

8. What does the proposed Settlement provide?
9. What can I get from the proposed Settlement?

10. What am I giving up if I stay in the Class?
11. When will I get my Certificate(s)?

HOW TO RECEIVE CERTIFICATE(S).....9-11

12. How can I get Certificate(s)?
13. What is the claim process?
14. What if I do nothing?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....11-12

15. How can I get out of the proposed Settlement?
16. If I exclude myself, can I still get Certificate(s)?
17. If I don't exclude myself, can I sue Mario Badescu for the same thing later?

THE LAWYERS REPRESENTING THE CLASS.....12-13

18. Do I have a lawyer in this case?
19. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....13-14

20. How can I tell the Court if I do not like the proposed Settlement?
21. What is the difference between objecting and asking to be excluded?

THE COURT'S FAIRNESS HEARING.....14-15

22. When and where will the Court decide whether to approve the proposed Settlement?
23. Do I have to come to the hearing?
24. May I speak at the fairness hearing?

GETTING MORE INFORMATION.....15-16

25. How can I get more information?

1 **BASIC INFORMATION**

2 **1. Why was this notice issued?**

3 The Court ordered that this notice be given because you have the right to know about a proposed
4 Settlement of a class action lawsuit, and about your rights and options before the Court decides
5 whether to approve the proposed Settlement. You will be informed of the progress of this
6 proposed Settlement and may receive a \$45 Certificate if you are a Class Member (as described in
7 response to Question 5) and submit a completed and timely Claim Form.

8 This notice explains: (1) this lawsuit; (2) the proposed Settlement; (3) your legal rights; (4) what
9 recovery is available; (5) who is eligible for Certificate under the Settlement; (6) how to get a
10 Certificate; and (7) other important information.

11 Information about the Settlement is summarized below. The settlement agreement, called the
12 “Stipulation of Settlement,” is available on the Settlement website
13 (www.healingandcontrolcreamsettlement.com), and gives greater detail on the rights and duties of
14 the Parties and Class Members.

15 The persons who sued are called the “Plaintiffs.” Mario Badescu Skin Care, Inc. and other
16 individuals associated with the company are the “Defendants.”

17 **2. What is this lawsuit about?**

18 This lawsuit was filed against Mario Badescu Skin Care, Inc. and certain individuals associated
19 with the company (together, “Mario Badescu”) and alleges that Mario Badescu violated certain
20 state and federal laws and consumer protection statutes in connection with its alleged failure to
21 disclose all of the ingredients used in the advertising, labeling, or marketing of its Healing Cream
22 and Control Cream products. Defendants deny all these claims.

23 The Court in charge of this lawsuit is the Superior Court of the State of California County of Los
24 Angeles and the lawsuit is called *Wankyu Choi, et al. v. Mario Badescu Skin Care, Inc., et al.*,
25 Case No. BC501173.

26 Information about the Settlement is summarized in this notice. More detail is provided in the
27 settlement agreement called the “Stipulation of Settlement” and other documents (including the
28 class action complaint), available at www.healingandcontrolcreamsettlement.com.

29 **3. Why is this a class action?**

30 In a class action, one or more people called “Class Representatives” sue on behalf of themselves
31 and other people who have similar claims. Together, all of these people are “Class Members.”
32 One Court resolves the issues for all Class Members in a class action, except for those who
33 exclude themselves from the Class (see Question 15).

1 **4. Why is there a proposed Settlement?**

2 The Court has not decided in favor of the Plaintiffs or Defendants. Instead, the Parties have
3 agreed to the proposed Settlement. By agreeing to the proposed Settlement, and if the proposed
4 Settlement is approved by the Court, they avoid the costs and uncertainty of a trial, and Class
5 Members receive the benefits described in this notice. The proposed Settlement does not mean
6 that any law was broken or that Defendants did anything wrong, or that the Plaintiffs and the
7 Class would or would not win their case if it were to go to trial. The Parties believe that the
8 proposed Settlement is fair, reasonable, and adequate and will provide substantial benefits to the
9 Class.

10 **WHO IS PART OF THE SETTLEMENT?**

11 **5. Who is included in the proposed Settlement?**

12 Except as noted below under Question 6, the Class includes all persons in the United States who
13 purchased Mario Badescu Healing Cream and Control Cream from February 15, 2009 through
14 _____.

