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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf of
all others similarly situated, and the general
public,

Plaintiff,

v.

TRIPLE LEAF TEA INC.;

Defendant.

CASE NO.: 3:14-cv-01570 MMC
CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF JOINT
MOTION FOR AN ORDER (1) GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, (2) CERTIFYING
SETTLEMENT CLASS, (3) APPOINTING
CLASS REPRESENTATIVES AND CLASS
COUNSEL, (4) APPROVING NOTICE PLAN,
AND (5) SETTING FINAL APPROVAL
HEARING**

[Hearing Date Set by the Court in Dkt. No. 45]

Judge: Hon. Maxine M. Chesney
Date/Time: June 19, 2015 at 9:00 a.m.
Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014
Trial Date: Not Assigned

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INTRODUCTION

Pursuant to the Court's Order on March 20, 2015 [Dkt. No. 45], a hearing on Plaintiff's Motion for Preliminary Approval has been scheduled for June 19, 2015 at 9:00 a.m. in Department 7 (19th floor) of the above-entitled court. Plaintiff Eunice Johnson and Defendant Triple Leaf Tea, Inc. respectfully and jointly hereby move for an order: (1) Granting Preliminary Approval of Class Action Settlement; (2) Certifying a Settlement Class; (3) Appointing Plaintiff Class Representative and Plaintiff's Attorney as Class Counsel; (4) Approving the Notice Plan; and (5) Setting the Final Approval Hearing and Schedule. This joint motion is based on this Notice of Motion and Motion; Declaration of Ronald A. Marron and all exhibits attached thereto ("Marron Decl."); Declaration of Eunice Johnson ("Johnson Decl."); Declaration of Ryan B. Polk ("Polk Decl."); Redacted and Unredacted Declaration of Vincent Lam ("Lam Decl."); the Memorandum of Points and Authorities filed concurrently herewith; the record on file and all proceedings had in this matter to date; and all further evidence and argument submitted in support of or against the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Eunice Johnson ("Plaintiff" or "Ms. Johnson") brought this consumer protection class action lawsuit on behalf of herself, all others similarly situated, and the general public against Defendant Triple Leaf Tea, Inc. ("Defendant" or "Triple Leaf") regarding its weight loss teas sold as "Dieter's Green" tea, "Ultra Slim" tea, and "Super Slimming" tea (the "Products"). Plaintiff alleges Triple Leaf's representations and advertising regarding the characteristics, benefits, and abilities of the Products are false and misleading, violating California's Consumer Legal Remedies Act ("CLRA") Cal. Civ. Code §§ 1750, *et seq.*, California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200 *et seq.*, California's False Advertising Law ("FAL") Cal. Bus. & Prof. Code §§ 17500, *et seq.*, and constituting a breach of express and implied warranties. *See* Dkt. No. 1 (Compl.) ¶¶ 116-158; Marron Decl. ¶ 4.

On February 21, 2014, Plaintiff Eunice Johnson, through her attorney of record, sent a CLRA Letter to Triple Leaf via certified mail, notifying Triple Leaf of Plaintiff's claims that the advertising of the Products was false and deceptive, pursuant to the requirements of Cal. Civ. Code § 1782. Dkt.

No. 1, Ex. 6; Marron Decl. ¶ 3; Polk Decl. ¶ 3. Triple Tea, through its attorneys of record, responded to Plaintiff's CLRA notice letter on March 26, 2014, denying all of Plaintiff's allegations as factually and legally without merit and reserving all of its right and remedies should Plaintiff file suit. *See* Marron Decl. ¶ 3; Polk Decl. ¶ 3.

On April 4, 2014, Plaintiff filed suit against Defendant in the United States District Court for the Northern District of California. *See* Dkt. 1; Marron Decl. at ¶ 4. Although the initial Case Management Conference was originally scheduled for July 28, 2014, Defendant filed a Motion to Dismiss that suspended the conference. Marron Decl. ¶ 4; *see also* Dkt. 27. The Court ruled on Defendant's Motion to Dismiss on September 23, 2014, denying Defendant's Motion in its entirety. Marron Decl. ¶ 4; *see* Dkt. 33. The Parties eventually held their Case Management Conference before Magistrate Judge Maxine Chesney on October 31, 2014. Marron Decl. ¶ 4; Polk Decl. ¶ 4; *see* Dkt. 41.

At the Case Management Conference, the Parties, through their counsel of record, thoroughly discussed each contention identified in the Parties' respective statements. Marron Decl. ¶ 5; Polk Decl. ¶ 4. The Parties agreed to private mediation that the Court ordered to be conducted within 120 days of the conference. Marron Decl. ¶ 5; Polk Decl. ¶ 4; *see* Dkt. No. 41. Immediately following the conference, Plaintiff personally served on Defendant Plaintiff's First Set of Interrogatories, Request for Production, and Request for Admissions. Marron Decl. ¶ 5.

The Parties disagreed, however, on the scope and extent of discovery. *Id.* Defendant's counsel resisted discovery pending mediation; however, Plaintiff explained that it could not undertake due diligence in evaluating the case without first obtaining such discovery, and that in order for any meaningful settlement discussions to take place, Plaintiff would need sufficient information. *Id.* An important issue raised by Defendant during the conference was its financial position. *Id.* The parties agreed to meet and confer on the possibility of Plaintiff conducting narrow discovery needed to conduct a meaningful mediation.

On November 25, 2014, Plaintiff sent Defendant an email identifying the targeted discovery questions in preparation for mediation. Marron Decl., ¶ 6; Polk Decl. ¶ 5. These questions requested information concerning Defendant's sales information, operating costs, and profits and losses. *Id.*

On February 3, 2015, attorneys from Plaintiff's counsel and Triple Leaf's counsel attended an all-day mediation before the Honorable Ronald M. Sabraw (Ret.) of JAMS. Marron Decl. ¶ 7; Polk Decl. ¶ 6. Representatives from Triple Leaf attended the mediation and Plaintiff was on telephonic standby. *Id.* Before the mediation occurred, Plaintiff's counsel engaged in pre-mediation conference calls with Ms. Johnson. *Id.* Following the mediation, the Parties managed to establish a framework for settlement, but still needed to work out the material terms and details of a final memorialized agreement. Marron Decl. ¶ 8; Polk Decl. ¶ 6; *see also* Dkt. No. 44 at ¶ 12. The Parties diligently negotiated over the course of February through May 2015 to resolve those differences, ultimately leading to the formal Settlement Agreement for which the Parties now seek preliminary approval. Marron Decl. ¶ 8 and Ex. 1 (Settlement Agreement); Polk Decl. ¶ 7; *see also* Dkt. No. 44 at ¶ 12. Attorneys for Plaintiff's counsel performed a detailed review and approval of precise labeling claims for all of the packages of the Products, throughout the pendency of this case. Marron Decl. ¶ 9. No trial date has been set.

The Settlement Agreement is the product of vigorous, adversarial, and competent representation of the Parties and substantive negotiations throughout the pendency of this litigation. *See* Marron Decl. ¶¶ 3-12; Polk Decl. ¶ 7. The parties began negotiations in earnest shortly after the February 2014 CLRA letters were sent. Marron Decl. ¶¶ 3-8. The Parties subsequently agreed to attend private mediation, and the settlement terms were reached with the assistance of an independent, impartial mediator, the Ronald M. Sabraw (Ret.) of JAMS, as well as through the assistance of Senior District Judge Chesney by encouraging mediation at the Case Management Conference. *Id.* at ¶ 7; Polk Decl. ¶¶ 4, 6; *see also* Dkt. No. 11.

For the purposes of settlement, Triple Leaf produced and Plaintiff reviewed substantial documentary evidence, including profit and loss statements and financial statements for 2010 through 2014, plus gross and net sales for each of the Products referenced in the complaint. *See* Marron Decl. ¶ 6. Plaintiff's counsel exercised due diligence to confirm the adequacy, reasonableness, and fairness of the settlement, both before and after mediation. Marron Decl. ¶ 9. Plaintiff's counsel also conducted a detailed and comprehensive review of FDA guidance documents regarding dietary supplements; the Food, Drug and Cosmetic Act (located at 21 U.S.C. §§ 301, *et seq.*) and its implementing regulations

(located at 21 C.F.R. §§ 1.1, *et seq.*) (collectively, “FDCA”); the FDCA’s numerous changes over the years; Federal Trade Commission advertising standards and their applicability to the Products’ labeling claims at issue here; and the California Sherman Food, Drug and Cosmetic Law (Cal. Health & Safety Code §§ 109875, *et seq.*). *See* Dkt. No. 1; Marron Decl. ¶ 10.

The Parties also engaged in lengthy analysis of the laws applicable to the labeling claims here, with Defendant’s counsel arguing the labeling of the Products fully complied with the law, and Plaintiff’s counsel setting forth detailed factual and legal analysis why they believed the claims were not lawful or were false and deceptive. *See* Marron Decl. ¶¶ 3-10. When settlement talks continued to snag on certain key provisions, Plaintiff’s counsel pushed for additional discovery and both parties prepared their claims and defenses in this action. *Id.* at ¶ 11.

Plaintiff’s counsel believes Plaintiff could make a strong showing of why the Products’ packing claims were misleading or unlawful. Based on diligent effort, Plaintiff’s counsel was aware of the attendant strengths, risks, and uncertainties of Plaintiff’s claims, and Defendant’s defenses, during the course of negotiations. Marron Decl. ¶ 11.

Defendant, on the other hand, vigorously denies any wrongdoing or liability, and contends that it would be wholly successful in defeating Plaintiff’s claims at or before trial. Polk Decl. ¶ 9. At trial or before, Triple Leaf would argue that the Products are properly labeled under the FDCA and Sherman Law, and that their labeling and marketing is not false or misleading. Defendant also would argue, among other things, that Plaintiff cannot prove that class action is a superior resolution to Plaintiff’s claims.

Despite the vigorous opposition on both sides, the Parties appreciate the costs and uncertainty attendant to any litigation, and have agreed to a proposed settlement agreement. *See* Marron Decl., Ex. 1.¹ Plaintiff’s counsel agreed to settle the action pursuant to the provisions of the Settlement, after considering, among other things: (i) the substantial benefits to Plaintiff and the Class under the terms of the Settlement; (ii) the uncertainty of being able to prevail at trial; (iii) the uncertainty relating to Defendant’s defenses and the expense of additional motion practice in connection therewith; (iv) the attendant risks, difficulties, and delays inherent in litigation, especially in complex actions such as this;

¹ All initial-capped words refer to the terms and definitions in the Settlement Agreement.

1 and (v) the desirability of consummating this Settlement promptly in order to provide substantive relief
 2 to Plaintiff and the Class without unnecessary delay and expense. Marron Decl. ¶¶ 3-11; Polk Decl. ¶¶
 3 8-11. Triple Leaf has agreed that Plaintiff's Complaint, in compliance with Rule 11 of the Federal
 4 Rules of Civil Procedure, was brought in good faith, was not frivolous, and was being settled on a
 5 voluntary basis. Marron Decl., Ex. 1 (Settlement Agreement) at § 12.3.

6 **II. SUMMARY OF THE SETTLEMENT**

7 **A. Injunctive Relief**

8 Triple Leaf has agreed to provide injunctive relief by modifying their Products' labels and
 9 packaging, as well as its websites, as follows: *See* Marron Decl., Ex. 1 (Settlement Agreement) at §§
 10 4.1-4.2:

11 First, the FDA Disclaimer will remain on each Products' packaging in a legible font size and
 12 will be conspicuously displayed on the package in a readable font color, in comparison to any
 13 background coloring on the package.

14 Second, Defendant has removed whorled mallow, an ingredient at issue in the Complaint, from
 15 each of the Products.

16 Third, the statement: "Recently, here in the West, people have discovered the value of this
 17 ancient system which focuses on aiding the body's own healing mechanisms through restoring
 18 harmony and balance[]" has been, or will be, removed from each of the Products' labels and
 19 packaging.

20 Fourth, the statement: "The Chinese System of herbology has been recorded in ancient texts
 21 which are studied and employed even today[]" has been, or will be, removed from each of the
 22 Products' labels and packaging.

23 Fifth, the statement: "This time tested knowledge has been passed on from generation to
 24 generation over the centuries[]" has been, or will be, removed from each of the Products' labels and
 25 packaging.

26 Sixth, the statement: "Remember when dieting to follow a balanced weight loss diet . . ." has
 27 been, or will be, removed from each of the Products' labels and packaging.

28 Seventh, the warning: "This tea is not intended to be used for chronic constipation or as an aid

1 to lose weight” has been, or will be, added to each of the Products’ labels and packaging.

2 Eighth, the warning: “Frequent or prolonged use of laxatives may result in dependence on
3 laxatives” has been, or will be, added to each of the Products’ labels and packaging.

4 Ninth, in addition to the required Senna Notice, the warning: “Senna may result in abdominal
5 pain, cramping, and loose or watery stools” has been, or will be, added to each of the Products’ labels
6 and packaging.

7 Tenth, Defendant has, or will, change the names of two of the three Products. Dieter’s Green
8 will be changed to Diet Green and Super Slimming will be changed to Super Slim.

9 Eleventh, for Dieter’s Green, the statement: “Research indicates that green tea’s antioxidants
10 help promote health metabolism[]” has been, or will be, removed from the Product’s labels and
11 packaging.

12 Twelfth, Defendant will modify its website to comport with the modifications to the Products’
13 packaging and labeling, as set forth above.

14 Plaintiff has assisted Defendant’s efforts in relabeling the Products, to ensure that the modified
15 labels comply with the UCL, FAL, CLRA, and FDCA. Triple Leaf shall have eighteen (18) months
16 after the date the Settlement is finally approved to complete the labeling changes referred to in Section
17 4.1 of the Agreement. Triple Leaf may continue to market and ship product stock with existing
18 labeling for up to eighteen (18) months following final approval, as contemplated by the eighteen
19 month time period it will take to complete the labeling changes, and third-party retailers and
20 distributors may have on hand product stock in existing labeling for some time after the Settlement is
21 finally approved.

22 **B. Monetary Relief**

23 The Settlement does not include a monetary relief component for sound reasons.

24 First, the primary form of relief under the UCL and FAL is injunctive in nature. *See* Cal. Bus.
25 & Prof. Code §§ 17200, 17500. The harm that these statutes seek to redress is false or deceptive
26 advertising in the marketplace. *See In re Tobacco II Cases*, 46 Cal. 4th 298, 320 (2009). The
27 Settlement Agreement accomplishes this goal. *See id.*; Settlement Agreement §§ 4.1-4.2. Moreover,
28 the Settlement does not waive personal injury damages and consumers can opt out of the Settlement if

1 they wish. *Id.* § 6.1.

2 Second, the Products cost approximately \$3.75 per box at retail. It would be cost prohibitive to
 3 implement a claims procedure to refund the small amount representing the difference between the
 4 value of the product as advertised and the value of the product as purchased because claims-based
 5 settlement administration, not including the amount of any monetary relief to the fund, routinely costs
 6 in excess of \$250,000. *See* Marron Decl. ¶ 10. Relatedly, Defendant's net profit from sales of the
 7 Product were minimal as Triple Leaf is a small family owned and operated business. *See* Lam Decl. ¶
 8 6; *see Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 637 (N.D. Cal. 1978) (Defendant's financial
 9 condition is a factor for the court to weigh in considering a class action settlement).

10 Third, the different forms of injunctive relief Defendant has agreed to are sufficient
 11 consideration for Class Members to waive their rights to monetary relief. *See id.* Indeed, Class
 12 Members are receiving a substantial direct benefit from the labeling changes, which have been
 13 substantially modified as described above. As proof of this claim, the Federal Trade Commission has
 14 recognized that "[f]raudulent weight loss products cost consumers millions of dollars each year." In its
 15 effort to curb this trend, the FTC sent a letter to media outlets in support of its campaign entitled "Gut
 16 Check," which aims to curb fraudulent weight loss products through consumer education and removing
 17 false advertising from the marketplace. *See* Marron Decl., Ex. 2. Thus, the FTC, the primary federal
 18 law enforcement agency for deceptive advertising, has recognized that removing false advertising from
 19 the marketplace is "the most effective front-line defense" to protect consumers. *Id.* The Settlement
 20 achieves that FTC goal.

21 **C. Costs of Notice and Administration, Attorneys' Fees, and Incentive Award**

22 All Notice costs shall be paid by Defendant. Marron Decl., Ex 1 (Settlement Agreement) at §
 23 5.1. If the Court orders additional notice above and beyond that cost, such that notice shall comply
 24 with all federal and state law and with principles of Due Process, the additional sum shall be paid by
 25 Triple Leaf. *Id.* at § 5.2. Nevertheless, the Notice Plan provides a broad range of notice, as discussed
 26 in Section III. D., *infra*. *See also id.*

27 Defendant has agreed to pay Plaintiff's attorneys' fees and costs in the total aggregate amount
 28 of \$250,000, subject to court approval. Marron Decl., Ex. 1 (Settlement Agreement) at § 9.1.

Defendant has also agreed to pay an incentive award to the Class Representative up to \$1,500 as a reward for her efforts in seeing that this case was brought, litigated, and resulted in substantive labeling changes on behalf of the public. *See id.* Defendant shall bear its own attorneys' fees, costs, and expenses. *Id.* § 9.3.

III. THE SETTLEMENT SATISFIES THE CRITERIA FOR PRELIMINARY APPROVAL

A. Standard of Review

Pre-trial settlement of complex class actions is a judicially favored remedy. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Public policy also strongly “favors settlements, particularly where complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *accord Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). Preliminary approval of a class action settlement “is committed to the sound discretion of the trial judge.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

The Court must evaluate the fairness of the settlement in its entirety. *Id.* (“It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness . . . [t]he settlement must stand or fall in its entirety.”). But courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties . . . must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,” and whether the settlement is fair, reasonable and adequate. *Id.* at 1027; *see also Knight v. Red Door Salons, Inc.*, No. 08-1520 SC, 2009 WL 248367, at *4 (N.D. Cal. Feb. 2, 2009) (“The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.”) (citation and quotations omitted).

At the preliminary approval stage, a final analysis of the settlement’s merits is not required. Instead, a more detailed assessment is reserved for the final approval after class notice has been sent and class members have had the opportunity to object to or opt-out of the settlement. *See Moore’s Fed. Prac.* § 23.165[3] (3d ed. 2005). Accordingly, “[p]reliminary approval of a settlement and notice to the proposed class is appropriate: ‘[i]f [1] the proposed settlement appears to be the product of

serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls with[in] the range of possible approval[.]” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009) (citation and internal quotations omitted); *see also In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (“[t]he court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid.”).

Before granting preliminary approval, the court must also determine whether a class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 2248 (1997); *Hanlon*, 150 F.3d at 1019. This Motion will first address the propriety of class certification and then explain why the Court should preliminarily approve the Settlement.

B. The Court Should Certify the Class for Settlement Purposes²

A proposed class may be certified for settlement purposes if it satisfies Federal Rule of Civil Procedure 23(a), “namely: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.” *Hanlon*, 150 F.3d at 1019 (citing to *Amchem Prods., Inc.*, 117 S.Ct. at 2248). In consumer class actions, doubts on certifying a class should be resolved in favor of certification. *See City P’ship Co. v. Jones Intercable, Inc.*, 213 F.R.D. 576, 581 (D. Colo. 2002); *accord In re Static Random Access Antitrust Litig.*, No. C 07-01819 CW, 2008 WL 4447592, at *2 (N.D. Cal. Sept. 29, 2008) (“Class actions play an important role in the private enforcement of antitrust actions. For this reason courts resolve doubts in these actions in favor of certifying the class.”). For settlement purposes only, Defendant does not object to a finding that the class elements are met. Marron Decl., Ex. 1 (Settlement Agreement) at § 7.1.

1. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that “the class is so numerous that joinder of

² The Settlement Agreement defines the Class as: “All persons who purchased, on or after April 4, 2010, Defendant’s Dieter’s Green Herbal Tea, Ultra-Slim Herbal Tea, and/or Super Slimming Herbal Tea Products, in all sizes and package iterations, for personal or household use during the Class Period (April 4, 2010 to the Objection Deadline, as set by the Court). Excluded from the Class are Triple Leaf, its employees, parents, subsidiaries, affiliates, officers and directors, and those who purchased the Products for resale.” Marron Decl., Ex. 1 (Settlement Agreement) at § 7.1.

all members is impracticable.” “Where the exact size of the class is unknown, but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.” *In re Abbott Labs. Norvir Anti-Trust Litig.*, Nos. C 04-1511 CW, C 04-4203 CW, 2007 WL 1689899, at *6 (N.D. Cal. June 11, 2007) (internal citations and quotations omitted). Generally, classes of forty or more are sufficiently numerous. *Harris v. Palm Springs Alpine Estates*, 329 F.2d 909 (9th Cir. 1964). Here, Plaintiff seeks to certify a class of nationwide purchasers of three of Defendant’s diet tea Products, which are sold in numerous retail stores throughout the United States. The proposed Settlement Class potentially consists of tens of thousands of claimants, which can reasonably be inferred from Defendant’s sales volume. *See id.* Therefore, the Class is sufficiently numerous such that joinder of all individual claimants would be impracticable. *See Fed. R. Civ. P. 23(a)(1).*

2. Commonality

Rule 23(a)(2) requires “questions of law or fact common to the class.” “All questions of fact and law need not be common . . . The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.” *Hanlon*, 150 F.3d at 1019. “In the Ninth Circuit, the requirements of Rule 23(a)(2) are construed ‘permissively.’” *Quintero v. Mulberry Thai Silks, Inc.*, No. C 08-02294 MHP, 2008 WL 4666395, at *3 (N.D. Cal. Oct. 21, 2008) (quoting *Hanlon*, 150 F.3d at 1019). In addition, all class members must “have suffered the same injury.” *Wal-Mart Store, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon* (“*Falcon*”), 457 U.S. 147, 157 (1982)). In the context of claims for false or deceptive advertising, there is essentially a single misrepresentation (the product is effective for a health problem) and a single injury (loss of money for a product that did not work as represented). *See Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 589 (C.D. Cal. 2011).

Here, Defendant made uniform representations on the Products’ labeling and packaging, as well as Defendant’s websites, as to the Products’ dietary and health-related properties. The labeling was uniform throughout the United States, and did not differentiate for any specific market or region. Lam Decl. ¶ 5. Class Members therefore share a common injury because they were all exposed to the same representations on each Product. *See id.* The Class is also limited to purchasers of the Products. Marron Decl., Ex. 1 (Settlement Agreement) at § 7.1. Thus, all potential Class Members were

necessarily exposed to Defendant's uniform advertisements at the time of purchase and had the same reason for purchasing the Products – to assist with dieting or to relieve a health symptom. *See Delarosa*, 275 F.R.D. at 589. This action, therefore, presents common questions of law or fact concerning whether Defendant made false or deceptive representations about their Products, and determination of whether the representations were true or deceptive would resolve all claims “in one stroke.” *Dukes*, 131 S.Ct. at 2551.³

3. Typicality

Rule 23(a)(3) sets a “permissive standard,” and the named Plaintiff's claims are typical of the class if they are “reasonably co-extensive with those of absent class members.” *Hanlon*, 150 F.3d at 1020. Also, the representative plaintiff must be a member of the class they seek to represent. *Falcon*, 457 U.S. at 156. Here, the proposed Class Representative has claims typical to the Class and is a member of the Class she seeks to represent. Ms. Johnson sought out Defendant's Products based on the representations the Products were effective for diet, weight loss, and/or health benefits, and suffered the same injury in fact – loss of money in the amount of the purchase price – when the Products were not effective as advertised. *See* Dkt. No. 1 (Complaint) ¶¶ 9, 21, 23, 25-34. All purchasers and Class Members were exposed to Defendant's representations about the Products because the labels, packaging, and websites are the same throughout the United States. *See id.*; *see* Lam Decl. ¶ 5. Since absent Class Members' claims need not be “substantially identical,” the inclusion of other Products not necessarily purchased by Plaintiff still presents factual claims that are “reasonably co-extensive” to the Class Representative's claims because the fundamental basis for all the claims is the alleged false or misleading claims about the Products' dietary and health-related capabilities. *See Hanlon*, 150 F.3d at 1020; *Gallucci v. Boiron, Inc.*, No. 11CV2039 JAH NLS, 2012 WL 5359485, at *8-9 (S.D. Cal. Oct. 31, 2012).

4. Adequacy of Representation

Rule 23(a)(4) requires that the Class Representative parties “fairly and adequately represent the

³ This case does not pose commonality problems that might arise in an employment class action, where a defendant supervisor may have subjected different plaintiffs to disparate, discriminatory treatment. *See Dukes*, 131 S.Ct. at 2554 (noting commonality could be proven where there was “a uniform employment practice”); *In re Ferrero Litig.*, No. 11-CV-205 H(CAB), 2011 WL 5557407, at *3-4 (S.D. Cal. Nov. 14, 2011).

1 interests of the class.” There are two issues to be resolved for adequacy: (1) whether the Class
 2 Representatives have interests that conflict with the proposed Class; and (2) the qualifications and
 3 competency of proposed Class Counsel. *In re Live Concert Antitrust Litig.*, 247 F.R.D. 98, 118 (C.D.
 4 Cal. 2007). Regarding qualifications of proposed Class Counsel, the Court should analyze “(i) the
 5 work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s
 6 experience in handling class actions, other complex litigation, and the types of claims asserted in the
 7 action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit
 8 to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

9 Here, Plaintiff does not have interests that conflict with the proposed Settlement Class.
 10 Plaintiff and the Class purchased the Products, believing the representations that they were effective
 11 for the dietary and health-related claims made on the Products’ packaging and lost money as a result
 12 when the Products were not as advertised. Moreover, the packaging of each Product is the same
 13 throughout the United States. Lam Decl. ¶ 5.

14 Plaintiff’s counsel is also adequate, drafting a Complaint with five potential causes of action.
 15 See Dkt. No. 1. Further, Plaintiff’s counsel performed extensive work to date in successfully
 16 mediating and negotiating the proposed Settlement over the course of approximately one year. Marron
 17 Decl. ¶¶ 3-11. Plaintiff’s counsel has numerous years’ experience, and demonstrated success, in
 18 bringing the same types of false labeling claims at issue in this action. *Id.* ¶¶ 15-31, Ex. 3. In
 19 particular, Plaintiff’s counsel has specialized experience and expertise with respect to the FDCA and
 20 dietary supplements. *Id.* This action involves a complex statute (FDCA), its implementing
 21 regulations, common law theories, and California’s statutory requirements for bringing CLRA, UCL,
 22 and FAL actions. Proposed Class Counsel are competent, qualified, and will more than adequately
 23 protect the Class’ interests. Accordingly, Plaintiff requests the Court order that Plaintiff’s counsel
 24 shall be Class Counsel pursuant to Rule 23(g)(1) (requiring a certified class to also have appointed
 25 class counsel). See Marron Decl. ¶¶ 3-6, 9-11, 15-31, Ex. 3.

1 **5. The Proposed Class Meets the Requirements of Rule 23(b)(2)⁴**

2 Certification under Rule 23(b)(2) is appropriate where a defendant has acted on “grounds that
3 apply generally to the class, so that final injunctive relief or corresponding declaratory relief is
4 appropriate respecting the class as a whole.” “A class seeking monetary damages may be certified
5 pursuant to Rule 23(b)(2) where [monetary] relief is ‘merely incidental to [the] primary claim for
6 injunctive relief.’” *Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (citing *Probe*
7 *v. State Teachers' Ret. Sys.*, 780 F.2d 776, 780 (9th Cir. 1986)).

8 Plaintiff’s claims for restitution are “incidental” to the Complaint’s primary claims for various
9 forms of injunctive relief. *Dukes*, 131 S.Ct. at 2557. Plaintiff’s primary claims under the CLRA were
10 for injunctive relief, and the UCL and FAL are primarily equitable remedy statutes. *See* Dkt. No. 1; *In*
11 *re Tobacco II Cases*, 46 Cal. App. 4th at 320. Plaintiff and the Class’ claims for restitution were
12 secondary in that any compensation would have flowed directly out of Defendant’s misrepresentations
13 or omissions. *See Dukes*, 131 S.Ct. at 2559 (stating that damages are incidental when they “flow
14 directly from liability to the class as a whole on the claims forming the basis of the injunctive or
15 declaratory relief.”) (citing *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir. 1998)).
16 Plaintiff’s basis for seeking disclaimers on the Products also flow directly from the basis of
17 Defendant’s liability to the Class as a whole: the Products’ allegedly false and deceptive marketing.

18 Further, if Defendant’s labeling conduct was unlawful as to one Plaintiff, it was unlawful as to
19 the entire Class. *Id.* at 2557 (stating Rule 23(b)(2) injunctive relief is appropriate when defendant’s
20 conduct is unlawful “as to all of the class members” and applies “when a single injunction or
21 declaratory judgment would provide relief to each member of the class,” thereby benefitting each Class
22 Member equally). Here, the multiple forms of injunctive relief agreed to between the Parties, in the
23 form of consumer disclaimers, corrective advertising and labeling, and removal of potentially harmful
24 ingredients will afford relief to each Member of the Class and benefit the Class equally. This Court
25 should, therefore, certify the Class under Rule 23(b)(2) (and Rule 23(b)(3)) for settlement purposes.
26 For settlement purposes only, Defendant does not object to a finding that the class should be certified

27
28 ⁴ The Settlement requires that the Class will be certified under Rule 23(b)(2) and Rule 23(b)(3), or
solely under Rule 23(b)(3). In the Ninth Circuit, a class may be certified under both Rules 23(b)(2)
and 23(b)(3). *Smith v. Univ. , of Wash. Law Sch.*, 233 F.3d 1188, 1196 (9th Cir. 2000).

under Rule 23(b)(2) (and Rule 23(b)(3)). Marron Decl. Ex. 1 (Settlement Agreement) at § 7.1.

6. The Proposed Class Meets the Requirements of Rule 23(b)(3)

Certification under Rule 23(b)(3) is appropriate “whenever the actual interests of the parties can be served best by settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022 (quoting 7A C.A. Wright, A.R. Miller, & M. Kane, Federal Practice & Procedure §1777 (2d ed. 1986)). Certification under Rule 23(b)(3) requires: (A) questions of law or fact common to the class predominate over questions affecting only individual members; and (B) a class action is superior to resolution by other available means. Fed. R. Civ. P. 23(b)(3); *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010). For settlement purposes only, Defendant does not object to a finding that the class should be certified under Rule 23(b)(3). Marron Decl., Ex. 1 (Settlement Agreement) at § 7.1.

The predominance test is satisfied when common questions “present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication.” *Hanlon*, 150 F.3d at 1022. The predominance requirement “does not require that all questions of law or fact be common; it only requires that the common questions predominate over individual questions.” *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y. 1981).

Here, Plaintiff would have to prove that the Products’ labeling is false and deceptive before any remedy at all can be achieved. *See* Cal. Civ. Code 1750; Cal. Bus. & Prof. Code §§ 17200, 17500. Thus, the central issue for every Class Member is whether the alleged misrepresentations made on the Products’ packaging and/or Defendant’s websites were likely to deceive a reasonable consumer. *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009). Under these circumstances, there is sufficient basis to find that the common question – whether Defendant’s advertising was likely to deceive a reasonable consumer – predominates. *See Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 669 (C.D. Cal. 2009) (predominance satisfied when alleged misrepresentation of product’s health benefits were displayed on every package); *In re Steroid Hormone Prod. Cases*, 181 Cal. App. 4th 145, 159-160 (Ct. App. 2010) (citing *Tobacco II* and holding that “relief under the UCL is available without individualized proof of deception, reliance and injury,” and reliance for the CLRA may be presumed classwide where a misrepresentation was material).

Class treatment is also the superior means to adjudicate Plaintiff's claims. For superiority, the Court should consider: "(1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; and (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum." *True*, 749 F. Supp. 2d at 1062; *see also id.* at 1066 (finding superiority met where nationwide advertising was uniform and classwide reliance on the advertising was presumed). A fourth factor – the difficulties of managing the class action – is not considered when certification is used only for settlement. *Id.* at n.12. There are no other, duplicative class action cases against Defendant as of the date of this filing. Nevertheless, should a case arise, resolving these claims in one proceeding will preserve efficiency for the parties and judicial economy. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980). Continued litigation without class certification could potentially "dwarf potential recovery." *Hanlon*, 150 F.3d at 1023.

C. The Court Should Grant Preliminary Approval of the Proposed Settlement

1. The Settlement was Reached at Arms' Length

"A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005). Moreover, if the terms of the settlement are fair, courts generally assume the negotiations were proper. *See In re GM Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785-86 (3d Cir. 1995).

Here, the settlement negotiations took place between counsel for the Parties and involved the services of a competent, experienced, and independent mediator, the Honorable Ronald M. Sabraw (Ret.) of JAMS. Marron Decl. ¶ 7; Polk Decl. ¶ 6. Plaintiff had an independent law firm – The Law Offices of Ronald A. Marron, APLC – representing her interests and the interests of the putative Class; Defendant is represented by Gordon & Rees LLP. The fact that the Settlement was prompted by an experienced mediator – a retired judge – is one factor that demonstrates the Settlement was anything but collusive. *See, e.g., Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428 MHP, 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007) ("The assistance of an experienced mediator in the settlement process

confirms that the settlement is non-collusive.”). The initial Case Management Conference session with Magistrate Judge Chesney was followed by months of detailed and adversarial negotiations between the Parties, who eventually enlisted the services of an impartial mediator, the Honorable Ronald M. Sabraw (Ret.), with overall negotiations lasting nearly one year before the Settlement Agreement was finalized. Marron Decl. ¶¶ 3-8; Polk Decl. ¶¶ 5-9.

2. The Settlement has no Obvious Deficiencies and does not Improperly Grant Preferential Treatment to the Class Representative or Segments of the Class

The Settlement Agreement provides the same relief to all Class Members, including the Class Representative. Marron Decl., Ex. 1 (Settlement Agreement) at §§ 4.1-4.2. All Class Members will benefit equally from the labeling and website changes Defendant has agreed to undertake.

The Settlement Agreement grants the Representative Plaintiff the right to apply to the Court for an incentive award. *Id.* § 9.1. The amount of any award is within the Court’s discretion and, thus, will not be unreasonable in light of the Representative Plaintiff’s role in this case. Indeed, “[i]t is appropriate for courts to award enhancements to representative plaintiffs who undertake the risk of personal or financial harm as a result of litigation. Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit . . .” *Misra v. Decision One Mortg., Co.*, 2009 WL 4581276, at *8 (C.D. Cal. Apr. 13, 2009); *see also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992). Accordingly, the Settlement Agreement does not give preferential treatment to the Class Representative.

3. The Proposed Settlement is Fundamentally Fair, Reasonable, and Adequate

Under Federal Rule of Civil Procedure 23(e), the district court must determine whether the proposed settlement is “fundamentally fair, adequate, and reasonable.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The Ninth Circuit has established several factors that should be weighed when assessing whether a proposed settlement is fair, adequate, and reasonable: (1) the strength of Plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience

1 and views of counsel; and (7) the reaction of the class members to the proposed settlement.⁵ *Hanlon*,
 2 150 F.3d at 1026. “Given that some of these factors cannot be fully assessed until the court conducts
 3 its fairness hearing, a full fairness analysis is unnecessary at [the preliminary approval] stage . . .”
 4 *West v. Circle K Stores*, 2006 WL 1652598, at *9 (E.D. Cal. June 13, 2006). Even though the Court
 5 need not, at this stage, assess the final approval factors, a review of those factors shows that the
 6 Settlement Agreement merits preliminary approval.

7 *i. The Strength of Plaintiff’s Case*

8 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court
 9 cannot and need not determine the merits of the contested facts and legal issues at this stage, and to the
 10 extent courts assess this factor, it is to determine whether the decision to settle is a good value for a
 11 relatively weak case or a sell-out of an extraordinary strong case.” *Misra*, 2009 WL 4581276, at *7.
 12 In this case, Plaintiff is confident in the strength of her claims. Based on extensive investigation and
 13 discovery, Plaintiff believes that she could obtain class certification, defeat all dispositive motions filed
 14 by Defendant, and proceed to a trial on the merits. Plaintiff further believes that at trial she could meet
 15 her burden, including, without limitation, demonstrating the Products do not work or that their labels
 16 were deceptive. Nevertheless, Plaintiff recognizes Defendant has factual and legal defenses that, if
 17 successful, could potentially defeat or substantially impair the value of Plaintiff’s claims. For
 18 example, Plaintiff might not be able to: (1) satisfy her burden of demonstrating that the Products are
 19 ineffective for everyone, as necessary for a warranty cause of action; (2) overcome the fact that certain
 20 claims may be preempted; or (3) retain class certification through trial. “The Settlement eliminates
 21 these and other risks of continued litigation, including the very real risk of no recovery after several
 22 years of litigation.” *In re Nvidia Derivs. Litig.*, No. C-06-06110-SBA (JCS), 2008 WL 5382544, at *3
 23 (N.D. Cal. Dec. 22, 2008).

24 *ii. Complexity, Expense, and Probable Length of Litigation*

25 Plaintiff’s claims involve complex issues under the FDCA and the Products’ claimed efficacy.
 26 The costs and risks associated with continuing to litigate this action would require extensive resources
 27 and Court time, such as expert testimony and *Daubert* motions. “Avoiding such a trial and the

28 ⁵ Another factor identified by the court was the presence of a governmental participant. As there are
 no governmental parties to this action, this factor is neutral in this case.

subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” *Nat’l Rural Telecomms. Coop v. DirecTV*, 221 F.R.D. 523, 527 (C.D. Cal. 2004). Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Id.* at 526.

iii. *The Risks of Maintaining Class Action Status Throughout Trial*

While Plaintiff strongly believes that class treatment is appropriate for all reasons discussed herein, there is a genuine risk that Plaintiff will not be able to maintain class action status through trial. Other than consenting to class certification for the purposes of settlement only, Defendant would vigorously oppose class certification. *See* Marron Decl., Ex. 1 (Settlement Agreement) at § 12.4. And, even if the Class were certified, Defendant might seek decertification or modification of the Class. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2007); *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009). In contrast, by settling the action, Defendant effectively accedes to certification and “there is much less risk of anyone who may have actually been injured going away empty-handed.” *In re Omnivision Techs.*, 559 F. Supp. 2d at 1041-42. Accordingly, this factor weighs in favor of preliminary approval.

iv. *Amount of Recovery*

Defendant agreed to pay the cost of Notice to the Class, and reasonable attorneys’ fees and costs, subject to Court approval. Marron Decl., Ex. 1 (Settlement Agreement) at §§ 5.1-5.3, 9.1-9.2. “An agreed upon award of attorneys’ fees and expenses is proper in a class action settlement, so long as the amount of the fee is reasonable under the circumstances.” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007) (“In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by . . . agreement of the parties” (citing Fed. R. Civ. P. 23(h))). “In fact, courts have encouraged litigants to resolve fee issues by agreement, if possible.” *Id.* (citing *Lobatz v. U.S. W. Cellular, Inc.*, 222 F.3d 1142, 1149–50 (9th Cir. 2000) and *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (upholding district court’s award of attorneys’ fees where Court had approved attorneys’ fees and costs of \$5.2 million which were negotiated after final settlement was achieved)).

The cost to Defendant of repackaging its labeling is substantial and should not be

underestimated. Lam Decl. ¶ 7. *See also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000); *Jaffe v. Morgan Stanley & Co.*, No. C 06-3903 TEH, 2008 WL 346417, at *9 (N.D. Cal. Feb. 7, 2008) (“The settlement amount could undoubtedly be greater, but it is not obviously deficient, and a sizeable discount is to be expected in exchange for avoiding the uncertainties, risks, and costs that come with litigating a case to trial.”). “Courts must tread cautiously when comparing the amount of a settlement to speculative figures regarding what damages might have been won had [plaintiffs] prevailed at trial. Indeed, the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.” *White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086, 1098 (2011) (internal citations and quotations omitted).