15 **6. Are there exceptions to being included?**

16 The Proposed Settlement does not include:

- 17 • All persons who are employees, directors, officers, and agents of Mario Badescu;
- 18 • Persons or entities who purchased the Healing Cream and Control Cream primarily
19 for resale purposes;
- 20 • Any claims for personal injury relating to the use of Healing Cream and Control
21 Cream;
- 22 • The judge presiding over this class action, his immediate family and the Court
23 staff;
- 24 • Governmental entities;
- 25 • Any person who timely and properly excludes him or herself from the Class (*see*
26 Question 15); and
- 27 • Anyone who purchased Healing Cream and Control Cream products via the
28 Internet or other remote means while not residing in the United States.

1 **7. What if I'm still not sure if I'm included?**

2 If you are not sure whether you are a Class Member, or have any other questions about the
3 Settlement, visit the website, www.healingandcontrolcreamsettlement.com, or call the toll free
4 number, 1-____-____-____. You may also send questions to the Settlement Administrator via e-
5 mail at info@healingandcontrolcreamsettlement.com or via U.S. Mail at
6 _____.

1 **THE SETTLEMENT BENEFITS – WHAT YOU CAN GET**

2 **8. What does the proposed Settlement provide?**

3 If the Settlement is approved and becomes final, it will provide benefits to Class Members.
4 Mario Badescu will send a \$45.00 Certificate to Class Members who timely file valid claims by
5 submitting a Claim Form (*see* Question 12), as well as pay for costs associated with the notice
6 and administration of the Settlement, attorneys’ fees and costs (*see* Question 19), and a special
7 service payment to the Class Representatives (*see* Question 19). Class Members who purchased
8 both Healing Cream and Control Cream since February 15, 2009 are entitled to receive one
9 Certificate for their Healing Cream purchases and another for their Control Cream purchases, for
10 a total of 2 Certificates.

11 In addition, Mario Badescu has agreed to change the future labeling, advertising, and marketing
12 of Healing Cream and Control Cream. The Settlement agreement, called the “Stipulation of
13 Settlement,” is available at www.healingandcontrolcreamsettlement.com, which has more
14 information about the Settlement.

15 **9. What can I get from the proposed Settlement?**

16 You may be entitled to receive a \$45.00 certificate good off of the purchase of any Mario
17 Badescu product at www.mariobadescu.com or service or product at Mario Badescu’s New York
18 spa. Class Members who purchased both Healing Cream and Control Cream since February 15,
19 2009 are entitled to receive one \$45.00 certificate for their Healing Cream purchases and another
20 for their Control Cream purchases, for a total of 2 Certificates.

21 **10. What am I giving up if I stay in the Class?**

22 Unless you exclude yourself from the Class, you can’t sue Mario Badescu or the other defendants
23 or be part of any other lawsuit against Mario Badescu or the other defendants about the issues in
24 this case. Unless you exclude yourself, all of the decisions by the Court will bind you. The
25 Settlement agreement, called the “Stipulation of Settlement,” is available at
26 www.healingandcontrolcreamsettlement.com, which describes the claims that you give up if you
27 remain in the Settlement Class.

28 By staying in the Class, you become a Class Member and you will automatically release Mario
29 Badescu and the Released Parties from any claims set forth below and will give up your rights to
30 pursue or continue any action against Mario Badescu or the Defendants relating to the Healing
31 Cream and Control Cream and the claims at issue in the lawsuit. **A word-for-word copy of the
32 Release Sections from the Stipulation of Settlement is copied below.** Because Class Members
33 will release a wide range of claims, **please carefully read** the following “Release and Waiver of
34 Claims”:

35 “Released Claims” means and includes any and all claims, demands, rights, damages,
36 obligations, suits, debts, liens, and causes of action under common law or statutory law
37 (federal, state, or local) of every nature and description whatsoever, ascertained or
38 unascertained, suspected or unsuspected, existing or claimed to exist, including unknown

claims (as described in Paragraph 60 below) as of the Notice Date by all of the Plaintiffs and all Class Members (and Plaintiffs' and Class Members' respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

(i) were asserted or that could have been reasonably asserted in the Action against the Released Parties (as hereinafter defined), and any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including, but not limited to, alleged violations of state consumer protection, unfair competition, and/or false or deceptive advertising statutes (including, but not limited to, California Business & Professions Code §§ 17200, *et seq.*, California Business & Professions Code §§ 17500, *et seq.*, California Civil Code §§ 1750, *et seq.*); RICO, 19 U.S.C. §§ 1961, *et seq.*, breach of express or implied warranty (including, but not limited to, claims arising under state law and/or the Magnuson-Moss Warranty Act), fraud, negligence, product liability, conspiracy, assault and battery, unjust enrichment, restitution, declaratory or injunctive relief, and any other equitable claim or claims sounding in contract or tort); and

(ii) relate in any way to the advertising, labeling, or marketing of the Products and arising out of any statement made or not made respecting the Products through any medium (on-label, Internet, or otherwise).

(b) Notwithstanding any other provision of this Stipulation of Settlement, "Released Claims" do not include claims for personal injuries. Plaintiffs and Class Members are not releasing any claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action relating to personal injuries arising from their use of any of the Products.

(c) "Released Claims" shall be construed as broadly as possible to effect complete finality over the Action involving Healing Cream and Control Cream and the advertising, labeling, and/or marketing of the Products as set forth herein.

"Released Parties" shall be defined and construed as broadly as possible to effectuate a complete and comprehensive release, and means:

(a) Defendant Mario Badescu Skin Care, Inc. and nominally named Defendant Mario Badescu Skin Care Inc., and each of their past, present, and future employees, assigns, attorneys, agents, advertising agencies, consultants, officers, and directors;

(b) All of Mario Badescu Skin Care, Inc.'s and Mario Badescu Skin Care Inc.'s past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, and successors, and each of their respective employees, assigns, attorneys, agents, resellers, officers, and directors;

(c) Any and all persons, entities, or corporations involved in any way in the development, creation, sale, advertising, labeling, or marketing of the Products or their ingredients, and any other vendor or any company that supplied any ingredients to Defendants or any of them;

(d) Defendant Morise Cabasso; and

(e) Defendant Joseph Cabasso.

1 “Releasing Parties” means Plaintiffs and Class Members, and each of their heirs,
2 guardians, executors, administrators, representatives, agents, attorneys, partners,
3 successors, predecessors-in-interest, and assigns.

4 Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation
5 of the Final Order and Final Judgment shall have, fully, finally, and forever released,
6 relinquished, and discharged all Released Claims against the Released Parties. Further,
7 Defendants will release, waive, and discharge, on the Effective Date, all legal claims,
8 causes of action, cross-claims, or counter-claims against Plaintiffs, Class Members, and
9 Class Counsel (collectively, the “Plaintiff Released Parties”) arising from or related to the
10 Products and claims at issue or in the Action (“Plaintiff Released Claims”). The Released
11 Claims shall be construed as broadly as possible to affect complete finality over the
12 Action involving Defendants’ advertising, labeling, and/or marketing of Healing Cream
13 and Control Cream as set forth herein.

14 Members of the Class who have opted out of the Settlement by the date set forth by the
15 Court do not release their claims and will not obtain any benefits of the Settlement.

16 The Released Claims and the Plaintiff Released Claims include known and unknown
17 claims relating to the Action, and this Stipulation of Settlement is expressly intended to
18 cover and include all such injuries or damages, including all rights of action thereunder.
19 Plaintiffs, Class Members, and Defendants hereby expressly, knowingly, and voluntarily
20 waive the provisions of Section 1542 of the California Civil Code, which provides as
21 follows:

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

28 Plaintiffs, Class Members, and Defendants expressly waive and relinquish any and all rights and
benefits they may have under, or that may be conferred upon them by, the provisions of Section
1542 of the California Civil Code, or any other law of any state or territory that is similar,
comparable, or equivalent to Section 1542, to the fullest extent they may lawfully waive such
rights or benefits pertaining to the Released Claims and the Plaintiff Released Claims. In
connection with such waiver and relinquishment, Plaintiffs, Class Members, and Defendants
hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims
or facts in addition to those that they now know or believe to exist with respect to the Released
Claims and the Plaintiff Released Claims, but it is their intention to hereby fully, finally, and
forever settle and release all of the Released Claims and the Plaintiff Released Claims known or
unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of
such intention, the Releases herein given by Plaintiff, Class Members, and Defendants to the
Released Parties and the Plaintiff Released Parties shall be and remain in effect as a full and
complete general release notwithstanding the discovery or existence of any such additional
different claims or facts. Each of the Parties expressly acknowledges that he/she/it has been
advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge

each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs and Class Members are not releasing any claims for personal injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a material element of the Settlement of which this Release is a part.