Further, the injunctive relief provided for in the Settlement cannot be overlooked. It will address the harm allegedly caused to consumers and provides Plaintiff with the relief she most desires – a change in the Products’ labeling. The FTC has recognized that the “most effective front-line defense” for fraudulent weight advertising should be to remove the advertising from the marketplace. Marron Decl., Ex. 2. The value of this substantive and widespread change to Defendant’s practices cannot be overstated. *See id.*; *Riker v. Gibbons*, No. 3:08-cv-00115-LRH-VPC, 2010 WL 4366012, at *4 (D. Nev. Oct. 27, 2010) (approving a settlement for injunctive and declaratory relief, finding that it “achieve[d] the goals of the lawsuit”).

v. The Extent of Discovery Completed and the Stage of the Proceedings

“[I]n the context of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have sufficient information to make an informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998) (citation and internal quotations omitted). This is especially true “where there has been sufficient information sharing and cooperation in providing access to necessary data[.]” *Misra*, 2009 WL 4581276, at *8; *see also Taifa v. Bayh*, 846 F. Supp. 723, 728 (N.D. Ind. 1994) (same). Plaintiff engaged in substantial informal discovery and negotiations, reviewing Defendant’s financial information, marketing literature and websites, FDCA and Sherman Law rules and regulations, plus the Products’ labeling and packaging, before and after injunctive relief changes were agreed upon. Marron Decl. ¶¶ 3-11. Plaintiff’s counsel also reviewed FDA guidance documents on dietary supplements, FTC standards,

1 and background evidence relating to the Products' claims. *Id.* at ¶ 10. Thus, the Parties had sufficient
 2 information to make an informed decision about the terms of the Settlement Agreement. *Id.* at ¶¶ 3-12.

3 *vi. The Experience and Views of Counsel*

4 In contemplating the preliminary approval of a proposed settlement, "[t]he recommendations of
 5 plaintiffs' counsel should be given a presumption of reasonableness." *Knight*, 2009 WL 248367, at *4
 6 (citing *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)); *see also Nat'l Rural*
 7 *Telecomms. Coop.*, 221 F.R.D. at 528 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).
 8 "Parties represented by competent counsel are better positioned than courts to produce a settlement that
 9 fairly reflects each party's expected outcome in litigation." *In re Pacific Enters. Secs. Litig.*, 47 F.3d at
 10 378. Thus, "the Court should not without good cause substitute its judgment for [counsel's]." *Boyd*,
 11 485 F. Supp. at 622. Here, "[i]n addition to being familiar with the present dispute, Plaintiff[s']
 12 counsel has considerable expertise in . . . consumer and class action litigation." *Knight*, 2009 WL
 13 248367, at *4; Marron Decl. ¶¶ 15-32, Ex. 3; Polk Decl. ¶¶ 8-11. There is also nothing to counter the
 14 presumption that counsel's recommendation concerning settlement is reasonable. *See* Marron Decl. ¶
 15 12; Polk Decl. ¶¶ 8-11.

16 *vii. The Reaction of the Class Members to the Proposed Settlement*

17 At the preliminary approval stage, the reaction of the class to the proposed settlement is not
 18 known because notice has not yet been distributed. As such, this factor is not as meaningful a
 19 consideration as it may be at the fairness hearing, where Class Members will have had a chance to
 20 object to the proposed settlement.

21 **D. The Proposed Form of Class Notice and Notice Plan Satisfy the Requirements of Rule 23**

22 If the Court's *prima facie* review of the relief offered and notice provided by the settlement are
 23 fair and adequate, it should order that notice be sent to the class. Manual for Complex Litig., § 21.632
 24 at 321. Notice of a class action settlement must be "the best notice practicable under the
 25 circumstances, including individual notice to all members who can be identified through reasonable
 26 effort." Fed. R. Civ. P. 23(c)(2)(B). Here, Defendant does not sell its Products directly to consumers,
 27 but only to third party retailers and distributors, who sell the Products on store shelves. Thus,
 28 individual notice is not possible; and notice by publication is the "best notice practicable under the

1 circumstances.” *See id.*

2 The proposed Notice and Notice Plan are adequate, constituting the best possible notice under
 3 the circumstances. *See* Marron Decl., Ex. 1 (Settlement Agreement) at Exs. A-B, D. The Notices are
 4 neutral, and written in an easy-to-understand clear language, giving consumers (1) basic information
 5 about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of
 6 how Class Members can exercise their right to object to the settlement; (4) an explanation that any
 7 claims against Defendant that could have been litigated in this action will be released; (5) the names of
 8 counsel for the Class and information regarding attorney’s fees and incentive awards; (6) the fairness
 9 hearing date, along with an explanation of eligibility for appearing; and (7) the settlement web site
 10 where additional information, including Spanish translations of all notices. *Id.*; *see also id.* § 5.4.1.
 11 The Notices are also eye-catching, and mirror the exemplar notices set forth in the Federal Judicial
 12 Center, Judges’ Class Action Notice and Claims Process Checklist (2010).

13 The Notice Plan involves (1) creation of a dedicated Settlement Website, with online claims
 14 form submission, posted documents regarding the case, and a downloadable claim form; (2) a toll-free
 15 number that potential Class Members may use to obtain further information, which is available 24-
 16 hours a day for 6 months; (3) 60 days of online banner advertising on Google Display Network (10
 17 million impressions), which includes national outlets such as USAToday.com, Time.com,
 18 USNews.com, and regional outlets such as LATimes.com, CBS2.com, FresnoBee.com,
 19 Fox5SanDiego.com, and targeted websites such as WebMD.com and MensHealth.com; (4) 60 days of
 20 Facebook online banner advertising (5 million impressions); (5) local publication in the *San Francisco*
 21 *Examiner*, 1/6 page size, 4 insertions, sufficient to meet CLRA requirements; and (5) national news
 22 media publication in *USA Today* (Mon.-Thurs., 2 insertions, circulation of 1.7 million). Settlement
 23 Agreement, Ex. D.

24 The online advertising efforts are estimated to generate 15 million impressions, meaning the
 25 number of times a person will be exposed to the banner notice. *See id.* The Summary Notice will be
 26 targeted to publications and websites that consumers of the Products are likely to read, and will direct
 27 consumers to the Settlement Website for more information. *See id.*; Settlement Agreement, Ex. B.

28 The Parties have selected a qualified third-party Class Action Administrator with particular

expertise in targeted online notice, KCC to disseminate the notice and process claims. *See id.*, Ex. D. In light of the foregoing, the Court should approve the form of Notice, the manner of notice in the Notice Plan, and the chosen Claims Administrator.

E. The Proposed Timeline for Events Should be Adopted

Event	Date
Preliminary Approval Granted	Day 1
Class Settlement Website Activated	On or before Day 15 or as soon as reasonably possible after Order Granting Preliminary Approval
Notice First Published in Print Sources	Day 30 or as soon as reasonably possible after Order Granting Preliminary Approval
Class Counsel to File Motion for Attorney's Fees and Costs and Incentive Award	45 days before Final Approval Hearing
Last Day to Postmark or Submit Objection Online	30 days before Final Approval Hearing
Parties to File Motion for Final Approval	21 days before Final Approval Hearing
Final Approval Hearing	As set by the Court (preferably 120 days after Order Granting Preliminary Approval is entered)

Accordingly, the Parties request the Court schedule the Final Approval Hearing 120 days after the order granting preliminary approval, or as soon thereafter as practical.

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IV. **CONCLUSION**

For the foregoing reasons, the Parties jointly respectfully request this Court grant the relief requested.

Dated: May 15, 2015

Respectfully submitted,

/s/ Ronald A. Marron

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Dated: May 15, 2015

GORDON & REES LLP

/s/ Ryan B. Polk

RYAN B POLK

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* Counsel for Plaintiff, Ronald A. Marron, attests that, pursuant to Local Rule 5-1(i), Defendant's counsel, Ryan B. Polk, has reviewed the contents of this Joint Motion for Preliminary Approval of Settlement and authorized placement of his electronic signature on this document. Counsel for Plaintiff further attests that they has on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/s/) within this e-filed document.

LAW OFFICE OF RONALD A. MARRON, APLC

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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf
of all others similarly situated, and the general
public,

Plaintiff,

v.

TRIPLE LEAF TEA, INC.,

Defendant.

Case No. 3:14-cv-01570 MMC
CLASS ACTION

**DECLARATION OF RONALD A. MARRON IN
SUPPORT OF JOINT MOTION FOR AN
ORDER (1) GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, (2) CERTIFYING
SETTLEMENT CLASS, (3) APPOINTING
CLASS REPRESENTATIVES AND CLASS
COUNSEL, (4) APPROVING NOTICE PLAN,
AND (5) SETTING FINAL APPROVAL
HEARING**

Judge: Hon. Maxine M. Chesney
Date/Time: June 19, 2015 at 9:00 a.m.
Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014
Trial Date: Not Assigned

Johnson v. Triple Leaf Tea, Inc., 3:14-cv-01570 MMC

DECLARATION OF RONALD A. MARRON IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

1 I, Ronald A. Marron, declare:

2 1. I am counsel of record for Plaintiff and the putative class in this action. I am a member in
3 good standing of the State Bar of California and the United States District Courts for the Northern,
4 Central, Eastern, and Southern Districts of California; and of the United States Court of Appeals for the
5 Ninth Circuit. I submit this declaration in support of an Order (1) Granting Preliminary Approval of the
6 Class Action Settlement, (2) Certifying the Settlement Class, (3) Appointing Eunice Johnson as Class
7 Representative and the Law Offices of Ronald A. Marron, APLC as Class Counsel, (4) Approving the
8 Notice Plan, and (5) Setting the Final Approval Hearing. I make this Declaration based on personal
9 knowledge and if called to testify, I could and would competently testify to the matters contained herein.

10 2. Attached hereto as **Exhibit 1** is a true and correct copy of the final Settlement Agreement
11 between the Parties, including exhibits thereto. Attached hereto as **Exhibit 2** is a true and correct copy
12 of the Federal Trade Commission Letter issued in January 2013 to send to media outlets in support of
13 their campaign entitled “Gut Check,” which aims to curb fraudulent weight loss products through
14 consumer education and removing false advertising from the marketplace. Attached hereto as **Exhibit 3**
15 is a true and correct copy of my current firm resume.

16 3. On February 21, 2014, Plaintiff sent notice to Defendant of its alleged violations of
17 California’s Consumer Legal Remedies Act (CLRA), demanding that Defendant destroy all alleged false
18 and deceptive advertising with respect to its Ultra-Slim Tea, Super-Slimming Tea, and Dieter’s Green
19 Tea and engage in a corrective advertising campaign. Defendant, through its attorneys of record,
20 responded to Plaintiff’s CLRA notice letter on March 26, 2014, denying all of Plaintiff’s allegations as
21 factually and legally without merit and reserving all of its right and remedies should Plaintiff file suit.

22 4. On April 4, 2014, Plaintiff filed suit against Defendant in the United States District Court
23 for the Northern District of California. *See* Dkt. 1. Although the initial Case Management Conference
24 was originally scheduled for July 28, 2014, Defendant filed a Motion to Dismiss that suspended the
25 conference. *See* Dkt. 27. The Court ruled on Defendant’s Motion to Dismiss on September 23, 2014,
26 denying Defendant’s Motion in its entirety. *See* Dkt. 33. The Parties eventually held their Case
27 Management Conference before Magistrate Judge Maxine Chesney on October 31, 2014. *See* Dkt. 41.

28 5. At the Case Management Conference, the Parties, through their counsel of record,

1 thoroughly discussed each contention identified in the Parties' respective statements. We agreed to
2 private mediation that the Court ordered to be conducted within 120 days of the conference. *See* Dkt.
3 No. 41. Immediately following the conference, we personally served on Defendant Plaintiff's First Set
4 of Interrogatories, Request for Production, and Request for Admissions.

5 We disagreed, however, on the scope and extent of discovery. Defendant's counsel resisted
6 discovery pending mediation; however, we explained that we could not undertake due diligence in
7 evaluating the case without obtaining such discovery. In order for any meaningful settlement
8 discussions to take place, we would need sufficient information. An important issue raised by
9 Defendant during the conference was its financial position.

10 6. On November 25, 2014, we sent an email identifying the targeted discovery questions in
11 preparation for mediation. These questions requested information concerning Defendant's sales
12 information, operating costs, and profits and losses. In December 2014, Triple Leaf produced and
13 Plaintiff reviewed substantial documentary evidence, including profit and loss statements and financial
14 statements for 2010 through 2014, plus gross and net sales for each of the Products referenced in the
15 complaint, comprising over 1,500 documents.

16 7. On February 3, 2015, attorneys from my firm and Triple Leaf's counsel attended
17 mediation before the Honorable Ronald M. Sabraw (Ret.) of JAMS. Representatives from Triple Leaf
18 attended the mediation and Plaintiff was on telephonic standby. Before the mediation occurred,
19 Plaintiff's counsel engaged in pre-mediation conference calls with Ms. Johnson.

20 8. Following the mediation on February 2, 2015, the Parties managed to establish a
21 framework for settlement, but still needed to work out the material terms and details of a final
22 memorialized agreement. The Parties diligently negotiated over the course of February through May
23 2015 to resolve those differences, ultimately leading to the formal Settlement Agreement for which the
24 Parties now seek preliminary approval. *See* **Ex. 1** to this Decl. (Settlement Agreement or "Agreement").

25 9. Attorneys at my firm performed a detailed review and approval of precise labeling claims
26 for all of the packages of the Products, throughout the pendency of this case.

27 10. In addition, for purposes of settlement or litigation, whichever was going to be necessary,
28 my firm conducted a detailed and comprehensive review of FDA guidance documents regarding dietary

1 supplements; the Food, Drug and Cosmetic Act (located at 21 U.S.C. §§ 301, *et seq.*) and its
 2 implementing regulations (located at 21 C.F.R. §§ 1.1, *et seq.*) (collectively, “FDCA”); the FDCA’s
 3 numerous changes over the years; Federal Trade Commission advertising standards and their
 4 applicability to the Products’ labeling claims at issue here; and the California Sherman Food, Drug and
 5 Cosmetic Law (Cal. Health & Safety Code §§ 109875, *et seq.*). Further, based on my many years of
 6 experience negotiating notice and claims plans with various claims administrators across the United
 7 States, coupled with the rising cost of advertising, implementing a claims-based settlement program
 8 routinely costs in excess of \$250,000.

9 11. My firm also propounded a broad range of formal discovery on Triple Leaf, diligently
 10 prepared Plaintiff’s claims, and analyzed Triple Leaf’s defenses in this action. Based on this diligent
 11 effort of counsel, Plaintiff’s counsel was aware of the attendant strengths, risks, and uncertainties of
 12 Plaintiff’s claims and Triple Leaf’s defenses during the course of negotiations.

13 12. The Settlement Agreement is the product of vigorous, adversarial, and competent
 14 representation of the Parties and substantive negotiations throughout the pendency of this litigation;
 15 early contact between counsel for the Parties to commence a dialog about the merits and the risks of the
 16 claims and defenses; substantive negotiations throughout the pendency of the litigation; and the
 17 assistance of an independent, impartial mediator, the Ronald M. Sabraw (Ret.) of JAMS, as well as
 18 through the assistance of Magistrate Judge Chesney. Plaintiffs and their counsel are confident that the
 19 Settlement Agreement and broad injunctive relief agreed upon demonstrates a more than fair,
 20 reasonable, and adequate result, and that the proposed Settlement merits preliminary approval.

21 13. In regard to injunctive relief, Defendant’s packaging of each Product is the same
 22 throughout the United States: Defendant made uniform representations about the weight loss or health
 23 properties of the Products on the Products’ labeling and advertising throughout the United States, and
 24 did not differentiate for any specific market or region.

25 **Ronald A. Marron Firm’s Qualifications and Experience Prosecuting Consumer Class**

26 **Action Lawsuits**

27 14. My work experience and education began in 1984 when I enlisted in the United States
 28 Marine Corps (Active Duty 1984-1988, Reserves 1988-1990) and thereafter received my Bachelor of

1 Science in Finance from the University of Southern California (1991). While attending Southwestern
 2 University School of Law (1992-1994), I also studied Biology and Chemistry at the University of
 3 Southern California and interned at the California Department of Corporations with emphasis in
 4 consumer complaints and fraud investigations. I was admitted to the State Bar of California in January
 5 of 1995 and have been a member in good standing since that time. In 1998, I started my own law firm
 6 with an emphasis in consumer fraud. My firm currently employs five full-time attorneys, two law
 7 clerks, three paralegals, and support staff.

8 15. Over the years I have acquired extensive experience in class actions and other complex
 9 litigation and have obtained large settlements as lead counsel. In recent years, I devoted almost all of
 10 my practice to the area of false and misleading labeling of food, dietary supplements and over-the-
 11 counter (“OTC”) products.

12 16. My firm has an in-depth knowledge of litigating OTC product cases, including the
 13 FDCA’s history, principles and regulation. For example, in *Gallucci v. Boiron, Inc.*, Case No. 3:11-CV-
 14 2039 JAH NLS (S. D. Cal.), we drafted a Complaint with five potential causes of action, and claims
 15 under the CLRA, UCL and FAL with respect to OTC homeopathic drugs which “concern[ed] novel
 16 legal theories in a specialized area of law.” *See Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 590 n. 4 (C.D.
 17 Cal. 2011). This action involved extensive motion practice and my firm’s opposition brief was so
 18 persuasive that defendants decided to withdraw their motion. My firm’s well-drafted briefing,
 19 knowledge and experience resulted in a \$5 million common fund plus injunctive relief settlement of
 20 *Gallucci* against French homeopathic giant, Boiron, Inc. On April 25, 2012, the Honorable John A.
 21 Houston granted preliminary approval, noting that:

22 During the pendency of the Litigation, Class Counsel conducted an extensive
 23 examination and evaluation of the relevant facts and law to assess the merits of
 24 the named plaintiffs’ and class claims to determine how best to serve the interests
 25 of Plaintiffs and the Class. . . . Class Counsel conducted thorough review of the
 26 Food, Drug and Cosmetic Act, its numerous changes over the years, and the Act’s
 27 implementing regulations. Class Counsel have carefully considered the merits of
 28 Plaintiffs’ claims, and the defenses raised by defendants. *Gallucci* Dkt. No. 89 at
 i.

17. Accordingly, Judge Houston appointed my firm as Class Counsel, finding that Class
 Counsel “will fairly and adequately protect the interests of the Class . . . [and] are experienced and

competent to prosecute this matter on behalf of the Class.” *Id.* at iii-iv. The Fairness Hearing was held on October 1, 2012 and on October 31, 2012, the court granted final approval. *See Gallucci v. Boiron, Inc.*, 2012 U.S. Dist. LEXIS 157039 (S.D. Cal. Oct. 31, 2012).

18. In addition to the present action, my firm is litigating numerous other cases involving OTC products, such as drugs, cosmetics, diet products, and dietary supplements:

- *Allen v. Hyland’s, Inc.*, Case No. 2:12-cv-1150 DMG (MANx) (C.D. Cal.) (OTC drugs)
- *Allen v. Similasan Corp.*, Case No. 3:12-cv-376 BTM (WMC) (S.D. Cal.) (OTC drugs)
- *Allen v. Nelsons Bach USA Ltd.*, Case No. 3:12-cv-495 L (NLS_ (S.D. Cal.) (OTC drugs)
- *Bell v. Homeolab USA*, Case No. 37-2013-00064604-CU-BT-CTL (San Diego Superior Court) (OTC drugs)
- *Branca v. Iovate Health Sciences USA, Inc.*, Case No. 3:12-cv-01686 LAB (WMC) (S.D. Cal.) and its related case of *Garcia/Branca v. Iovate*, Case No. 1402915 (Santa Barbara Superior Court) (weight loss pills)
- *Dorsey v. Rockhard Labs., LLC*, 2:13-cv-07557 DDP (RZ) (C.D. Cal.) (aphrodisiac pills)
- *Nadler v. Nature’s Way Prods., LLC*, Case No. 5:13-cv-00100 TJH (OP) (C.D. Cal.) (OTC drugs)
- *Margolis v. The Dial Corp.*, Case No. 3:12-cv-288 JLS (WVG) (S.D. Cal.) (pheromone-containing cosmetics)
- *Mason v. Nature’s Innovation, Inc.*, Case No. 3:12-cv-3019 BTM (DHB) (S.D. Cal.) (OTC drugs)
- *Ortega v. Natural Balance, Inc.*, Case No. 2:13-cv-05942 ABC (Ex) (C.D. Cal.) (aphrodisiac pills)
- *Roemmich v Hylands, Inc.*, Case No. 2:12-cv-6256 GHK (MRW) (C.D. Cal.) (OTC drugs)

- *Santisteban-Cortina v. Walmart*, Case No. 13-cv-2054 JAH (DHB) (S.D. Cal.)
(dietary supplements)
- *Woodson v. Nature's Way Prods., Inc.*, 2:13-cv-06591 MMM (MANx) (C.D. Cal.)
(OTC drugs)

19. On October 31, 2013, the Honorable Gonzalo P. Curiel of the United States District Court for the Southern District of California granted preliminary approval to a class action settlement of \$1 million and injunctive relief for class wide claims of false and deceptive advertising of OTC drugs negotiated by my firm in *Mason v. Heel, Inc.*, Case No. 3:12-cv-3056 GPC (KSC) (Dkt. No. 27), also finding there was “sufficient basis . . . under the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure” to appoint my firm as Class Counsel. *Id.* at p. 5. The final approval hearing is set for March 7, 2014. *See id.*

20. On October 23, 2013, the Honorable Michael M. Anello of the United States District Court for the Southern District of California granted final approval to a \$1.2 million and injunctive relief class action settlement concerning false and deceptive advertising of OTC drugs negotiated by my firm in *Nigh v. Humphreys Pharmacal, Inc.*, Case No. 3:12-cv-02714-MMA-DHB (Dkt. No. 30), finding that “the Class was adequately represented by competent counsel.” *Id.* at p. 14.