11. When will I get my Certificate(s)?

Class Members who submit timely and valid claims will receive Certificates only after the Court grants final approval to the Settlement and after any appeals are resolved (see “The Court’s Fairness Hearing” below). If there are appeals, resolving them can take time. Please be patient.

HOW TO RECEIVE CERTIFICATE(S)

12. How can I get Certificates?

To get a Certificate under the Settlement, you must timely submit a Claim Form. A Claim Form and directions are attached as Appendix B to this Class Notice. You may also obtain and print a Claim Form and other relevant documents by visiting www.healingandcontrolcreamsettlement.com. Please read the instructions carefully, and fill out the form completely and accurately. Claim Forms can be submitted two ways: electronically or by mail. Your Claim Form must be submitted electronically at www.healingandcontrolcreamsettlement.com no later than February 28, 2014, or by mail postmarked no later than February 28, 2014 and addressed to:

13. What is the claim process?

The Settlement Administrator will review each Claim Form. If a claim is not contested, you will receive \$45.00 Certificate(s) in accordance with the terms of the Stipulation of Settlement. All usual and customary steps to prevent fraud and abuse in the claim process will be taken. This includes denying claims in whole or in part to prevent fraud or abuse. Class Counsel and Defendants will be provided a report on the denial of any claim and may recommend additional action, including issuance of a Certificate.

The issuance of Certificates for approved claims will begin one hundred and twenty (120) days after the close of the Claim Period so long as this period is after the date the Settlement is final and approved, including any appeals that must be resolved in favor of the Settlement (the “Effective Date”).

The Court will hold a Fairness Hearing on _____, 2014 at ____ to decide whether or not to approve the proposed Settlement. The Court must finally approve the proposed Settlement before any Certificates can be issued. The Court will grant its approval only if it finds that the proposed Settlement is fair, reasonable, and adequate.

In addition, the Court’s orders may be subject to appeals. It is always uncertain whether these

1 appeals can be resolved, and resolving them takes time, sometimes more than a year. Finally,
2 there remains a possibility that this Settlement may be terminated for other reasons.

3 Everyone who sends in a Claim Form will be informed of the progress of the Settlement by
4 contacting the Settlement Administrator, Class Counsel, or by visiting
5 www.healingandcontrolcreamsettlement.com. Please be patient. The Settlement Administrator
6 will begin to issue Certificates one hundred and twenty (120) days after the close of the Claim
7 Period, so long as this period is after the Effective Date. In the event the Effective Date falls
8 after the close of the Claim Period, then the Settlement Administrator shall begin to issue
9 Certificates commencing no later than one hundred twenty (120) days after the Effective Date.
10 Not later than one hundred sixty (160) days after either the occurrence of the Effective Date or the
11 close of the Claim Period, whichever is later, the Settlement Administrator shall have completed
12 the issuance of Certificates to Class Members who have submitted timely, valid, and approved
13 Claims pursuant to the Claims Process. Please note, however, that the Parties may, only upon
14 their joint agreement, commence this period after final approval of the Settlement by the Court,
15 but before the attainment of the Effective Date.

11 **14. What if I do nothing?**

12 If you are a Class Member and you do nothing, you will not get a Certificate from the Settlement
13 and you will be bound by the Court's decisions and the Settlement's "Release and Waiver of
14 Claims" (see Question 10). To receive a Certificate, you must complete and submit a Claim
15 Form on or before February 28, 2014 (see Question 12).

16 Unless you exclude yourself from the Class, if the Settlement is approved you won't be able to
17 start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about
18 the claims in this lawsuit ever again, regardless of whether you submit a Claim Form.

17 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

18 **15. How can I get out of the proposed Settlement?**

19 To exclude yourself from the Class, you must send by U.S. mail a letter or written request to the
20 Settlement Administrator. Your request must include all of the following:

- 21 1. Your full name and current address;
- 22 2. A clear statement that you wish to be excluded from the Class;
- 23 3. The case name and case number (*Wankyu Choi, et al. v. Mario Badescu Skin Care, Inc., et al*, Case No. BC501173); and
- 24 4. Your signature (you must personally sign the letter).

25 Please write "**EXCLUSION REQUEST**" on the lower left-hand corner of the front of the
26 envelope.

27 Your exclusion request must be postmarked no later than January 31, 2014. Send your request to:
28 Rust Consulting

1
2
3 **16. If I exclude myself, can I still get Certificate(s)?**

4 No. You will not get a Certificate if you exclude yourself from the Settlement. If you request
5 exclusion from the Class, then:

- 6
- 7 • You will not be eligible for a Certificate under the proposed Settlement;
 - 8 • You will not be allowed to object to the terms of the proposed Settlement;
and
 - 9 • You will not be bound by any subsequent rulings entered in this case if the
proposed Settlement is finally approved.

10 However, if your request for exclusion is late or not complete, you will still be a part of the Class,
11 you will be bound by the Settlement and by all other orders and judgments in this lawsuit, and
you will not be able to participate in any other lawsuits based on the claims in this case.

12 **17. If I don't exclude myself, can I sue Defendants for the same thing later?**

13 No. If the Court approves the proposed Settlement and you do not exclude yourself from the
14 Class, you give up (or "release") all claims that have been made in the lawsuit (this means that
15 you are agreeing to fully, finally, and forever release, relinquish, and discharge all Released
Claims against the Released Parties, as set forth above in response to Question 10).

16 As part of this Settlement, the Court has preliminarily stopped all Class Members and/or their
17 representatives (who do not timely exclude themselves from the Class) from filing, participating
18 in, or continuing litigation against Defendants, and/or from receiving any benefits from any other
lawsuit relating to the claims being resolved in this case.

19 Upon final approval of the Settlement, Plaintiffs and Defendants will ask the Court to enter a
20 permanent ruling forbidding all Class Members and/or their representatives from engaging in the
activities described above. All Class Members will be bound by this order.

21
22 **THE LAWYERS REPRESENTING THE CLASS**

23
24 **18. Do I have a lawyer in this case?**

25 The Court has appointed attorneys at the Law Office of Young W. Ryu and Law Offices of
26 Gerald S. Ohn, APC to represent you and other Class Members in the lawsuit. The lawyers
27 representing you and Class Members are called "Class Counsel." You will not be charged for the
services of these lawyers.

28 You may contact Class Counsel as follows:

Young W. Ryu
Law Office of Young W. Ryu
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
E-mail: young.ryu@youngryulaw.com
Tel: (888) 365-8686

Gerald S. Ohn
Law Offices of Gerald S. Ohn, APC
1875 Century Park East, Suite 700
Los Angeles, CA 90067
E-mail: Gerald@ohnlaw.com
Tel: (310) 407-8655

You have the right to retain your own lawyer to represent you in the lawsuit, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

19. How will the lawyers be paid?

Class Counsel have worked on this case since 2012 and have not been paid anything to date for their work on the case. Class Counsel will request attorneys' fees and expenses, which will be subject to Court approval. The attorneys' motion for fees, costs, and expenses and Class Representatives payment will be filed on or before _____, 2014. The motion will be posted on the website at www.healingandcontrolcreamsettlement.com.

Class Counsel will also ask the Court for a special service payment of up to Five Thousand Dollars (\$5,000) for Class Representatives (Wankyu Choi and Jae K. Lee) for their work on behalf of the Class. Any special service payments must also be approved by the Court.

OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the Settlement or any of its terms.

20. How can I tell the Court if I do not like the proposed Settlement?

If you choose to remain a Class Member, you have a right to object to any part of the proposed Settlement. The Court will consider your views.

To object, you **must file** a timely, written objection with the Court, through the Court's electronic filing system or any other method in which the Court will accept filings, if any, send the written objection by U.S. mail or e-mail to the Settlement Administrator, and send by U.S. mail or e-mail a copy to Class Counsel and Defense Counsel postmarked no later than January 31, 2014. Members of the Class who fail to file and serve timely written objections as described here and in the Stipulation of Settlement shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Your written objection must include:

1. Your full name;
2. Your current address;
3. A written statement of your objection(s) and the reasons for each objection;

- 1 4. A statement of whether you intend to appear at the Fairness Hearing;
2 5. Your signature; and
3 6. The case name and case number (*Wankyu Choi, et al. v. Mario Badescu Skin Care, Inc., et al*, Case No. BC501173).