21. On March 13, 2012, my firm settled a case against manufacturers of OTC dietary supplement products for \$900,000 in a common fund plus injunctive relief, styled *Burton v. Ganeden Biotech, Inc. et al.*, Case No. 3:11-cv-01471 W (NLS) (S.D. Cal.). Burton alleged that defendants falsely advertised their products as containing “clinically proven” proprietary bacteria that improved and benefitted the digestive and immune health of individuals when, in fact, no clinical proof existed. Before this settlement was finalized, my firm rejected defendants’ coupon settlement offer, because we did not believe it constituted the best relief for the class members. Instead, we continued extensive and lengthy rounds of negotiations with the defendants to obtain the best result for the class. These months-long negotiations included back and forth exchange of approximately twenty editions of the Settlement Agreement, multiple conference calls (including on the weekends) and e-mails. On March 14, 2012, the parties filed a Joint Motion for Preliminary Approval of Settlement, (Dkt. No. 38) which the court granted on April 16, 2012 (*Id.* at 42). After the Fairness Hearing in this case on August 21, 2012, Judge

1 Whelan granted final approval on October 5, 2012. Dkt. Nos. 48, 52.

2 22. On March 1, 2012, the Honorable Janis L. Sammartino appointed my firm Interim Class
3 Counsel in an action styled *Margolis v. The Dial Corporation*, currently pending in the United States
4 District Court Southern District of California, Case No. 3:12-cv-288 JLS (WVG) (Dkt. No. 14). This
5 case involves an OTC pheromone soap product that its manufacturer alleges enhances a man's sexual
6 attraction to women.

7 23. When my firm was appointed Interim Lead Class Counsel for a class of consumers in a
8 deceptive food labeling case back in March of 2011, the Honorable Marilyn Huff recognized Class
9 Counsel "appears to be well qualified to represent the interest of the purported class and to manage this
10 litigation." *Hohenberg v. Ferrero U.S.A., Inc.*, 2011 U.S. Dist. LEXIS 38471, at *6 (S.D. Cal. Mar. 22,
11 2011). Subsequently, when my firm obtained certification of the proposed class, this court reaffirmed its
12 finding that my firm is adequate Class Counsel. *See In re Ferrero Litig.*, 278 F.R.D. 552, 559 (S.D. Cal.
13 2011). Judge Huff gave Final Approval of a settlement on July 9, 2012. (*Ferrero* Dkt. No. 127).

14 24. On November 14, 2011 my firm obtained the certification of a nationwide class of
15 consumers who purchased Qunol CoQ10, a dietary supplement making misleading efficacy claims. *See*
16 *Bruno v. Quten Research Inst., LLC*, 2011 U.S. Dist. LEXIS 132323 (C.D. Cal. Nov. 14, 2011). My
17 firm then successfully defeated the defendants' motion to decertify the class following the Ninth
18 Circuit's decision in *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). *See Bruno v.*
19 *Eckhart Corp.*, 2012 U.S. Dist. LEXIS 30873 (C.D. Cal. Mar. 6, 2012). The case recently settled, on the
20 eve of trial (originally scheduled for October 2, 2012).

21 25. On June 14, 2011, the Honorable Richard Seeborg appointed my firm Interim Class
22 Counsel, over a competing application from a former partner at the New York law firm Milberg Weiss
23 regarding a deceptive food labeling case. *See Chacanaca v. Quaker Oats Co.*, 2011 U.S. Dist. LEXIS
24 65023, at *8-9 (N.D. Cal. June 14, 2011) (since restyled as *In re Quaker Oats Labeling Litig.*) ("There is
25 no question here that both the Weston/Marron counsel...have ample experience handling class actions
26 and complex litigation. It is also clear that both have particular familiarity with suits involving issues of
27 mislabeling in the food industry.")

28 26. I was appointed class counsel in *Peterman v. North American Company for Life and*

1 *Health Ins., et al.*, No. BC357194, (L.A. Co. Sup. Ct.), which was litigated for over 4 years and achieved
 2 a settlement of approximately \$60 million for consumers. In granting preliminary approval of the
 3 settlement, the Hon. Carolyn B. Kuhl noted that “the excellent work that the plaintiffs’ side has done in
 4 this case has absolutely followed through to the settlement...The thought and detail that went into the
 5 preparation of every aspect was very impressive to me.”

6 27. I also served as class counsel in *Clark v. National Western Life Insurance Company*, No.
 7 BC321681 (L.A. Co. Sup. Ct.), a class action that, after litigating the case for well over 6 years, resulted
 8 in a settlement of approximately \$25 million for consumers.

9 28. In *Iorio v. Asset Marketing*, No. 05cv00633-IEG (CAB) (S.D. Cal.), I was appointed
 10 class counsel on August 24, 2006, following class certification, which was granted on July 25, 2006 by
 11 the Honorable Irma E. Gonzalez. Dkts. Nos. 113 and 121.

12 29. After nearly 6 years of intensive litigation, a settlement valued at \$110 million was
 13 reached in *Iorio, supra*, and approved on March 3, 2011, by the Honorable Janis Sammartino. Dkt. No.
 14 480. Co-counsel and I successfully defended multiple motions brought by defendant in the Southern
 15 District of California, including “challenges to the pleadings, class certification, class decertification,
 16 summary judgment,...motion to modify the class definition, motion to strike various remedies in the
 17 prayer for relief, and motion to decertify the Class’ punitive damages claim,” plus three petitions to the
 18 Ninth Circuit, attempting to challenge the Rule 23(f) class certification. *Iorio*, Final Order Approving
 19 (1) Class Action Settlement, (2) Awarding Class Counsel Fees and Expenses, (3) Awarding Class
 20 Representatives Incentives, (4) Permanently Enjoining Parallel Proceedings, and (5) Dismissing Action
 21 with Prejudice, entered on Mar. 3, 2011, at 6:9-15 (commenting that class counsel were “highly
 22 experienced trial lawyers with specialized knowledge in insurance and annuity litigation, and complex
 23 class action litigation generally” and “capable of properly assessing the risks, expenses, and duration of
 24 continued litigation, including at trial and on appeal,” *id.* at 7:18-22). Judge Sammartino also noted “the
 25 complexity and subject matter of this litigation, and the skill and diligence with which it has been
 26 prosecuted and defended, and the quality of the result obtained for the Class.” *Id.* at 17:25-27.

27 30. In *Tabares v. Equitrust Life Ins. Co.*, No. BC390195 (L.A. Co. Sup. Ct.), my firm
 28 obtained a class certification order and was appointed class counsel. The action is still pending.

31. I am currently counsel in a number of additional putative class actions and complex cases, including, but not limited to:

- *In re Gerber Probiotic Sales Practices Litig.*, Case No. 2:12-cv-00835 JLL (MAH) (D.N.J.) (food labeling case)
- *Martinez v. Toll Brothers, et al.*, Case No. 09-cv-00937-CDJ (E.D. Penn.) (recently settled, shareholder fraud action)
- *Red v. Kraft*, Case No. 2:10-cv-01028 GW (AGR) (C.D. Cal.) (food labeling case)
- *Reid v. Johnson & Johnson*, Case No. 3:11-cv-1310 L (BLM) (S.D. Cal.) (food labeling case)
- *Perez v. The J.M. Smucker Co.*, Case No. 3:12-cv-853 W (BGS) (S.D. Cal.) (food labeling case)
- *Vinson v. The J.M. Smucker Co.*, Case No. 2:12-cv-04936 GHK (VBK) (C.D. Cal.) (food labeling case)
- *Vaccarino v. Midland National Life Insurance Co.*, Case No. 2:11-cv-05858 CAS (MANx) (C.D. Cal.) (annuities case)

32. Besides these cases, I have also represented plaintiffs victimized in other complex cases such as Ponzi schemes, shareholder derivative suits, and securities fraud cases. I have litigated hundreds of lawsuits and arbitrations against major corporations; of these, approximately 30 cases against the likes of, such corporate titans as Shell Oil, Citigroup, Wells Fargo, Morgan Stanley and Merrill Lynch have gone through trial or arbitration. Many more have settled on the eve of trial so that I was fully prepared to proceed to trial.

33. My firm is fully committed to prosecuting this action against Defendant to achieve a successful outcome for the proposed Class, and has the financial means to do so.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on this 15th day of May 2015 in San Diego, California.

/s/ Ronald A. Marron
Ronald A. Marron

TABLE OF EXHIBITS

Exhibit	Document	Page(s)
1	Settlement Agreement	1-81
2	Sample letter from FTC re: Gut Check Campaign	82-85
3	Marron Firm Resume	86-93

EXHIBIT 1

1
2
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7
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF DISTRICT OF CALIFORNIA

10
11 EUNICE JOHNSON, individually, on
12 behalf of all others similarly situated,
and the general public,

13 Plaintiff,

14
15 v.

16 TRIPLE LEAF TEA, INC.,

17 Defendant.
18

Case No. 3:14-cv-01570-MMC
CLASS ACTION
Filed: April 4, 2014

CLASS ACTION SETTLEMENT
AGREEMENT

Judge: Hon. Maxine M. Chesney

19
20 This Class Action Settlement Agreement (the "Agreement") is made and
21 entered into by and between Plaintiff Eunice Johnson, the Representative Plaintiff
22 ("Plaintiff"), on behalf of herself and the Class in this action, and Defendant Triple
23 Leaf Tea, Inc. ("Triple Leaf" or "Defendant") (collectively, the "Settling Parties")
24 to settle and compromise this action, and settle, resolve, and discharge the
25 Released Claims, as defined below, according to the terms and conditions herein.
26
27
28

RECITALS

1. PROCEDURAL BACKGROUND

1.1 WHEREAS, Plaintiff filed an action in the United States District Court for the Northern District of California against Defendant, entitled *Johnson v. Triple Leaf Tea, Inc.*, Case No. 3:14-cv-01570-MMC, bringing claims under California's Consumer Legal Remedies Act, (Cal. Civ. Code § 1750, *et seq.* ["CLRA"]), Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.* ["UCL"]), False Advertising Law (*Id.* § 17500, *et seq.* ["FAL"]), and Breach of Express and Implied Warranties.

1.2 WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiff and Defendant have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Agreement.

NOW THEREFORE, subject to the final approval of the Court as required herein and by applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, that any Released Claims against any Released Parties shall be settled, compromised, and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

1.1. "CAFA Notice" means the notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005 (28 U.S.C. § 1715 ["CAFA"]), and as further described in Section 5.5.

1 1.2. "Class" means all United States consumers who purchased
2 Defendant's Dieter's Green Herbal Tea, Ultra Slim Herbal Tea, and Super
3 Slimming Herbal Tea products, in all sizes and package iterations, for household or
4 personal use during the Class Period, as more specifically defined in Section 7.1 of
5 this Agreement.

6 1.3. "Class Period" means April 4, 2010 through the Objection Deadline,
7 as designated by the Court in its Preliminary Approval Order.

8 1.4. "Class Counsel" means Plaintiff's counsel of record in the Litigation,
9 the Law Offices of Ronald A. Marron, APLC.

10 1.5. "Class Member" means a Person who falls within the definition of the
11 Class set forth in Section 7.1.

12 1.6. "Court" means the United States District Court for the Northern
13 District of California.

14 1.7. "Defendant" means Triple Leaf Tea, Inc. ("Triple Leaf").

15 1.8. "Defense Counsel" means Defendant's counsel of record in the
16 Litigation, Gordon & Rees LLP.

17 1.9. "Effective Date" means the first date by which any Judgment entered
18 pursuant to the Agreement becomes Final, except as specifically provided in
19 Sections 1.10 and 9.2 of this Agreement.

20 1.10. "Final" means (a) if no appeal from the Judgment is filed, the date of
21 expiration of the time for the filing or noticing of any appeal from the Judgment; or
22 (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the
23 appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for
24 certiorari seeking review of any appellate judgment is filed and denied, the date the
25 petition is denied; or (d) if a petition for a writ of certiorari is filed and denied, the
26 date the petition is denied; or (e) if a petition for a writ of certiorari is filed and
27 granted, the date of final affirmance or final dismissal of the review proceeding

1 initiated by the petition for a writ of certiorari. Any proceeding or order, or any
2 appeal or petition for a writ of certiorari pertaining solely to any application for
3 attorneys' fees or expenses will not in any way delay or preclude the Judgment
4 from becoming Final, and the Parties' obligations as set forth in Section 9.2 are not
5 dependent on the Judgment becoming Final.

6 1.11. "Judgment" means the judgment to be entered by the Court pursuant
7 to the Settlement.

8 1.12. "Litigation" means *Johnson v. Triple Leaf Tea, Inc.*, No. 3:14-cv-
9 015070-MMC, pending in the U.S. District Court for the Northern District of
10 California.

11 1.13. "Notice" means a document, substantially in the form of **Exhibit A**
12 hereto (the "Long Form Notice"), and "Summary Notice" means a document
13 substantially in the form of **Exhibit B** hereto, to be disseminated in accordance
14 with the Preliminary Approval Order, informing Persons who fall within the Class
15 definition of, among other things, the pendency of the Litigation, the material
16 terms of the proposed Settlement and their options with respect thereto.

17 1.14. "Notice Plan" means the method of providing the Class with notice of
18 the Settlement, as approved by the Court.

19 1.15. "Notice Administrator" means the company selected by the Settling
20 Parties, KCC, and approved by the Court to provide notice to the Class and CAFA
21 Notice.

22 1.16. "Objection Deadline" means the date that is the end of the period to
23 object to the Settlement, as established by the Court in the Preliminary Approval
24 Order and set forth in the Notice and Section 8.5 of this Agreement.

25 1.17. "Parties" means the Representative Plaintiff and Defendant.

26 1.18. "Person" means an individual, corporation, partnership, limited
27 partnership, association, joint stock company, estate, legal representative, trust,
28

1 unincorporated association, government or any political subdivision or agency
2 thereof, any business or legal entity, and such individual's or entity's parents,
3 subsidiaries, spouse, heirs, predecessors, successors, representatives, and
4 assignees.

5 1.19. "Preliminary Approval Order" means an order, providing for, among
6 other things, preliminary approval of the Settlement and dissemination of the
7 Notice to the Class according to the Notice Plan.

8 1.20. "Products" means the Dieter's Green Herbal Tea, Ultra Slim Herbal
9 Tea, and Super Slimming Herbal Tea products manufactured and/or distributed by
10 Defendant and sold in the United States, in any size, variation, format, dosage, or
11 packaging.

12 1.21. "Released Claims" means, with the exception of claims for personal
13 injury, any and all claims, demands, rights, suits, liabilities, and causes of action of
14 every nature and description whatsoever, known or unknown, asserted or not
15 asserted, matured or unmatured, at law or in equity, existing under federal and/or
16 state law, including without limitation a waiver of all rights under Section 1542 of
17 the California Civil Code (or similar laws of other States), that the Representative
18 Plaintiff and/or any Class Member has or may have against the Released Persons
19 arising out of, in connection with, or related in any way, directly or indirectly, to
20 Defendant's advertising, marketing, packaging, labeling, promotion, and/or sale of
21 the Products, that have been brought, could have been brought, or are currently
22 pending, by any Class Member against Released Persons, in any forum in the
23 United States (including territories and Puerto Rico).

24 1.22. "Released Persons" means Defendant, its respective parent
25 companies, any person or entity who purchases Triple Leaf's assets in whole or in
26 part, subsidiary companies, affiliated companies, past, present, and future officers
27 (as of the Objection Deadline), directors, shareholders, employees, predecessors,
28

principals, insurers, administrators, agents, accountants, consultants, advisers, independent contractors, distributors, subcontractors, experts, servants, successors, trustees, co-conspirators, buyers, attorneys, representatives, heirs, executors, and assigns of all of the foregoing persons and entities.

1.23. "Representative Plaintiff" means Eunice Johnson.

1.24. "Settlement" means the settlement set forth in this Agreement.

1.25. "Settling Parties" means, collectively, Defendant, the Representative Plaintiff, and all Class Members.

1.26. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

2. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies the material factual allegations and legal claims asserted by the Representative Plaintiff in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Similarly, this Agreement provides for no admission of wrongdoing or liability by Triple Leaf, its past, present and future officers, directors, employees, shareholders, subsidiaries, parents, affiliates, accountants, advisers, agents, contractors, legal counsel, successors, heirs, and assigns. This Settlement is entered solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

3. THE BENEFITS OF SETTLEMENT

Class Counsel and the Representative Plaintiff recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent problems of proof under the

claims and possible defenses to the claims asserted in the Litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Representative Plaintiff and Class Counsel have determined that the Settlement is in the best interests of the Representative Plaintiff and the Class.

4. SETTLEMENT CONSIDERATION

4.1. Injunctive Relief

Defendant will provide the Class with injunctive relief by way of modification of the label and packaging for the Products. Exemplars of the revised Product packaging are attached hereto as **Exhibit C**. Triple Leaf will implement certain modifications to each Tea, among others, as described below:

Dieter's Green Herbal Tea:

- The name of Dieter's Green Herbal Tea will be changed to Diet Green Herbal Tea.
- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that "Research indicates that green tea's antioxidants help promote health metabolism[]" has been removed.
- The statement that "Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body's own healing mechanisms through restoring harmony and balance[]" has been removed.
- The statement that "The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]" has been removed.
- The statement that "This time tested knowledge has been passed on from generation to generation over the centuries[]" has been removed.

- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the Senna Notice required by California law, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Ultra Slim Herbal Tea

- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.

- In addition to the Senna Notice required by California law, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Super Slimming Herbal Tea

- The name of Super Slimming Herbal Tea will be changed to Super Slim Herbal Tea
- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the Senna Notice required by California law, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

1 In addition, the FDA Disclaimer will remain on the Products' packaging in a
2 legible font size and will be conspicuously displayed on the package in a readable
3 font color, in comparison to any background coloring on the package. Defendant
4 will modify its website to comport with the modifications to the Products'
5 packaging and labeling, set forth above.

6
7 4.2. Triple Leaf shall have eighteen (18) months after the date the
8 Settlement is finally approved to complete the labeling changes referred to in
9 Section 4.1 of this Agreement. The Parties understand that Triple Leaf may
10 continue to market and ship product stock with existing labeling for up to eighteen
11 (18) months following final approval, as contemplated by the eighteen month time
12 period it will take to complete the labeling changes as set forth herein, and that
13 third-party retailers and distributors may have on hand product stock in existing
14 labeling for some time after the Settlement is finally approved.

15 4.3. To the extent that any state and/or federal statute, regulation, policy,
16 and/or code may, in the future, impose other, further, different, and/or conflicting
17 obligations or duties on Defendant with respect to the Products, this injunctive
18 relief shall cease as to Defendant's conduct covered by that statute, regulation,
19 policy, and/or code as of the effective date of such statute, regulation, policy,
20 and/or code.

21 5. NOTICE

22 5.1. Within seven (7) calendar days of entry of any Court Order granting
23 preliminary approval to the Settlement, Triple Leaf shall pay to KCC, in U.S.
24 funds, the sum of up to \$50,000 for the purpose of the Settling Parties providing
25 notice to the Class.

26 5.2. All costs and expenses of providing Notice in accordance with the
27 Preliminary Approval Order ("Notice Costs") shall be paid by Defendants to KCC

1 (“Notice Administrator”), as approved by the Court through its approval of the
2 Notice Plan. If the Court orders additional notice above and beyond that cost, such
3 that notice shall comply with all federal and state law and with principles of Due
4 Process, the additional sum shall be paid by Triple Leaf.