4 If you choose to object, in order to be considered by the Court, your written objection(s) must be
5 **filed with the Court and served by U.S. Mail or e-mail on the Settlement Administrator,**
6 **Class Counsel, and Defense Counsel no later than January 31, 2014.** Objections that are
7 mailed to the Court (and not filed pursuant to the Court's electronic filing system, or any other
8 method in which the Court will accept filings, if any), or objections that are served on the Parties
9 but not filed with the Court, shall not be received or considered by the Court at the Fairness
10 Hearing.

11 Objections must be served:

12 Upon Settlement Administrator at:

13 Rust Consulting
14 _____
15 _____
16 _____

17 Upon Class Counsel at:

18 Young W. Ryu
19 Law Office of Young W. Ryu
20 9595 Wilshire Boulevard, Suite 900
21 Beverly Hills, CA 90212
22 E-mail: young.ryu@youngryulaw.com

23 Gerald S. Ohn
24 Law Offices of Gerald S. Ohn, APC
25 1875 Century Park East, Suite 700
26 Los Angeles, CA 90067
27 E-mail: Gerald@ohnlaw.com

28 Upon Defense Counsel at:

 Ronie M. Schmelz
 Edwards Wildman Palmer LLP
 1901 Century Park East, Suite 1700
 Los Angeles, CA 90067
 E-mail: rschmelz@edwardswildman.com

 If you file objections, but the Court approves the Settlement as proposed, you can still complete a
 Claim Form to be eligible for Certificates under the Settlement, subject to the terms and
 conditions discussed in this Notice and in the settlement agreement called the "Stipulation of

Settlement.”

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

Objecting is simply a way of telling the Court that you don’t like something in the proposed Settlement. You can only object if you stay in the Class. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of the lawsuit. If you object to the Settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself is telling the Court that you don’t want to be a part of the Class. If you exclude yourself, you have no basis to object to the Settlement and appear at the Fairness Hearing because it no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to finally approve the Settlement. You may attend and ask to speak, but you don’t have to.

22. When and where will the Court decide whether to approve the Proposed Settlement?

On _____, 2014, at _____, the Court will hold a Fairness Hearing at the Superior Court of the State of California County of Los Angeles, before the Honorable William F. Highberger, 600 South Commonwealth, Los Angeles, California 90005.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.healingandcontrolcreamsettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also decide whether to award attorneys’ fees and costs, as well as a special payment to 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.

23. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice, so it is a good idea to check the settlement website www.healingandcontrolcreamsettlement.com for updates. If you are planning to attend the hearing, you should confirm that the date and time on this website before going to the Court.

24. May I speak at the Fairness Hearing?

Yes, you may ask the Court for permission to speak at the hearing. To do so, you **must file** a document called a “Notice of Intention to Appear” through the Court’s electronic system or through any other method in which the Court will accept filings, if any. If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must, in addition to

1 filing a Notice of Intention to Appear at the Fairness Hearing with the Court, mail, or e-mail
2 copies to the Settlement Administrator, Class Counsel, and Defense Counsel, whose addresses are
3 listed above in response to Question 20. Your notice of intention to appear at the Fairness
4 Hearing must be filed and received by the Court, and mailed and/or e-mailed to the Settlement
5 Administrator, Defense Counsel, and Class Counsel no later than January 31, 2014.

6 **GETTING MORE INFORMATION**

7 **25. How can I get more information?**

8 This notice summarizes the proposed Settlement. More details are in the settlement agreement
9 which is called the "Stipulation of Settlement." For a complete, definitive statement of the
10 Settlement, refer to the Stipulation of Settlement at www.healingandcontrolcreamsettlement.com.
11 You also may write with questions to the Settlement Administrator at Healing and Control Cream
12 Settlement, _____, call the toll-free number, 1-____-____-____, or e-mail questions to info@healingandcontrolcreamsettlement.com.

13 **PLEASE DO NOT CALL THE COURT**

14 Dated: _____, 2014

Superior Court of the State of California
County of Los Angeles

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EXHIBIT F

SETTLEMENT ADMINISTRATION PROTOCOL

This Settlement Administration Protocol (the “Protocol”) is a part of the Stipulation of Settlement and shall be used by the Settlement Administrator to review, address, implement, and process those claims submitted pursuant to the Stipulation of Settlement and otherwise implement the terms of the claim process in the Stipulation of Settlement. All capitalized terms used in this Protocol shall have the same meaning given to them in the Stipulation of Settlement. To the extent there is any conflict between the Stipulation of Settlement and this Protocol, the Stipulation of Settlement shall govern.

1. Settlement Administrator’s Role and Duties

- (a) The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Stipulation of Settlement, this Protocol, and Orders issued by the Court.
- (b) The Settlement Administrator shall be reimbursed by Defendants for reasonable costs, fees, and expenses of providing notice to the Class and administering the Settlement in accordance with the Stipulation of Settlement.
- (c) The Settlement Administrator warrants that it knows of no reason why it cannot fairly and impartially administer the claim process set forth in the Stipulation of Settlement. The Settlement Administrator shall not process the claim of any Class Member if the Settlement Administrator, Class Counsel, or Defense Counsel determines that there is a conflict of interest. In the event that the Settlement Administrator, Class Counsel, or Defense Counsel learns of a conflict of interest as to a claim, that party shall give written notice to the other parties, who shall resolve any such circumstances by further written agreement. Any unresolved dispute over such conflict of interest shall be submitted to the Court for resolution.
- (d) The Settlement Administrator shall keep a clear and careful record of all communications with Class Members, all claims decisions, all expenses, and all tasks performed in administering the claim process.
- (e) The cost of the Settlement Administrator shall be paid by Defendants pursuant to the Stipulation of Settlement.
- (f) The Settlement Administrator shall take all reasonable efforts to administer the Claims effectively and to avoid unnecessary fees and expenses. As soon as work commences, the Settlement Administrator shall provide a detailed written accounting of all fees and expenses on a regular basis to Class Counsel and Defense Counsel, and shall separately respond to inquiries from Class Counsel and Defense Counsel concerning the administration and notice fees and expenses.

The Parties are entitled to observe and monitor the performance of the Settlement Administrator to assure compliance with the Stipulation of Settlement and this Protocol. The Settlement Administrator shall promptly respond to all inquiries and

requests for information made by Defendants, Defense Counsel, or Class Counsel.

2. Locating, Obtaining, and Submitting Claim Forms

- (a) The Claim Form, which is substantially similar to the form attached as Exhibit “C” to the Stipulation of Settlement, shall be available as part of the Class notice, on the Internet website at www.healingandcontrolcreamsettlement.com, in response to requests through the toll-free telephone voice response unit with message and interactive voice response (IVR), and also through contacting by telephone or by mail or other similar service the Settlement Administrator and requesting a copy of the Claim Form to be sent to them. The Claim Form on the Internet website and the hard copy Claim Form shall be consistent in all substantive respects.
- (b) Class Members may submit a claim to the Settlement Administrator during the Claim Period. As part of the claim process, Class Members shall be eligible for the relief provided in the Stipulation of Settlement, provided Class Members complete and timely submit the Claim Form to the Settlement Administrator within the Claim Period, subject to the terms herein and in the Stipulation of Settlement.
- (c) Claims may be submitted by completing the Claim Form in hard copy by mail or other similar delivery service or on-line through a web-based Claim Form at the Internet website www.healingandcontrolcreamsettlement.com.
- (d) The Settlement Administrator shall establish and maintain an Internet website, www.healingandcontrolcreamsettlement.com, that shall be easily accessible through commonly used Internet Service Providers for the submission of claims. The Long Form Notice, Claim Form, Stipulation of Settlement and Exhibits thereto, the Second Amended Complaint, and any Motion for Preliminary Approval of the Settlement, Final Approval of the Settlement, and for Award of Attorneys’ Fees and Incentive Awards (including supporting declarations and exhibits) shall be available on the Internet website. The Internet website shall be designed to permit Class Members to readily and easily submit Claims and obtain information about the Class Member’s rights and options under the Stipulation of Settlement. The Internet website shall be maintained continuously until the end of the Claim Period. The Settlement Administrator shall be solely responsible for receiving and processing requests for Claim Forms and for promptly delivering Claim Forms to Class Members who request them.
- (e) The Settlement Administrator also shall establish a toll-free telephone number that will have recorded information answering frequently asked questions about certain terms of the Settlement, including, but not limited to, the claims process and instructions about how to request a Claim Form and/or Class Notice.