5 5.3. Notice Costs incurred by the Notice Administrator shall not be
6 chargeable to the Class or Representative Plaintiff and shall be borne solely by
7 Defendant if the Settlement does not receive final approval.

8 5.4. The Settling Parties shall jointly retain the Notice Administrator
9 (including subcontractors) to help implement the terms of the Settlement
10 Agreement.

11 5.5. The Notice Administrator will facilitate the notice process by assisting
12 the Settling Parties in the implementation of the Notice Plan, as well as CAFA
13 Notice, although Defendant shall retain ultimate responsibility for effectuating
14 CAFA Notice within the required time.

15 5.6. The Notice Administrator shall be responsible for providing the
16 Settling Parties with assistance, as necessary, such as by preparing affidavits of
17 work it has performed with respect to implementing the Class Notice, and
18 providing regular updates to the Settling Parties’ counsel about the status of the
19 Notice process.

20 **5.7. Class Settlement Website**

21 5.7.1. The Notice Administrator will create and maintain a class
22 settlement website (the “Class Settlement Website”), to be activated within fifteen
23 (15) calendar days of its receipt of the Preliminary Approval Order. The Notice
24 Administrator’s responsibilities will also include securing an appropriate URL,
25 such as www.TripleLeafTeaClassActionSettlement.com. The Class Settlement
26 Website will contain Settlement information and case-related documents, such as
27 the Agreement, the Long-Form Notice, Preliminary Approval Order, motions, and
28

1 notices from the Court. In addition, the Class Settlement Website will include
 2 procedural information regarding the status of the Court-approval process, such as
 3 an announcement of the Final Approval Hearing date, as described in Section 8.1,
 4 when the Final Approval Order and Judgment have been entered, and when the
 5 Effective Date has been reached, including any appeal(s), if any.

6 5.7.2. The Class Settlement Website will terminate (be removed from
 7 the internet) and no longer be maintained by the Notice Administrator thirty (30)
 8 days after either (a) the Effective Date or (b) the date on which the Agreement is
 9 terminated or otherwise not approved by a court, whichever is later. The Notice
 10 Administrator will then transfer ownership of the URL to Defendant.

11 5.8. CAFA Notice

12 5.8.1. The Settling Parties agree that the Notice Administrator shall
 13 serve notice of the Settlement Agreement that meets the requirements of CAFA, 28
 14 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10)
 15 days after the filing of this Settlement Agreement with the Court.

16 5.8.2. The Notice Administrator will file a certification with the Court
 17 stating the date or dates on which the CAFA Notice was sent. Defendant will
 18 provide Class Counsel with any substantive responses received in response to any
 19 CAFA Notice.

20 5.8.3. The Notice Administrator shall also publish the Summary
 21 Notice in a newspaper in a manner sufficient to meet California Government Code
 22 § 6064 and California Civil Code § 1781.

23 5.9. Notice Plan

24 5.9.1. The Class Notice shall conform to all applicable requirements
 25 of the Federal Rules of Civil Procedure, the United States Constitution (including
 26 the Due Process Clauses), and any other applicable law, and shall otherwise be in
 27

1 the manner and form agreed upon by the Settling Parties and approved by the
2 Court.

3 5.9.2. No later than thirty (30) days after preliminary approval by the
4 Court of this Settlement, the Notice Administrator shall commence providing
5 Notice to the Class according to the Notice Plan as attached in **Exhibit D**, except
6 that the Class Settlement Website shall require earlier publication, as discussed in
7 Section 5.7.

8 5.9.3. The Settling Parties agree to the content of the Notice,
9 substantially in the forms attached to this Agreement as **Exhibits A and B**, and as
10 approved by the Court.

11 5.9.4. Within fourteen (14) calendar days after entry of the
12 Preliminary Approval Order, Defendant shall provide to the Notice Administrator
13 complete e-mail or mail addresses of any direct consumer purchasers of the
14 Products that it possesses, for purposes of effecting direct notice to potential Class
15 Members.

16 **6. RELEASES**

17 6.1. Upon the Effective Date, the Representative Plaintiff and each of the
18 Class Members will be deemed to have, and by operation of the Judgment will
19 have, fully, finally, and forever released, relinquished, and discharged the Released
20 Persons from all Released Claims, meaning any and all claims (with the exception
21 of claims for personal injury), demands, rights, suits, liabilities, and causes of
22 action of every nature and description whatsoever, known or unknown, asserted or
23 nonasserted, matured or unmatured, at law or in equity, existing under federal
24 and/or state law, including without limitation a waiver of all rights under Section
25 1542 of the California Civil Code (or any similar state law), that the Representative
26 Plaintiff and/or Class Member has or may have against the Released Persons
27 arising out of, in connection with, or related in any way, directly or indirectly, to

1 Defendant's advertising, marketing, packaging, labeling, promotion, manufacture,
2 sale, and distribution of the Products, that have been brought, could have been
3 brought, or are currently pending, up to the date of the Effective Date, by any Class
4 Member against Released Persons, in any forum in the United States (including
5 territories and Puerto Rico).

6 6.2. After entering into this Settlement Agreement, Plaintiff or the Class
7 Members may discover facts other than, different from, or in addition to, those that
8 they know or believe to be true with respect to the Released Claims. Plaintiff and
9 the Class Members expressly waive and fully, finally, and forever settle and
10 release any known or unknown, suspected or unsuspected, contingent or
11 noncontingent claim, whether or not concealed or hidden, without regard to the
12 subsequent discovery or existence of such other, different, or additional facts.

13 6.3. All Parties to this Settlement Agreement, including the Class
14 Members, specifically acknowledge that they have been informed by their legal
15 counsel, via the Notice, of Section 1542 of the California Civil Code (and any
16 similar state laws) and they expressly waive and relinquish any rights or benefits
17 available to them under this statute (and any similar state laws). California Civil
18 Code § 1542 provides:

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

26 6.4. Notwithstanding Section 1542 of the California Civil Code, or any
27 other federal or state statute or rule of law of similar effect, this Agreement shall be

given full force and effect according to each and all of its expressed terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from, or are in any way connected with the Litigation.

7. CLASS CERTIFICATION

7.1. The Settling Parties agree that, for settlement purposes only, this Litigation shall be certified as a class action pursuant to Federal Rules of Civil Procedure 23(b)(3); or 23(b)(2) and 23(b)(3). The Class will be defined as follows, with Representative Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel:

All persons who purchased, on or after April 4, 2010, Defendant's Dieter's Green Herbal Tea, Ultra Slim Herbal Tea, and/or Super Slimming Herbal Tea Products, in all sizes and package iterations, for personal or household use during the Class Period (April 4, 2010 to the Objection Deadline, as set by the Court). Excluded from the Class are Triple Leaf, its employees, parents, subsidiaries, affiliates, officers and directors, and those who purchased the Products for resale.

7.1.1. In the event the Settlement is terminated or for any reason the Settlement is not effectuated, the certification of the Class shall be vacated and the Litigation shall proceed as if the Class had not been certified.

8. SETTLEMENT HEARING

8.1. As set forth in Section 8.2, the Settling Parties will submit the Agreement together with its exhibits to the Court and will request that the Court grant preliminary approval of the Settlement, as of the date of which the Settlement shall be deemed "filed" within the meaning of 28 U.S.C. § 1715; issue the Preliminary Approval Order; and schedule a hearing on whether the Settlement should be granted final approval and whether Class Counsel's application for fee

1 award and expenses, and for an incentive award to the Representative Plaintiff
2 (“Fee Application”) should be granted (“Final Approval Hearing”).

3 8.2. Defendant shall cooperate in good faith in Plaintiff’s preparation of
4 her motion for preliminary approval of the Settlement, which is to be filed on or
5 before May 15, 2015 and set for hearing on June 19, 2015, including by providing
6 Class Counsel with then-available details of the payment of the out-of-pocket costs
7 of the injunctive relief and other measures and relief such as the costs of changing
8 the Products’ packaging, implementing web site changes, and any and all other
9 costs associated with implementing the injunctive provisions of the Settlement
10 Agreement. Triple Leaf will further provide sworn affidavits of its appropriate
11 corporate officers and relevant financial information of the Products challenged in
12 the Litigation and as reasonably necessary to obtain preliminary and final approval
13 of the Settlement.

14 8.3. Defendant shall not oppose Plaintiff’s assertion, in papers filed in
15 furtherance of this Settlement, that the Class satisfies each of the elements required
16 under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3): The Class is so
17 numerous that joinder of all members is impracticable; there are questions of law
18 or fact common to the Class; the claims of Plaintiff are typical of the Class;
19 Plaintiff and Class Counsel will fairly and adequately protect the interests of the
20 Class; the questions of law of fact common to Class Members predominate over
21 any questions affecting only individual members; and class treatment is the
22 superior means to adjudicate Plaintiff’s claims.

23 8.4. The Settling Parties agree to the form and substance of the proposed
24 Preliminary Approval Order, attached hereto as **Exhibit E**, to be lodged with the
25 Court with the joint motion for preliminary approval of the Settlement Agreement.

26 **8.5. Procedures for Objecting to the Settlement**
27
28

1 8.5.1. Class Members shall have the right to appear and show cause, if
2 they have any reason why the terms of this Agreement should not be given final
3 approval, subject to each of the sub-provisions contained in this Section 8.5. Any
4 objection to this Agreement, including any of its terms or provisions, must be in
5 writing, filed with the Court, with a copy served on Class Counsel, Defense
6 Counsel, and the Notice Administrator at the addresses set forth in the Notice, and
7 postmarked no later than thirty (30) calendar days prior to the Final Approval
8 Hearing date. Class Members may object either on their own or through an
9 attorney hired at their own expense.

10 8.5.2. If a Class Member hires an attorney to represent him or her at
11 the Final Approval Hearing, he or she must do so at his or her own expense. No
12 Class Member represented by an attorney shall be deemed to have objected to the
13 Agreement unless an objection signed by the Class Member is also filed with the
14 Court and served upon Class Counsel, Defense Counsel, and the Notice
15 Administrator at the addresses set forth in the Notice thirty (30) calendar days
16 before the Final Approval Hearing.

17 8.5.3. Any objection regarding or related to the Agreement shall
18 contain a caption or title that identifies it as "Objection to Class Settlement in
19 *Johnson v. Triple Leaf Tea, Inc.*, No. 3:14-cv-015070-MMC" and also shall
20 contain information sufficient to identify and contact the objecting Class Member
21 (or his or her attorney, if any), as well as a clear and concise statement of the Class
22 Member's objection, documents sufficient to establish the basis for their standing
23 as a Class Member, i.e., verification under oath as to the approximate date(s) and
24 location(s) of their purchase(s) of the Products, the facts supporting the objection,
25 and the legal grounds on which the objection is based. Any objections not
26 submitted to the Court at least thirty (30) calendar days prior to the Final Approval
27 Hearing are deemed waived. If an objecting party chooses to appear at the hearing,

1 that party must file with the Court, at least thirty (30) calendar days before the
2 Final Approval Hearing, a notice of intent to appear and that notice must list the
3 name, address and telephone number of the attorney, if any, who will appear on
4 behalf of that party.

5 8.5.4. Any Class Member who does not object to the Agreement in
6 compliance with the provisions set forth herein, is deemed to be a Class Member
7 and bound by the Agreement upon final approval of the Settlement.

8 **8.6. Right to Respond to Objections**

9 Class Counsel and Defendant shall have the right, but not the obligation, to
10 respond to any objection, by filing opposition papers no later than seven (7)
11 calendar days prior to the Final Approval Hearing, or on such other date as set
12 forth in the Preliminary Approval Order, or any subsequent Court order(s)
13 modifying the briefing schedule for the Final Approval Hearing. The Party
14 responding shall file a copy of the response with the Court, and shall serve a copy,
15 by regular mail, hand, or overnight delivery, in the Party's discretion, to the
16 objector (or counsel for the objector), Class Counsel, and Defense Counsel, to the
17 extent the objector or his or her counsel do not receive notice of electronic filing
18 via the Court's ECF filing system.

19 **8.7. Opt Outs**

20 8.7.1. Any Class Member who does not wish to participate in the
21 Settlement must write to the Class Action Administrator, stating an intent to be
22 "excluded" from this Settlement ("Request for Exclusion"). The written Request
23 for Exclusion must be sent via first class United States mail to the Class Action
24 Administrator at the address set forth in the Class Notice and postmarked no later
25 than thirty (30) calendar days before the date set for the Final Approval Hearing
26 ("Opt-Out Date"). The Request for Exclusion must be personally signed by the
27

1 Class Member and may only be on behalf of such signing Class Member. So-
2 called “mass” or “class” opt-outs shall not be allowed.

3 8.7.2. Any Class Member who does not request exclusion from the
4 Settlement has the right to object to the Settlement. Any Class Member who
5 wishes to object must timely submit an objection, as set forth in Section 8.5 above.
6 If a Class Member submits an objection and a written Request for Exclusion, he or
7 she shall be deemed to have complied with the terms of this Opt-Out procedure
8 and shall not be bound by the Agreement if approved by the Court. However, any
9 objector who has not timely requested exclusion from the Settlement will be bound
10 by the terms of the Agreement upon final approval of the Settlement.

11 **9. ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARD**

12 9.1. In accordance with Rule 23(h) of the Federal Rules of Civil Procedure
13 and relevant case law, Plaintiff will petition the Court for attorneys’ fees and costs
14 in the total amount of \$250,000, and a Class Representative incentive award in the
15 amount of \$1,500. Defendant shall not object or oppose any such petition,
16 including by contesting any fees, expenses, or incentive award requested, to the
17 extent the petition does not request more than the amounts set forward above.

18 9.2. Upon appropriate Court Order so providing, all attorneys’ fees and
19 costs awarded to Class Counsel, and incentive award to the Class Representative,
20 as set forth in Section 9.1 above, shall be paid by Defendant to Class Counsel
21 within seven (7) calendar days of the date of any order so providing (“Fee
22 Award”), notwithstanding the existence of any timely filed objections thereto, or
23 appeal (actual or potential) therefrom, or collateral attack on the Settlement or any
24 part thereof.

25 9.3. Triple Leaf shall bear its own attorney’s fees and costs. Triple Leaf
26 bears all risk of an objector’s success.

27 **10. MOTION FOR FINAL JUDGMENT AND ORDER**

1 10.1. In accordance with the Court's schedule for the Final Approval
2 Hearing, as set in the Preliminary Approval Order, the Class Representative shall
3 file a motion for final approval of the Settlement Agreement, in consultation with
4 Defendant, and Defendant agrees not to oppose such motion.

5 10.2. Defendant shall cooperate in good faith with Plaintiff's preparation of
6 the motion for final approval of the Settlement Agreement, including by providing
7 Class Counsel with then-available details of the payment of the out-of-pocket costs
8 of the injunctive relief and other measures and relief such as the costs of changing
9 the Products' packaging, implementing web site changes, and any and all other
10 costs associated with implementing the injunctive provisions of the Agreement;
11 and providing signed declaration(s) of appropriate corporate officers of Triple Leaf
12 if the Settling Parties, in good faith, deem such declaration(s) reasonably
13 necessary.

14 10.3. Defendant shall not oppose Plaintiff's assertion, in papers filed in
15 furtherance of the Settlement Agreement, that the Court should affirm its rulings
16 granting Preliminary Approval of the Settlement and grant final approval of the
17 Settlement.

18 10.4. The Settling Parties agree to the form and substance of the proposed
19 Final Judgment and Order, attached hereto as **Exhibit F**, to be lodged with the
20 Court with the motion for final approval of the Settlement Agreement.

21 **11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

22 11.1. The Effective Date of this Agreement shall be the date the Judgment
23 has become Final, as defined in Section 1.10.

24 11.2. If this Agreement is not approved by the Court or the Settlement is
25 terminated or fails to become effective in accordance with the terms of this
26 Agreement, the Settling Parties will be restored to their respective positions in the
27 Litigation as of the date the Motion for Preliminary Approval was filed. In such
28

1 event, except with respect to the Notice Administrator's fees, costs, and expenses
2 as provided in Section 5 herein, the terms and provisions of this Agreement will
3 have no further force and effect with respect to the Settling Parties and will not be
4 used in this Litigation or in any other proceeding for any purpose, and any
5 Judgment or order entered by the Court in accordance with the terms of this
6 Agreement will be treated as vacated.

7 11.3. No order of the Court or modification or reversal on appeal of any
8 order of the Court concerning any award of attorneys' fees, expenses, or costs to
9 Class Counsel, or incentive awards to the Class Representative, will constitute
10 grounds for cancellation or termination of this Agreement.

11 **12.MISCELLANEOUS PROVISIONS**

12 12.1. The Settling Parties acknowledge that it is their intent to consummate
13 this Agreement, and they agree to cooperate to the extent reasonably necessary to
14 effectuate and implement all terms and conditions of this Agreement and to
15 exercise their best efforts to accomplish the foregoing terms and conditions of this
16 Agreement.

17 12.2. The Settling Parties intend the Settlement to be a final and complete
18 resolution of all disputes between them with respect to the Litigation. The
19 Settlement compromises claims that are contested and will not be deemed an
20 admission by any Settling Party as to the merits of any claim or defense.

21 12.3. The Settling Parties agree that the consideration provided to the Class
22 and the other terms of the Settlement were negotiated at arms' length, in good faith
23 by the Settling Parties, and reflect a settlement that was reached voluntarily, after
24 consultation with competent legal counsel, and with the extensive assistance of an
25 independent, neutral mediator, The Honorable Ronald Sabraw of JAMS. The
26 Litigation was filed in good faith, was not frivolous, and was in compliance with
27

1 Rule 11 of the Federal Rules of Civil Procedure. This Agreement is entered into
2 solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

3 12.4. Neither this Agreement nor the Settlement, nor any act performed or
4 document executed pursuant to or in furtherance of this Agreement or the
5 Settlement is or may be deemed to be or may be used as an admission of, or
6 evidence of, the validity of any Released Claims, or of any wrongdoing or liability
7 of Defendant or any other Released Person; or is or may be deemed to be or may
8 be used as an admission of, or evidence of, any fault or omission of Defendant or
9 any other Released Person in any civil, criminal, or administrative proceeding in
10 any court, administrative agency, or other tribunal. Any party to this Litigation or
11 any other Released Person may file this Agreement and/or the Judgment in any
12 action that may be brought against it in order to support any defense or
13 counterclaim, including without limitation those based on principles of res
14 judicata, collateral estoppel, release, good faith settlement, judgment bar or
15 reduction, or any other theory of claim preclusion or issue preclusion or similar
16 defense or counterclaim.

17 12.5. All agreements made and orders entered during the course of the
18 Litigation relating to the confidentiality of information will survive this
19 Agreement. Any and all Exhibits to this Agreement are material and integral parts
20 hereof and are fully incorporated herein by this reference.

21 12.6. This Agreement may be amended or modified only by a written
22 instrument signed by or on behalf of all Settling Parties or their respective
23 successors-in-interest.

24 12.7. This Agreement and any exhibits attached hereto constitute the entire
25 agreement among the Settling Parties, and no representations, warranties, or
26 inducements have been made to any Settling Party concerning this Agreement or
27 its exhibits other than the representations, warranties, and covenants covered and
28

1 memorialized in such documents. Except as otherwise provided herein, the
2 Settling Parties will bear their own respective costs.

3 12.8. Class Counsel, on behalf of the Class, is expressly authorized by the
4 Representative Plaintiff to take all appropriate action required or permitted to be
5 taken by the Class pursuant to this Agreement to effectuate its terms, and is
6 expressly authorized to enter into any modifications or amendments to this
7 Agreement on behalf of the Class that Class Counsel deems appropriate.

8 12.9. Each counsel or other Person executing this Agreement or any of its
9 Exhibits on behalf of any Party hereby warrants that such Person has the full
10 authority to do so.

11 12.10. This Agreement may be executed in one or more counterparts. All
12 executed counterparts and each of them will be deemed to be one and the same
13 instrument. A complete set of original counterparts will be filed with the Court.

14 12.11. This Agreement will be binding upon, and inure to the benefit of, the
15 successors and assigns of the Settling Parties.

16 12.12. Except as provided in Section 4.2, the Court will retain jurisdiction
17 with respect to implementation and enforcement of the terms of this Agreement,
18 and all parties hereto submit to the jurisdiction of the Court for purposes of
19 implementing and enforcing the Settlement.

20 12.13. None of the Settling Parties, or their respective counsel, will be
21 deemed the drafter of this Agreement or its exhibits for purposes of construing the
22 provisions thereof. The language in all parts of this Agreement and its exhibits
23 will be interpreted according to its fair meaning, and will not be interpreted for or
24 against any of the Settling Parties as the drafter thereof.

25 12.14. This Agreement shall be deemed the "proposed agreement" filed with
26 the Court within the meaning of 28 U.S.C. § 1715 as of the date on which
27 preliminary approval is granted by the Court.

1 12.15. This Agreement and any exhibits hereto will be construed and
2 enforced in accordance with, and governed by, the internal, substantive laws of the
3 State of California without giving effect to that State's choice-of-law principles.
4 Any provision of California Evidence Code § 1115-1128 notwithstanding, this
5 Agreement may be enforced by any Party hereto by a motion under California
6 Code of Civil Procedure § 664.6 or by any other procedure permitted by California
7 law. The provisions of the confidentiality agreement entered into with respect to
8 the mediation process concerning this matter are waived for purposes of such
9 enforcement.

10 12.16. If the Agreement is rejected by the Court, the Settling Parties agree to
11 negotiate in good faith including through the engagement of an independent
12 mediator, regarding the elimination or revision of any provisions in the Agreement
13 that resulted in Court rejection, with the goal of reaching a formal settlement
14 agreement that will be accepted by the Court and thereafter to immediately submit
15 a revised settlement agreement to the Court for approval, and all other terms and
16 conditions herein shall continue in full force and effect until approval by the Court
17 of the revised settlement agreement. The fees and expenses of the mediator
18 incurred pursuant to this provision shall be shared equally between Defendant and
19 the Class. Each Party shall bear its own attorneys' fees and costs of such
20 renegotiation.

1 IN WITNESS WHEREOF, the Settling Parties have executed and caused
2 this Agreement to be executed by themselves, approved as to form and content by
3 their respective attorneys, dated as of May 8, 2015.

4 Dated: _____

Eunice Johnson
Plaintiff

5
6
7 Dated: 5/15/2015

Name: VINCENT LAM
Title: PRESIDENT

On Behalf of Defendant Triple Leaf Tea,
Inc.

11 APPROVED AS TO FORM AND CONTENT:

12
13 Dated: _____

Ronald A. Marron
LAW OFFICES OF RONALD MARRON
Attorneys for Plaintiff and the Class

14
15
16 Dated: 05.15.15

[Signature]
Diana N. Cominos
Ryan B. Polk
Gordon & Rees LLP
Attorneys for Defendant
Triple Leaf Tea, Inc.

1 IN WITNESS WHEREOF, the Settling Parties have executed and caused
2 this Agreement to be executed by themselves, approved as to form and content by
3 their respective attorneys, dated as of May 8, 2015.

4 Dated: 5/8/15


5 Eunice Johnson
6 Plaintiff

7
8 Dated: _____

9 Name: _____

10 Title: _____

11 On Behalf of Defendant Triple Leaf Tea,
12 Inc.

13 APPROVED AS TO FORM AND CONTENT:

14 Dated: 5/8/15



15 Ronald A. Marron

16 LAW OFFICES OF RONALD MARRON

17 Attorneys for Plaintiff and the Class

18 Dated: _____

19 Dion N. Cominos

20 Ryan B. Polk

21 Gordon & Rees LLP

22 Attorneys for Defendant

23 Triple Leaf Tea, Inc.

EXHIBIT LIST

Exhibit A	Long Form Notice to Class Members
Exhibit B	Summary Notice to Class Members
Exhibit C	Exemplars of Revised Product Packaging
Exhibit D	Notice Plan
Exhibit E	Proposed Preliminary Approval Order
Exhibit F	Proposed Final Judgment and Order

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

IF YOU PURCHASED ONE OF THE TRIPLE LEAF TEA PRODUCTS LISTED BELOW, BETWEEN APRIL 4, 2010 AND XXXXXX, 2015, IN THE UNITED STATES FOR PERSONAL OR HOUSEHOLD USED, PLEASE READ THIS NOTICE CAREFULLY, AS IT DESCRIBES A SETTLEMENT THAT MAY AFFECT YOUR RIGHTS.

Included Products: Dieter's Green Herbal Tea, Ultra-Slim Herbal Tea, and/or Super -Slimming Herbal Tea Products, in all sizes and package iterations (the "Products")

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

What is this Lawsuit About?

Plaintiffs brought a class action lawsuit on behalf of purchasers of the above Triple Leaf, Inc. ("Triple Leaf") products. The case alleges that Defendant Triple Leaf made false and misleading claims, and breached express and implied warranties regarding its Products. Defendant denies Plaintiff's allegations and continues to stand by its products and advertising. Before a trial could resolve Plaintiff's allegations, Plaintiff and Defendant reached a settlement.

The full settlement agreement and court documents associated with this case can be viewed at www.XXXXXXXClassActionSettlement.com, or by contacting the settlement administrator.

What are the Terms of the Settlement?

Defendant has agreed to certain modifications of the labeling and packaging for their products as follows:

Dieter's Green:

- The name of Dieter's Green will be changed to Diet Green.
- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that "Research indicates that green tea's antioxidants help promote health metabolism[]" has been removed.
- The statement that "Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body's own healing mechanisms through restoring harmony and balance[]" has been removed.
- The statement that "The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]" has been removed.
- The statement that "This time tested knowledge has been passed on from generation to generation over the centuries[]" has been removed.

- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Ultra Slim

- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Super Slimming

- The name of Super Slimming will be changed to Super Slim.
- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.

- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

In addition, the FDA Disclaimer will remain on the Products’ packaging in a legible font size and will be conspicuously displayed on the package in a readable font color, in comparison to any background coloring on the package. Defendant will modify its website to comport with the modifications to the Products’ packaging and labeling, set forth above.

The parties have also agreed that the costs to administer this Settlement and provide notice (up to \$50,000), reasonable attorneys’ fees and Class Representative incentive awards to the named Plaintiff will be paid for by the Defendant. Class Counsel may request attorneys’ fees and costs from the Defendant of no more than \$250,000, and incentive awards to the named Plaintiff of \$1,500. The final amount of attorneys’ fees and costs and Class Representative Incentive Award will be determined by the Court. All Class Members who do not request exclusion from this Settlement will forever release all claims from April 4, 2010 to the Opt-Out Date related to the allegations in this case.

Who is Included in the Settlement?

“Class Members” means all U.S. consumers who purchased the Defendant’s Products (listed above) for household or personal use during the Class Period (April 4, 2010 to XXXXXX, 2015) are included. Excluded from the Class are: Triple Leaf; persons who during or after the Class Period were officers or directors of Triple Leaf, or any corporation, trust or other entity in which Triple Leaf has a controlling interest; Triple Leaf employees; the members of the immediate families of Triple Leaf employees or their successors, heirs, assigns and legal representatives; and any judicial officer hearing this Litigation, as well as their immediate family members and employees.

Can I Exclude Myself from the Settlement?

Yes. If you are a Class Member, you may request exclusion by sending a letter requesting to be “excluded” from this Settlement to the Claims Administrator. If you exclude yourself, your claims against the Defendant will not be released. **TO BE VALID, ALL EXCLUSION REQUESTS MUST BE POSTMARKED NO LATER THAN XXXXX, 2015.**

Can I Object to the Settlement?

Yes. If you are a Class Member and do not request exclusion, you or your attorney on your behalf may object to the Settlement. Such objection must be in writing and must provide evidence that you are a Class Member. The procedures for submitting a written objection are identified below. A written and signed objection as well as any support for your objection

including documents sufficient to establish the basis for your standing as a Class Member (i.e., verification under oath as to the approximate date(s) and location(s) of your purchase of the Product(s)) *must be filed with the Court and served on all of the following with a postmark no later than XXXXX, 2015.*

Class Counsel (who will share objections with defense counsel):

Ronald A. Marron
Law Offices of Ronald Maron, APLC
651 Arroyo Drive
San Diego, CA 92103
Telephone: 619-696-9006

For the Court:

Clerk of Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415-522-2000

Any objection related to the Settlement Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in Johnson v. Triple Leaf, No. 3:14-cv-01570-MMC” and shall also contain information sufficient to identify the objecting Class Member, as well as a clear and concise statement of the Class Member’s objection, the facts supporting the objection, and the legal grounds on which the objection is based. If an objector chooses to appear at the hearing, then a notice of intention to appear, either in person or through an attorney, must be filed with the Court by XXXXX, 2015. This notice must list the name, address and telephone number of the attorney, if any, who will appear.

What if I do Nothing?

IF YOU DO NOTHING, AND THE COURT APPROVES THE SETTLEMENT, YOU WILL NO LONGER HAVE THE ABILITY TO SUE FOR MONETARY DAMAGES OR INJUNCTIVE RELIEF WITH RESPECT TO YOUR PURCHASE OF THE AFFECTED Triple Leaf PRODUCTS DURING THE CLASS PERIOD, AND YOUR CLAIMS DURING THE CLASS PERIOD WILL BE RELEASED AND DISMISSED.

Who Represents the Class Members?

The Law Offices of Ronald A. Marron (“Class Counsel”) were appointed by the Court to represent you. Class Members have the right to hire their own lawyers, at their own expense, although there is no obligation to do so, and Class Counsel will represent all Class Members in this lawsuit who do not object or retain their own lawyer.

How will Class Counsel be Paid?

Defendant has agreed that Class Counsel may seek an award of attorneys' fees and costs. If the Court approves the award, Defendant has agreed to pay Class Counsel's attorneys' fees and costs, up to \$250,000. Class Members are not responsible for paying Class Counsel.

When will the Court Hold a Hearing to Consider the Settlement?

On XXXXX, 2015 at X:XX X.m., the Honorable Maxine M. Chesney of the Northern District of California will hold a hearing (the "Fairness Hearing") in Department ____ of the Courthouse located at 450 Golden Gate Avenue, San Francisco, CA 94102. At the hearing, the Court will decide whether to approve the Settlement and will determine the amount of attorneys' fees and costs and Plaintiff's incentive award. You or your lawyer may appear at the Fairness Hearing *but do not have to do so*.

How Can I Obtain More Information?

Class Members can ask questions and review court documents associated with this case at www.XXXXXClassActionSettlement.com, or by writing the "Claims Administrator" at [TBD].

**PLEASE DO NOT CONTACT THE COURT OR CLERK'S OFFICE
REGARDING THIS NOTICE.**

EXHIBIT B

LEGAL NOTICE

A federal court authorized this notice. This is not a solicitation from a lawyer.

If you purchased a product manufactured by Triple Leaf Tea, Inc., your rights may be affected by a proposed class action settlement

Para una notificación en Español, llamar o visitar [www._____]]

WHAT IS THIS CASE ABOUT?

A proposed settlement has been reached in a class action lawsuit. The lawsuit claims that labeling and marketing on diet tea and other supplement products manufactured or distributed by defendant Triple Leaf Tea, Inc. ("Triple Leaf") was false or deceptive. Triple Leaf stands by its advertising and denies it did anything wrong. The Court has not decided which side was right. Instead, the parties have decided to settle the case.

ARE YOU A CLASS MEMBER?

You are a class member if you purchased Triple Leaf, Inc.'s Dieter's Green Herbal Tea, Ultra-Slim Herbal Tea, and/or Super Slimming Herbal Tea Products in all sizes and package iterations, for personal or household use between April 4, 2010 and [DATE] (the "Products"). Excluded from the Class are Triple Leaf, its employees, parents, subsidiaries, affiliates, officers and directors, and those who purchased the Products for resale. You should read the entire Notice carefully because your legal rights are affected whether you act or not.

WHAT DOES THIS SETTLEMENT PROVIDE?

Triple Leaf has agreed to make certain changes to the manner in which it labels and advertises the Products, and has also agreed to remove an ingredient from the Products. The complete Settlement Agreement is found at www.XXXXXX.com.

WHAT HAPPENS NOW?

The Court will hold a hearing in this case on [DATE] at [TIME] at the federal courthouse located at 450 Golden Gate Ave., San Francisco, CA 94102, to consider final approval of the settlement, payment of attorneys' fees of \$250,000 inclusive of costs, incentive awards of up to \$1,500 for the Class Representative in the lawsuit, and related issues. The motion(s) by Class Counsel for attorneys' fees and costs and incentive awards for the Class

Representative will be available for viewing on the settlement website after they are filed. You may appear at the hearing in person or through your attorney at your own cost, but you are not required to do so.

WHAT ARE YOUR OPTIONS?

EXCLUDE YOURSELF	Get out of the lawsuit and the settlement. Get no cash refund. If you do not want to be bound by the settlement, you must send a letter to the Claims Administrator at the address below requesting to be excluded. The letter must be postmarked by [DATE] . If you exclude yourself, you cannot receive a benefit from this settlement, but you can sue the manufacturer of the Products for the claims alleged in this lawsuit.
OBJECT OR COMMENT	Write the Court about why you do, or do not, like the settlement. If you want to object to the settlement you must file a written statement with the Court by [DATE] .
DO NOTHING	If you do not exclude yourself from the settlement, you will be bound by the Court's decisions.

Your rights and options – and the deadlines to exercise them – are only summarized in this notice. The Detailed Notice describes, in full, how to file a claim, object, or exclude yourself and provides other important information. For more information and to obtain a Detailed Notice, claim form or other documents, visit www.XXXX.com, call toll-free [1-800-XXX-XXXX], or write to:

1-800-XXX-XXXX

www.XXXXXX.COM

DO NOT CALL TRIPLE LEAF OR THE COURT

EXHIBIT C

SS TEA

4/7/15

**Herbal Tea
Naturally
CAFFEINE-FREE**

SUPER SLIM

HERBAL TEA™

**With Herbal Stimulant Laxative Senna & Chinese Herbs*
Helps Support Cleansing & Detoxification***

SUPER SLIM

HERBAL TEA™

**With Herbal Stimulant Laxative Senna
& Chinese Herbs*
Helps Support
Cleansing & Detoxification***

SUPER SLIM HERBAL TEA

The herbs in this popular Chinese tea have been used traditionally to help support cleansing and detoxification, and to help ease occasional irregularity that may be associated with some diets.* Senna is an herbal stimulant laxative that was used to promote bowel movements and cleansing.* Persimmon leaf and papaya leaf were used to support the stomach.* Loquat leaf was said to soothe and harmonize the stomach.* Licorice root is known as the “Great Detoxifier” in Chinese herbology.* It was used to harmonize the action of the other herbs.* Remember to follow the advice of your doctor, including their recommendations for a balanced healthy diet, fiber and regular exercise.* Be sure to eat plenty of fresh vegetables, fruits, juices and pure water, according to your doctor’s advice.* **SUGGESTED USE:** 1 cup after dinner or before bedtime.* Do not exceed 1 cup in 24 hours.* Make it weak by brewing it briefly.* Brew 1 tea bag in 1 cup of water for 1-2 minutes, remove the tea bag and drink 1 cup hot or cold.* Do not overbrew.* **Do not drink for more than 7 days unless directed by your doctor.***

<p>*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.</p>

Side panel: follow format on box:

SUPPLEMENT FACTS

WARNINGS (replaces NOTE)

NOTICE (CA required – on all boxes nationwide; move NOTICE down to make space)

Proprietary Blend of Herbs

Senna leaf
Persimmon leaf
Papaya leaf
Loquat Leaf
Licorice root

(Removed Whorled mallow leaf and added 1 Chinese herb – loquat leaf)

WARNINGS

This tea is not intended to be used for chronic constipation or as an aid to lose weight.* **Do not use for more than 1 week unless directed by a doctor.*** Frequent or prolonged use of laxatives may result in dependence on laxatives.* Senna may result in abdominal pain, cramping and loose or watery stools.* Consult a doctor before use if you are taking any medication or have a medical condition, or are pregnant or nursing.* Recommended for adults only.* For children under 12, consult a doctor before use.* **Keep out of reach of children.* Follow all directions for use carefully.***

NOTICE: This product contains senna leaf. Read and follow directions carefully. **Do not use if you have or develop diarrhea, loose stools, or abdominal pain because senna may worsen these conditions and be harmful to your health.** Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.

Other end panel:

TRIPLE LEAF TEA'S ANCIENT CHINESE HERBS & TEAS

Traditional Chinese use of herbs and teas dates back thousands of years. Recently, here in the West, people have discovered the value of this ancient practice. Tea drinkers are able to enjoy a wider variety of Chinese herbs and teas that rarely were used in the West until recent times. Different parts of plants are used, including the leaves, stems, roots, barks, seeds and flowers. Herbs are often blended together, and prepared and consumed as teas. The Chinese tradition of using herbs and teas has been passed on from generation to generation over the centuries.

Triple Leaf Tea comes from such a tradition. It is made in the U.S.A. by a Chinese American family-owned business. The company owner can remember stories of his own grandfather selling herbs and teas in his village in China. Today, these traditional Chinese herbs and teas are available to you. We wish you harmony, balance and well-being.

DG TEA

04/07/15

**Herbs and
DECAFFEINATED
Green Tea**

DIET GREEN

HERBAL TEA™

**With Herbal Stimulant Laxative Senna &
Naturally Decaffeinated Green Tea* – Helps Support Cleansing***

DIET GREEN

HERBAL TEA™

**With Herbal Stimulant Laxative Senna
& Naturally Decaffeinated Green Tea*
Helps Support Cleansing***

DIET GREEN HERBAL TEA

The herbs in this popular Chinese tea have been used traditionally to help support cleansing and to help ease occasional irregularity that may be associated with some diets.* Senna is an herbal stimulant laxative used to promote bowel movements and cleansing.* Loquat leaf was said to help soothe and harmonize the stomach.* Persimmon leaf was used to help support the stomach and spleen.* Naturally decaffeinated green tea adds to the delicious flavor of this tea.* This tea's traditional Chinese name comes from the green-colored herbs in the formula. Remember to follow the advice of your doctor, including their recommendations for a balanced healthy diet, fiber and regular exercise.* Be sure to eat plenty of fresh vegetables, fruits, juices and pure water, according to your doctor's advice.* **SUGGESTED USE:** 1 cup after dinner or before bedtime.* Do not exceed 1 cup in 24 hours.* Make it weak by brewing it briefly.* Brew 1 tea bag in 1 cup of water for 1-2 minutes, remove the tea bag and drink 1 cup hot or cold.* Do not overbrew.* **Do not drink for more than 7 days unless directed by your doctor.***

<p>*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.</p>

Side panel: follow format on box:

SUPPLEMENT FACTS

WARNINGS (replaces NOTE)

NOTICE (CA required – on all boxes nationwide; move NOTICE down to make space)

Proprietary Blend of Herbs

Senna leaf

Naturally decaffeinated green tea leaf

Loquat leaf (new add)

Persimmon leaf

(Removed Whorled mallow leaf)

WARNINGS

This tea is not intended to be used for chronic constipation or as an aid to lose weight.* **Do not use for more than 1 week unless directed by a doctor.*** Frequent or prolonged use of laxatives may result in dependence on laxatives.* Senna may result in abdominal pain, cramping and loose or watery stools.* Consult a doctor before use if you are taking any medication or have a medical condition, or are pregnant or nursing.* Recommended for adults only.* For children under 12, consult a doctor before use.* **Keep out of reach of children.* Follow all directions for use carefully.***

NOTICE: This product contains senna leaf. Read and follow directions carefully. **Do not use if you have or develop diarrhea, loose stools, or abdominal pain because senna may worsen these conditions and be harmful to your health.** Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.

Other end panel:

TRIPLE LEAF TEA'S ANCIENT CHINESE HERBS & TEAS

Traditional Chinese use of herbs and teas dates back thousands of years. Recently, here in the West, people have discovered the value of this ancient practice. Tea drinkers are able to enjoy a wider variety of Chinese herbs and teas that rarely were used in the West until recent times. Different parts of plants are used, including the leaves, stems, roots, barks, seeds and flowers. Herbs are often blended together, and prepared and consumed as teas. The Chinese tradition of using herbs and teas has been passed on from generation to generation over the centuries.

Triple Leaf Tea comes from such a tradition. It is made in the U.S.A. by a Chinese American family-owned business. The company owner can remember stories of his own grandfather selling herbs and teas in his village in China. Today, these traditional Chinese herbs and teas are available to you. We wish you harmony, balance and well-being.