3. Claim Form Review and Processing

- (a) The Settlement Administrator shall begin the claim process so that it is completed within the time period specified in the Stipulation of Settlement. Except as

provided below, Class Members must submit their claims so that they are postmarked or submitted online no later than the end of the Claim Period.

- (b) Claims Forms that do not meet the requirements set forth in the Stipulation of Settlement and in the Claim Form instructions shall be rejected. Where a good faith basis exists, the Settlement Administrator may reject a Class Member's Claim Form for, among other reasons, the following:
- (i) The Class Member purchased products that are not covered by the terms of the Stipulation of Settlement;
 - (ii) Failure to fully complete and/or sign the Claim Form;
 - (iii) Illegible Claim Form;
 - (iv) The Claim Form is fraudulent;
 - (v) The Claim Form is duplicative of another Claim Form;
 - (vi) The person submitting the Claim Form is not a Class Member;
 - (vii) The person submitting the Claim Form is requesting that a Certificate be issued to a person or entity that is not the Class Member for whom the Claim Form is submitted;
 - (viii) Failure to submit a Claim Form by the end of the Claim Period; and
 - (ix) The Claim Form otherwise does not meet the requirements of the Stipulation of Settlement.
- (c) The Settlement Administrator shall determine whether a Claim Form meets the requirements set forth in the Stipulation of Settlement. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine in accordance with the terms and conditions of the Stipulation of Settlement the extent, if any, to which each claim shall be allowed. The Settlement Administrator shall have the authority to determine whether a claim by any Class Member is complete and timely. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, indexing all Certificates provided to Class Members.
- (d) The Claim Form will be deemed to have been submitted when posted, if received with a postmark or equivalent mark by a courier company indicated on the envelope or mailer with the instructions set out in the Claim Form. In all other cases, the Claim Form shall be deemed to have been submitted when it is actually received by the Settlement Administrator.
- (e) The Settlement Administrator shall gather, review, prepare, and address the Claim Forms received pursuant to the Stipulation of Settlement as follows:

- (i) Claims that have been properly submitted shall be designated as “Approved Claims.” The Settlement Administrator shall examine the Claim Form before designating the claim as an Approved Claim to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable the mailing of a Certificate to the Class Member.
- (ii) No Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Class Member (“Duplicative Claim Forms”). The Settlement Administrator shall determine whether there is any duplication of claims, if necessary by contacting the Class Member(s) or their counsel. The Settlement Administrator shall designate any such Duplicative Claim Forms as rejected claims to the extent they seek relief on behalf of the same Class Member.
- (iii) The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any claim to prevent actual or possible fraud or abuse.
- (iv) By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate to further the purposes of the Stipulation of Settlement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse.
- (f) The Settlement Administrator shall provide periodic reports to Class Counsel and Defense Counsel regarding the implementation of the Stipulation of Settlement and this Protocol.

4. Issuance of Certificates for Valid Claims

- (a) The relief to be provided to eligible Class Members shall be as set forth in the Stipulation of Settlement.
- (b) The Settlement Administrator shall begin to issue Certificates in response to timely, valid, and approved claims within one hundred and twenty (120) days after the close of the Claim Period, so long as this period is after the Effective Date. In the event the Effective Date falls after the close of the Claim Period, then the Settlement Administrator shall begin to issue Certificates to valid and approved claimants commencing no later than one hundred and twenty (120) days after the Effective Date. Not later than one hundred sixty (160) days after either the occurrence of the Effective Date or the close of the Claim Period, whichever is later, the Settlement Administrator shall have completed the issuance of Certificates to Class Members who have submitted timely, valid, and approved Claims pursuant to the Claim Process, provided that the Parties may, only upon their joint agreement, commence the issuance of Certificates after final approval of the Settlement by the Court, but before the attainment of the Effective Date.

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EXHIBIT G

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HOW CAN I GET MORE INFORMATION?

Visit www.healingandcontrolcreamsettlement.com or call 1-____-____, write to the Settlement Administrator at _____, or e-mail the Settlement Administrator at info@healingandcontrolcreamsettlement.com.