US TEA

4/7/15

**Herbal Tea
Naturally
CAFFEINE-FREE**

ULTRA SLIM

HERBAL TEA™

**With Herbal Stimulant Laxative Senna & Chinese Herbs*
Helps Support Cleansing***

ULTRA SLIM

HERBAL TEA™

**With Herbal Stimulant Laxative Senna
& Chinese Herbs*
Helps Support
Cleansing***

ULTRA SLIM HERBAL TEA

The herbs in this popular Chinese tea have been used traditionally to help support cleansing, and to help ease occasional irregularity that may be associated with some diets.* Senna is an herbal stimulant laxative that was used to promote bowel movements and cleansing.* Persimmon leaf and papaya leaf were used to support the stomach.* Loquat leaf was said to soothe and harmonize the stomach.* Remember to follow the advice of your doctor, including their recommendations for a balanced healthy diet, fiber and regular exercise.* Be sure to eat plenty of fresh vegetables, fruits, juices and pure water, according to your doctor's advice.*

SUGGESTED USE: 1 cup after dinner or before bedtime.* Do not exceed 1 cup in 24 hours.* Make it weak by brewing it briefly.* Brew 1 tea bag in 1 cup of water for 1-2 minutes, remove the tea bag and drink 1 cup hot or cold.* Do not overbrew.* **Do not drink for more than 7 days unless directed by your doctor.***

<p>*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.</p>

Side panel: follow format on box:

SUPPLEMENT FACTS

WARNINGS (replaces NOTE)

NOTICE (CA required – on all boxes nationwide; move NOTICE down to make space)

Proprietary Blend of Herbs

Senna leaf

Persimmon leaf

Papaya leaf

Loquat leaf

(Removed Whorled mallow leaf)

WARNINGS

This tea is not intended to be used for chronic constipation or as an aid to lose weight.* **Do not use for more than 1 week unless directed by a doctor.*** Frequent or prolonged use of laxatives may result in dependence on laxatives.* Senna may result in abdominal pain, cramping and loose or watery stools.* Consult a doctor before use if you are taking any medication or have a medical condition, or are pregnant or nursing.* Recommended for adults only.* For children under 12, consult a doctor before use.* **Keep out of reach of children.* Follow all directions for use carefully.***

NOTICE: This product contains senna leaf. Read and follow directions carefully. **Do not use if you have or develop diarrhea, loose stools, or abdominal pain because senna may worsen these conditions and be harmful to your health.** Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.

Other end panel:

TRIPLE LEAF TEA'S ANCIENT CHINESE HERBS & TEAS

Traditional Chinese use of herbs and teas dates back thousands of years. Recently, here in the West, people have discovered the value of this ancient practice. Tea drinkers are able to enjoy a wider variety of Chinese herbs and teas that rarely were used in the West until recent times. Different parts of plants are used, including the leaves, stems, roots, barks, seeds and flowers. Herbs are often blended together, and prepared and consumed as teas. The Chinese tradition of using herbs and teas has been passed on from generation to generation over the centuries.

Triple Leaf Tea comes from such a tradition. It is made in the U.S.A. by a Chinese American family-owned business. The company owner can remember stories of his own grandfather selling herbs and teas in his village in China. Today, these traditional Chinese herbs and teas are available to you. We wish you harmony, balance and well-being.

EXHIBIT D



75 Rowland Way
Suite 250
Novato, CA 94945

415-798-5900 PHONE
415-892-7354 FAX
kccllc.com

April 24, 2015

Ryan Polk, Esq.
Gordon & Rees LLP
275 Battery Street, Suite 2000
Embarcadero Center West
San Francisco, CA 94111

Re: *Johnson v. Triple Leaf Tea Inc.*
Class Action Administration Services Estimate - Revised

Dear Ryan,

We appreciate the opportunity to submit this revised proposal and cost estimate for class action administration services pertaining to the *Johnson v. Triple Leaf Tea Inc.*

For the purposes of this revised proposal, we applied the following assumptions with respect to KCC's duties:

- Perform any required CAFA mailing to all State Attorneys General and the US Attorney General;
- KCC's Legal Notification Services will produce and place the Notice as follows:
 - *USA Today*; 2.74" x 7" ads; National edition; Marketplace section; 2 insertions;
 - *San Francisco Examiner*; 1/6 tabloid page; Main News or Legal/Classified; 4 insertions;
 - Sixty days of online banner advertisements; Google Display 10 million impressions; Facebook 5 million impressions;
- Establish and maintain the case website that will contain relevant case documents, important dates and frequently asked questions;
- Provide a Declaration of Notice Procedures to the parties indicating our compliance with the noticing effort; and
- Provide automated telephone support to handle any class member inquiries and fulfill notice packet requests.

With experience administering more than 1,500 settlements, KCC provides high-quality and cost-effective class action administration services including pre-settlement consulting, settlement funds escrow, class member data management, legal notification, call center support, claims administration as well as disbursement and tax reporting services. We are a knowledgeable partner who proactively works with you throughout the settlement administration process and are well-positioned to handle your matter immediately.

Our domestic infrastructure, the largest in the industry, includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. Last year, our disbursement services team distributed \$500 billion to payees in the form of 29 million checks and 11 million electronic transfers.

Please contact me with any questions regarding the enclosed case assumptions and cost estimate. We will hold this proposal and estimate open for ninety days from the date of this letter. Thank you for your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Ivie", is placed above the typed name.

Patrick J. Ivie
EVP, Class Action Services
Tel: 310.776.7385
Cell: 310.795.9742
Email: pivie@kccllc.com



COST SUMMARY & SCOPE OF SERVICES

<u>Description</u>	<u>Estimated Cost</u>
Class Member Data Management	\$1,500
Legal Notification	\$44,820
Telephone Support	\$6,819
Sub-Total Administration Costs	\$53,139
Plus Estimated Postage	\$61
Total Estimated Cost	\$53,200
 Less Client Courtesy Discount	 (\$3,250)
Total Estimated Cost, with Discount	\$49,950

The estimated total cost of the settlement administration as described, including approximately \$61 in postage, is \$53,200.

Provided there is no significant change to the scope of work, we will discount our administration costs by \$3,250, reducing the total estimated cost of the administration to \$49,950.

CLASS MEMBER DATA MANAGEMENT

Data and Forms Management

We will process class member data and pre-assign a unique sequential control number to each class member that will be used throughout the administration process. Our estimate assumes that the class member data will be delivered in one electronic file in a complete and accurate form.

We will format all relevant documents and will send all document proofs to you for approval prior to printing.

We will store all paper and electronic documentation received throughout the duration of the case. Upon the conclusion of the case, and absent any court orders or client requests pertaining to retention specifications, we will return or dispose of the physical materials within ninety (90) days. Any returned undeliverable mail will be disposed of within 2 days of receipt, absent any court orders or client requests pertaining to retention specifications. The storage of returned undeliverable mail will be billed as incurred.

LEGAL NOTIFICATION

CAFA Notice

We will copy the exhibits of the Settlement onto CD-ROMs and send them by USPS Priority Mail to all State Attorneys General and the US Attorney General. We recommend a generic cover letter and can share letters we have used previously.

Notice Publication

KCC's Legal Notification Services will produce and place the Notice as follows:

- *USA Today*; 2.74" x 7" ad; National edition; Marketplace section; Monday-Thursday; 2 insertions;
- *San Francisco Examiner*; 1/6 tabloid page; Main News or Legal/Classified; 4 insertions;
- Sixty days of online banner advertisements (*Google, Facebook*) - Adult Targeted with no frequency cap;
 - *Google* Display Impressions; 10 million impressions
 - *Facebook* impressions; 5 million impressions



Website Set-up and Maintenance

We will establish and maintain a case-specific website incorporating important court documents, dates, FAQs, forms and other pertinent case information.

Declaration of Notice Procedures

We will prepare a Declaration of Notice Procedures to report our compliance with all class notification requirements.

TELEPHONE SUPPORT

Automated Call Support

We will set up a toll-free automated Interactive Voice Response (IVR) system through which class members can access settlement information (via menu-driven Q&A's) and facilitate Notice Packet requests.



Administration Services Estimate
Johnson v. Triple Leaf Tea Inc.

April 24, 2015

Patrick Ivie; pive@kccllc.com; 310.776.7385

Key Assumptions Used in Estimate Preparation		
Size of Class:	Unknown class size	
Case Duration:	6 months	
# of Electronic, Finalized Data Files Provided (Excel, Access, etc.):	1 file(s)	
CAFA Notice Required?	Yes	
Claims Processing:	No	
Address Searches:	No	
Media Campaign Required:	Yes	
English Only:	Yes	
# of Email Campaigns:	N/A	
Reminder Mailing:	No	
Duration of Claims Filing Period:	N/A	
Type of Telephone Support:	Automated	
# of class members that will call:	2,500 calls	
% of callers that will request a Notice Packet:	5%	
Duration of Telephone Support:	6 months	
Type of Website Support:	Static	
Duration of Website Support:	6 months	

SUMMARY OF COSTS	
Notice Procedures	\$46,320
Telephone Support	\$6,819
Sub-Total Administration Costs	\$53,139
Plus Estimated Postage*	\$61
Total Estimated Cost**	\$53,200
Less Client Courtesy Discount****	(\$3,250)
Total Est. Cost, w/ Discount**	\$49,950

NOTICE PROCEDURES	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Data and Forms Set-up					
- Set up Case Management System		5 hrs	\$100.00	\$500	
- Format Document(s)		10 hrs	\$100.00	\$1,000	
Sub-total of Data and Forms Set-up					\$1,500
CAFA Mailing					
- CAFA Mailing to State Attorneys General and US Attorney General		1 time(s)	\$1,500.00	\$1,500	
Sub-total of CAFA Mailing					\$1,500
Media Campaign					
- Published Notice & Internet Media				\$39,045	
- USA Today; 2.74" x 7" ads; National edition; Marketplace section; Mon - Thurs		2 insertion(s)			
- SF Examiner; 1/6 tabloid page (3.95" x 5.42"); Main News or Legal/Classified		4 insertion(s)			
- 60 days of Online Banner advertisements (Google, Facebook) - Adult Targeted with no frequency cap					
* Google Display Impressions		10 Million impressions			
* Facebook impressions		5 Million impressions			
- Production of Materials					
Sub-total of Media Campaign					\$39,045
Website Set-up & Maintenance					
- Design & Set up Static Website		10 hrs	\$100.00	\$1,000	
- Domain Registration (5 yrs/Privacy Registration)				\$175	
- Maintenance		3 hrs	\$100.00	\$300	
- Server Space rental		6 mos	\$50.00	\$300	
Sub-total of Website Set-up & Maintenance					\$1,775
Case Management and Declaration of Notice Procedures		25 hrs	\$100.00	\$2,500	
Sub-total of Case Management and Declaration of Notice Procedures					\$2,500
SUB-TOTAL OF NOTICE PROCEDURES					\$46,320

TELEPHONE SUPPORT	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Automated Call Support					
- Toll Free Phone Line & System Set-up Cost				\$3,000	
- Script Drafting and Management		15 hrs	\$100.00	\$1,500	
- Monthly Maintenance Fees		6 mos	\$50.00	\$300	
- Projected # of Calls (% of Class)		2,500 calls			
- IVR Line Charges		7,500 mins	\$0.18 /min	\$1,350	
- Long-Form Notice Packet Requests	5%	125 units			
- Fulfill Notice Packet Requests		125 units	\$0.75	\$94	
- Print Production Management		2 hrs	\$100.00	\$200	
- Transcriptions		125 units	\$0.60	\$75	
- Staff Time Downloading Transcribed Data (30 min/month x 6 months)		3 hrs	\$100.00	\$300	
SUB-TOTAL OF TELEPHONE SUPPORT					\$6,819
SUB-TOTAL ADMINISTRATION COSTS					\$53,139
Plus Estimated Postage*					\$61
TOTAL ESTIMATED COST**					\$53,200
LESS CLIENT COURTESY DISCOUNT****					(\$3,250)
TOTAL ESTIMATED COST, WITH DISCOUNT					\$49,950



Administration Services Estimate
Johnson v. Triple Leaf Tea Inc.

April 24, 2015

Patrick Ivie; pivie@kccllc.com; 310.776.7385

OTHER SERVICES AND OUT-OF-POCKET EXPENSES	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Other Services and Ad Hoc Reporting, as needed or requested				(standard hourly rates)	
Other Charges and Out-of-Pocket Costs***				(actual)	

* Estimated Postage and Handling.

** Does not include applicable taxes.

*** Includes, but is not limited to long distance calls, overnight shipping, photocopies, storage, PO Box rentals, broker fees, etc.

**** Discount is contingent upon no significant change in the scope of work.

This Class Action Administration Services Estimate and the attached Cost Summary & Scope of Services (together, the "Proposal") are valid for ninety days from 4/24/2015. After such period, KCC reserves the right to amend the Proposal (including, without limitation, by increasing fees and costs) or to withdraw the Proposal in its sole discretion.

All services to be provided to the undersigned (the "Client") and all fees and costs set forth in the Proposal are subject to the terms, specifications, assumptions and conditions set forth in the Proposal and the attached Terms and Conditions (the "Terms of Service").

KCC Class Actions Services, LLC

BY: _____ DATE: _____

TITLE:

Triple Leaf Tea Inc.

BY: _____ DATE: _____

TITLE:



TERMS AND CONDITIONS

All services to be provided by KCC Class Action Services, LLC (together with its affiliates, "KCC"), including services provided to Client as set forth in the attached Proposal, are subject to the following Terms and Conditions:

1. SERVICES. KCC agrees to provide the services set forth in the Proposal attached hereto (the "Services"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Proposal. KCC will often take direction from Client's representatives, employees, agents and/or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that KCC may rely upon, and Client agrees to be bound by, any requests, advice or information provided by the Client Parties to the same extent as if such requests, advice or information were provided by Client. Client agrees and understands that KCC shall not provide Client or any other party with any legal advice.

2. PRICES, CHARGES AND PAYMENT. KCC agrees to charge and Client agrees to pay, subject to the terms herein, KCC for its fees and expenses as set forth in the Proposal. Client acknowledges that any estimate in the Proposal is based on information provided by Client to KCC and actual fees and expenses may vary depending on the circumstances and length of the case. Notwithstanding the foregoing, where total expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment from Client due and payable upon demand and prior to the performance of services. KCC's prices are inclusive of commission and other charges and are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to Client. Client agrees to pay the reasonable out of pocket expenses incurred by KCC in connection with Services, including, but not limited to, transportation, lodging, meals. KCC agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt.

KCC agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Client further agrees to pay a late charge (the "Finance Charge"), calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, Client shall give written notice to KCC within twenty (20) days of receipt of the invoice by Client. Client agrees the Finance Charge is applicable to instances where KCC agreed to provide certain pre-settlement work while deferring the billing of said work until the settlement phase.

3. FURTHER ASSURANCES. Client agrees that it will use its best efforts to include provisions reasonably acceptable to KCC in any relevant court order, settlement agreement or similar document that provide for the payment of KCC's fees and expenses hereunder. No agreement to which KCC is not a party shall reduce or limit the full and prompt payment of KCC's fees and expenses as set forth herein and in the Proposal.

4. RIGHTS OF OWNERSHIP. The parties understand that the software programs and other materials furnished by KCC to Client and/or developed during the course of the performance of Services are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by KCC.

5. CONFIDENTIALITY. Each of KCC and Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information. These provisions shall survive termination of Services.

6. BANK ACCOUNTS. At Client's request, KCC shall be authorized to establish accounts with financial institutions as agent for Client or as otherwise agreed by the parties. All Client accounts established by KCC shall be deposit accounts of commercial banks with capital exceeding \$1 billion and an S&P rating of "A" or higher. In some cases, KCC may derive financial benefits from financial institutions resulting from settlement funds and other moneys on deposit or invested with them. These benefits include, for example, discounts provided on certain banking services and service fees.

7. TERMINATION. The Services may be terminated by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to Client, (ii) the failure of Client to pay KCC invoices for more than sixty (60) days

JOHNSON V. TRIPLE LEAF TEA INC

from the date of invoice, or (iii) the accrual of invoices or unpaid services where KCC reasonably believes it will not be paid. Termination of Services shall not relieve Client of its obligations to pay all fees and expenses incurred prior to such termination.

In the event that the Services are terminated, regardless of the reason for such termination, KCC shall reasonably coordinate with Client to maintain an orderly transfer of data, programs, storage media or other materials furnished by Client to KCC or received by KCC in connection with the Services. Client agrees to pay for such services in accordance with KCC's then existing prices for such services.

8. LIMITATIONS OF LIABILITY AND INDEMNIFICATION. Client shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance of Services. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. Client shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that Client becomes aware of with respect to the Services provided by KCC.

Except as provided herein, KCC's liability to Client or any person making a claim through or under Client or in connection with Services for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability for any Losses, whether direct or indirect, arising out of the Services exceed the total amount billed to Client and actually paid to KCC for the Services. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the Services. Except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity. The provisions of this Section 8 shall survive termination of Services.

9. FORCE MAJEURE. Whenever performance hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond the performing party's reasonable control, then such performance shall be excused and shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

10. INDEPENDENT CONTRACTORS. KCC is and shall be an independent contractor of Client and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of the Services or these Terms and Conditions.

11. NOTICES. All notices and requests hereunder shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth in the Proposal or to such other address as the party to receive the notice or request so designates by written notice to the other.

12. APPLICABLE LAW. These Terms and Conditions will be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law principles.

13. ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY; BINDING EFFECT. These Terms and Conditions, together with the Proposal delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. If any provision herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. These Terms and Conditions may be modified only by a written instrument duly executed by the parties. All of the terms, agreements, covenants, representations, warranties and conditions of these Terms and Conditions are binding upon, and inure to the benefit of and are enforceable by, the parties and their respective successors and permitted assigns.

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf of)
all others similarly situated, and the general)
public,)

Plaintiff,)

v.)

TRIPLE LEAF TEA INC.,)

Defendant.)

CASE NO. 3:14-cv-01570-MMC

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, CERTIFYING THE
CLASS, APPOINTING CLASS
REPRESENTATIVES AND CLASS
COUNSEL, APPROVING NOTICE
PLAN, AND SETTING FINAL
APPROVAL HEARING**

Judge: Hon. Maxine M. Chesney

Date: June 19, 2015

Time: 9:00 a.m.

Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014

After arms-length settlement discussions between Plaintiff Eunice Johnson and Defendant Triple Leaf Tea, Inc. (the “Parties”), the Parties have entered into a Settlement Agreement (“Agreement”) with respect to the above captioned matter dated May 15, 2015, which, if approved, would resolve this putative class action (“the Litigation”).

1 The capitalized terms used in this Preliminary Approval Order shall have the meanings
2 and/or definitions given to them in the Agreement, or if not defined therein, the meanings and/or
3 definitions given to them in this Preliminary Approval Order.

4 For a number of months before, and during the pendency of, the Litigation, Class
5 Counsel conducted an extensive examination and evaluation of the relevant facts and law to
6 assess the merits of the named Plaintiff's and Class' claims to determine how best to serve the
7 interests of Plaintiff and the Class. In the course of this extensive examination, Class Counsel
8 reviewed numerous documents, which consisted of marketing data, label and package
9 mechanicals, sales figures, unit sales, promotional materials, package materials, and detailed
10 financial information produced by Defendant. Class Counsel has conducted thorough review of
11 the federal Food, Drug and Cosmetic Act ("FDCA"), its numerous changes over the years, and
12 the FDCA's implementing regulations with respect to dietary supplements. Class Counsel
13 propounded interrogatories, requests for admission, and requests for production of documents on
14 Defendant, to which Defendant responded. Class Counsel has carefully considered the merits of
15 Plaintiff's and the Class' claims, and the defenses raised by Defendant.

16 The proposed settlement was reached only after extensive investigation and discovery in
17 the matter, and was the result of protracted negotiations conducted by the Parties with the
18 assistance of The Honorable Ronald M. Sabraw (Ret.) at JAMS Arbitration, Mediation, and
19 ADR Services. In addition, the Parties engaged in numerous settlement discussions after the
20 mediation with Judge Sabraw in order to reach the terms of the Agreement, over the course of
21 several months. Based on the negotiations between counsel for the Parties, the Parties fully
22 understood the nature, strength, and weaknesses of each other's claims and defenses.

23 Plaintiff and Class Counsel maintain that the Litigation and the claims asserted therein
24 are meritorious and that Plaintiff and the Class would have prevailed at trial. Notwithstanding,
25 Plaintiff and Class Counsel have agreed to settle the Litigation pursuant to the provisions of the
26 Agreement, after considering, among other things: (i) the substantial benefits to Plaintiff and the
27 Class under the terms of this Agreement; (ii) the uncertainty of being able to prevail at trial; (iii)

1 the uncertainty relating to Defendant's defenses and the expense of additional motion practice in
2 connection therewith; (iv) the issues relating to proving damages on an individual Class Member
3 basis; (v) the attendant risks of litigation, especially in complex actions such as this, as well as
4 the difficulties and delays inherent in such litigation; and (vi) the desirability of consummating
5 this Settlement promptly in order to provide effective relief to Plaintiff and the Class.

6 Plaintiff and Class Counsel agree that this Agreement is fair, reasonable, and adequate
7 because it provides substantial benefit to the Class, is in the best interests of the Class, and fairly
8 resolves the claims alleged in this Litigation.

9 Defendant expressly denies any wrongdoing alleged in the pleadings in the Litigation,
10 and does not admit or concede any actual or potential fault, wrongdoing, or liability in
11 connection with any facts or claims which have been or could have been alleged against it in the
12 Litigation. Defendant nonetheless considers it desirable for the Litigation to be settled and
13 dismissed, because the proposed settlement will: (i) avoid further expense and disruption of the
14 management and operation of Defendant's business due to the pendency and defense of the
15 Litigation; (ii) finally put Plaintiff's and the Class' claims and the underlying matters to rest; and
16 (iii) avoid the substantial expense, burdens, and uncertainties associated with a potential finding
17 of liability and damages for Plaintiff and the Class on the claims alleged in the Complaint in the
18 Litigation.

19 The Court has read and considered the Agreement and all exhibits thereto, including the
20 proposed notices and claim form, and finds there is sufficient basis for: (1) granting preliminary
21 approval of the Agreement; (2) certifying a class for settlement purposes; (3) appointing Plaintiff
22 Eunice Johnson as Class Representative and her counsel as Class Counsel; (4) directing that
23 Notice be disseminated to the Class; and (5) setting a hearing at which the Court will consider
24 whether to grant final approval of the Agreement.

25 The Court now **GRANTS** the motion for preliminary approval and makes the following
26 findings and orders:
27
28

1 1. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby certifies this
2 Litigation as a class action on behalf of the following certified Class:

3 All U.S. consumers who purchased the Products for household or personal use
4 during the Class Period are included.¹ Excluded from the Class are Triple Leaf;
5 persons who during or after the Settlement Period were officers or directors of
6 Triple Leaf, or any corporation, trust or other entity in which Triple Leaf has a
7 controlling interest; and the members of the immediate families of Triple Leaf's
8 employees or their successors, heirs, assigns and legal representatives; any
9 judicial officer hearing this Action, and their family members and employees.

10 2. The Court finds that the Class meets the requirements of Rule 23(a), (b)(2), and
11 (b)(3) of the federal Rules of Civil Procedure. Joinder of all Class Members in a single
12 proceeding would be impracticable, if not impossible, because of their numbers and dispersion.
13 Common issues exist among Class Members and predominate over questions affecting
14 individual Class Members only. In particular, each Class Member's claim depends on whether
15 the representations made by Defendant on the packaging, labeling, and marketing of the
16 Products, which were uniform throughout the United States, were misleading to a reasonable
17 consumer. Plaintiff's claims are typical of, indeed identical, to those of the Class, as Plaintiff
18 was exposed to Defendant's diet and health-related claims and purchased the Product(s) in
19 reliance on those claims. Plaintiff and her counsel will fairly and adequately protect the interests
20 of the Class, as Plaintiff has no interests antagonistic to the Class, and has retained counsel who
21 are experienced and competent to prosecute this matter on behalf of the Class. Finally, a class
22 settlement is superior to other methods available for a fair resolution of the controversy.

23 3. The Court approves Eunice Johnson as Class Representative.

24 4. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of
25 Civil Procedure, the Court appoints Plaintiff's counsel, the Law Offices of Ronald A. Marron,
26 APLC, to serve as Class Counsel.

27 5. The Court preliminarily approves the Agreement, finding that its terms appear
28 sufficient, fair, reasonable, and adequate to warrant dissemination of Notice of the proposed

That is, April 4, 2010 through the Opt-Out Date for purchasers of Triple Leaf Tea, Inc.'s
DIETER'S GREEN, ULTRA-SLIM, and SUPER-SLIMMING herbal tea products.

1 settlement to the Class. The Agreement contains no obvious deficiencies and the Parties have
 2 entered into the Agreement in good faith, following arms-length negotiation between their
 3 respective counsel. The Court's approval of this Agreement is made subject to further
 4 consideration at the Final Approval Hearing Date.

5 6. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court will
 6 hold a final approval hearing (the "Final Approval Hearing Date") on _____, 2015
 7 at _____ a.m./p.m., in the Courtroom of the Honorable Maxine M. Chesney, United States
 8 District Court for the Northern District of California, for the following purposes:

- 9 a. finally determining whether the Class meets all applicable requirements of
 10 Federal Rules of Civil Procedure 23(a) and (b), and, thus, the Class'
 claims should be certified for purposes of effectuating the Settlement;
- 11 b. determining whether the proposed Settlement of the Litigation on the
 12 terms and conditions provided for in the Agreement is fair, reasonable,
 and adequate and should be approved by the Court;
- 13 c. considering the application of Class Counsel for an award of attorneys'
 14 fees and costs, as provided for in the Agreement;
- 15 d. considering the application of the named Plaintiff for a class representative
 incentive award, as provided for in the Agreement;
- 16 e. considering whether the Court should enter the [Proposed] Judgment,
 17 Final Order and Decree;
- 18 f. considering whether the release by the Class Members of the Released
 Claims as set forth in the Agreement should be provided; and
- 19 g. ruling upon such matters as the Court may deem just and appropriate.

20 7. Class Members must file and serve any objections to the proposed settlement no
 21 later than thirty (30) calendar days prior to the Final Approval Hearing Date, including any
 22 memoranda and/or submissions in support of the objections, which deadline will be set forth in
 23 the Class Notice.

24 8. All papers in support of the Agreement must be filed with the Court and served at
 25 least fourteen (14) calendar days prior to the Final Approval Hearing date. Any response to an
 26 objection must be filed and served at least seven (7) days prior to the Final Approval Hearing
 27 date.

1 9. Any application for an award of attorneys' fees and costs and class representative
2 incentive award must be filed with the Court and served at least forty-five (45) days prior to the
3 Final Approval Hearing date. After filing, the application for fees and costs, and incentive award
4 shall be posted on the Settlement Website for review by Class Members.

5 10. The Court approves the form and procedure for disseminating Notice of the
6 proposed Settlement to the Class as set forth in the Agreement. This Litigation concerns retail
7 products for which the Parties do not have direct notice information for class members.
8 Accordingly, the Notice Plan provides for notice to the Class by publication. The Court finds
9 that the Notice Plan submitted by the Parties constitutes the best notice practicable under the
10 circumstances, and constitutes valid and sufficient notice to the Class in full compliance with the
11 requirements of applicable law, including Rule 23 of the Federal Rules of Civil Procedure and
12 the Due Process Clause of the United States Constitution.

13 11. Within thirty (30) days after the date of entry of this Order, Defendant shall
14 disseminate the Class Notice in the form attached to the Agreement as Exhibits A and B. The
15 manner and form of such dissemination shall be as set forth in the Notice Plan attached as
16 Exhibit D to the Agreement.

17 12. The Court approves the designation of KCC to serve as the Court-Appointed
18 Class Action Administrator for the settlement. The Class Action Administrator shall disseminate
19 Class Notice and supervise and carry out the Notice Plan, and other administrative functions, and
20 shall respond to Class Member inquiries under the direction and supervision of the Court.

21 13. The Court directs the Class Action Administrator to establish a Class Settlement
22 Website, making available copies of this Order, Class Notice, the Settlement Agreement and all
23 exhibits thereto, a toll-free hotline, and such other information as may be of assistance to Class
24 Members or required under the Agreement. The Class Settlement Website shall be made
25 available to Class Members no later than fifteen (15) calendar days after the date of this Order,
26 and continuously thereafter until thirty (30) days after the Final Approval Hearing (defined
27 below).

1 14. As set forth in the Agreement, within seven (7) calendar days of the date of this
2 Order, Triple Leaf shall pay up to \$50,000 for the purpose of Plaintiff providing notice to the
3 Class, including all costs and expenses associated with the Class Notice, creating and
4 maintaining the Class Settlement Website, and all other Class Action Administrator and Class
5 Notice expenses. The Parties shall jointly retain the services of KCC as their Class Action
6 Administrator but Triple Leaf shall bear the full cost of notice if final approval is not granted.

7 15. No later than fourteen (14) days prior to the Final Approval Hearing Date,
8 Defendant, through the Class Action Administrator, shall file an affidavit and serve a copy on
9 Class Counsel, attesting that notice was disseminated as required by the terms of the Notice Plan
10 or as ordered by the Court. Defendant shall also notify Class Counsel of the costs of attaining
11 the labeling changes per the injunctive relief set forth in the Agreement.

12 16. All Class Members shall be bound by all determinations and judgments in the
13 Litigation concerning the settlement, whether favorable or unfavorable to the Class.

14 17. Any person falling within the definition of the Class may, upon his or her request,
15 be excluded from the Class. Any such person must submit a completed request for exclusion to
16 the Clerk of the Court postmarked or delivered no later than thirty (30) calendar days before the
17 Final Approval Hearing date (“Opt-Out and Objection Deadline”), as set forth in the Class
18 Notice. Requests for exclusion purportedly filed on behalf of groups of persons are prohibited
19 and will be deemed void.

20 18. Any Class Member who does not send a completed, signed request for exclusion
21 to the Clerk of the Court postmarked or delivered on or before the Opt-Out and Objection
22 Deadline will be deemed to be a Class Member for all purposes and will be bound by all further
23 orders of the Court in this Litigation and by the terms of the settlement, if finally approved by the
24 Court. The written request for exclusion must request exclusion from the Class, must be signed
25 by the potential Class Member and include a statement indicating that the person is a member of
26 the Class. All persons who submit valid and timely requests for exclusion shall not be bound by
27 the Agreement or the Final Judgment and Order.

1 19. Any person falling within the definition of the Class may object to the Agreement.
 2 Objections purportedly filed on behalf of groups of persons are prohibited and will be deemed
 3 void. To be considered, all objections must be timely, in writing, signed and dated by the
 4 objector (or his or her attorney, if applicable), must reference the abbreviated name and case
 5 number of the Litigation, and must contain the following information: (i) the objector's name,
 6 address, and telephone number; (ii) the name, address, and telephone number of any attorney for
 7 the objector with respect to the objection; (iii) the factual basis and legal grounds for the
 8 objection; (iv) identification of the case name, case number, and court for any prior class action
 9 lawsuit in which the objector has objected to a proposed class action settlement, the general
 10 nature of such prior objection(s), and the outcome of said prior objection(s); (v) identification of
 11 the case name, case number, and court for any prior class action lawsuit in which the objector
 12 and the objector's attorney (if applicable) has objected to a proposed class action settlement, the
 13 general nature of such prior objection(s), and the outcome of said prior objection(s); (vi) the
 14 payment terms of any fee agreement between the objector and the objector's attorney with
 15 respect to the objection; and (vii) any attorneys' fee sharing agreement or referral fee agreement
 16 between or among the objector, the objector's attorney, and/or any third party, including any
 17 other attorney or law firm, with respect to the objection.

18 20. A request for exclusion or an objection that does not include all of the foregoing
 19 information, that is sent to an address other than the one designated in the Class Notice, or that is
 20 not received within the time specified, shall be invalid and the person serving such a request
 21 shall be deemed a member of the Class, and shall be bound as a Class Member by the
 22 Agreement. The Class Action Administrator shall promptly forward copies of all requests for
 23 exclusion and objections to Class Counsel and counsel for Defendant.

24 21. If a Class Member hires an attorney to represent him or her in support of a timely
 25 and properly submitted objection, and the attorney wishes to appear at the Final Approval
 26 Hearing, in addition to the foregoing requirements, that attorney must (1) file both an entry of
 27 appearance and a notice of intention to appear and participate at the Final Approval Hearing with
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1 the Clerk of the Court no later than thirty (30) calendar days before the Final Approval Hearing,
2 and (2) mail copies of the entry of appearance and the notice of intention to appear and
3 participate at the Final Approval Hearing to Counsel for Defendant and Class Counsel,
4 postmarked no later than thirty (30) calendar days before the Final Approval Hearing.

5 22. A Class Member who appears at the Final Approval Hearing, either personally or
6 through counsel, will be permitted to argue only those matters that were set forth in the timely
7 and validly submitted written objection filed by such Class Member. No Class Member shall be
8 permitted to raise matters at the Final Approval Hearing that the Class Member could have raised
9 in his/her written objection, but failed to do so, and all objections to the Agreement that are not
10 set forth in a timely and validly submitted written objection are deemed waived.

11 23. If a Class Member wishes to present witnesses or evidence at the Final Approval
12 Hearing in support of a timely and validly submitted objection, all witnesses must be identified
13 in the objection, and true and correct copies of all supporting evidence must be appended to, or
14 filed and served with, the objection. Failure to identify witnesses or provide copies of supporting
15 evidence in this manner waives any right to introduce such testimony or evidence at the Final
16 Approval Hearing. While the declaration described above is prima facie evidence that the
17 objector is a member of the Class, Plaintiff or Defendant or both may take discovery regarding
18 the matter, subject to Court approval.

19 24. Any Class Member who fails to comply with the applicable provisions of the
20 preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or
21 she may have to object, appear, present witness testimony, and/or submit evidence, shall be
22 barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval
23 Hearing, and shall be bound by all the terms of the Agreement and by all proceedings, orders,
24 and judgments in the Litigation.

25 25. All objections must be filed with the Clerk and served on the Parties' counsel no
26 later than the Opt-Out and Objection Deadline. Objections received after the Opt-Out and
27 Objection Deadline will not be considered at the Final Approval Hearing. A Class Member's
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1 failure to submit a written objection within the Opt-Out and Objection Deadline, in conformance
2 with the procedures set forth in the Class Notice, and above, waives any right the Class Member
3 may have to object to the settlement, the Agreement, attorneys' fees and costs, the Class
4 Representative's incentive award, or to appeal or seek other review of the Final Judgment and
5 Order.

6 26. Class Members who do not oppose the settlement, the applications for attorneys'
7 fees and costs, or Class Representative incentive award need not take any action to indicate their
8 approval.

9 27. Class Members are preliminarily enjoined from filing, commencing, prosecuting,
10 intervening in, participating in, maintaining as class members or otherwise, directly or indirectly
11 through a representative or otherwise, or receiving any benefits from, any lawsuit, arbitration,
12 government action, administrative or regulatory proceeding or order in any jurisdiction, forum or
13 tribunal asserting any Released Claims. In addition, all persons are preliminarily enjoined from
14 filing, commencing or prosecuting a lawsuit as a class action (including by seeking to amend a
15 pending complaint to include class allegations or by seeking class certification in a pending
16 action in any jurisdiction) on behalf of Class Members, or asserting any Released Claims.
17 Nothing herein shall require any Class Member to take any affirmative action with regard to
18 other pending class action litigation in which he or she may be an absent class member.

19 28. The Agreement and the proceedings and statements made pursuant to the
20 Agreement or papers filed relating to the approval of the Agreement, and this Order, are not and
21 shall not in any event be construed as, offered in evidence as, received in evidence as, and/or
22 deemed to be evidence of a presumption, concession, or an admission of any kind by any of the
23 Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been,
24 could have been, or in the future might be asserted in the Litigation, any other litigation, court of
25 law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative
26 proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of
27 the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff.
28

1 Nothing contained herein shall be construed to prevent a Party from offering the Agreement into
2 evidence for the purposes of enforcement of the Agreement.

3 29. The certification of the Class shall be binding only with respect to the settlement
4 of this Litigation. In the event that the Agreement is terminated pursuant to its terms or is not
5 finally approved by the Court, or such approval is reversed, vacated, or modified in any material
6 respect by this or any other Court, the certification of the Class shall be deemed vacated, the
7 Litigation shall proceed as if the Class had never been certified (including Defendant's right to
8 oppose any subsequent motion for class certification), and no reference to the Class, the
9 Agreement, or any documents, communications, or negotiations related in any way thereto shall
10 be made for any purpose.

11 **IT IS SO ORDERED.**

12
13 DATED: _____

14 The Honorable Maxine M. Chesney
15 UNITED STATES DISTRICT JUDGE
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EXHIBIT F

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 EUNICE JOHNSON, individually, on behalf of)
11 all others similarly situated, and the general)
12 public,)

12 Plaintiff,)

13 v.)

14 TRIPLE LEAF TEA INC.,)

15 Defendant.)

CASE NO. 3:14-cv-01570-MMC

CLASS ACTION

**FINAL JUDGMENT AND ORDER: (1)
APPROVING CLASS ACTION
SETTLEMENT, (2) AWARDING
CLASS COUNSEL FEES AND
EXPENSES, (3) AWARDING CLASS
REPRESENTATIVE INCENTIVE
AWARD, (4) PERMANENTLY
ENJOINING PARALLEL
PROCEEDINGS, AND (5) DISMISSING
ACTION WITH PREJUDICE**

Judge: Hon. Maxine M. Chesney

Date: June 19, 2015

Time: 9:00 a.m.

Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014

1 **I. PROCEDURAL HISTORY**

2 Plaintiff Eunice Johnson filed a Complaint against Defendant Triple Leaf Tea, Inc. in this
 3 action (the “Parties”), as styled above (the “Litigation”), alleging violations of California’s
 4 Unfair Competition Law ([“UCL”] Cal. Bus. & Prof. Code §§ 17200, *et seq.*), False Advertising
 5 Law ([“FAL”] Cal. Bus. & Prof. Code §§ 17500, *et seq.*), the Consumer Legal Remedies Act
 6 ([“CLRA”] Cal. Civ. Code §§ 1750, *et seq.*), and breach of express and implied warranties. Dkt.
 7 No. 1. Defendant manufactures, markets and sells in the United States three teas at issue in this
 8 Settlement (“the Products”). Plaintiff alleges that Defendant’s labeling and marketing of their
 9 Products is false and misleading.

10 After arms-length settlement discussions, the Parties have entered into a Settlement
 11 Agreement (“Settlement” or “Agreement”) dated May 15, 2015, which, if approved, would
 12 resolve this putative class action. Currently pending before the Court is Plaintiff’s Motion for
 13 Final Approval of the Settlement Agreement and Plaintiff’s Motion for Attorneys’ Fees and
 14 Incentive Award for the Class Representative.

15 After consideration of the Parties’ briefs and the briefs submitted by the objectors to the
 16 Settlement, this Court hereby **GRANTS** Final Approval of the Settlement.

17 On _____, 2015, the Court entered its Order (1) Preliminarily Approving Class
 18 Action Settlement, (2) Certifying Class, (3) Appointing Class Representatives and Class
 19 Counsel, (4) Approving Notice Plan, and (5) Setting Final Approval Hearing (“Preliminary
 20 Approval Order”), in which it preliminarily approved the Settlement Agreement. The Court also
 21 scheduled a hearing to determine whether the Settlement is fair, reasonable, adequate, in the best
 22 interests of the Class, and free from collusion, such that the Court should grant Final Approval of
 23 the Settlement, and to consider Plaintiff’s motion for an award of attorneys’ fees, costs and
 24 litigation expenses, and incentive for the Class Representative (“Fairness Hearing”).

25 The Court has considered:

- 26 • The points and authorities submitted by Plaintiff in support of the motion for final
 27 approval of the Settlement (“Final Approval Motion”);

- The points and authorities submitted by Plaintiff in support of the motion for an award of attorneys' fees and litigation expenses, and approval of incentive award for the Class Representative ("Fee Motion");
- Defendant's memorandum in support of final approval of the Settlement;
- The declarations and exhibits submitted in support of said motions;
- The Settlement Agreement;
- The entire record in this proceeding, including but not limited to the points and authorities, declarations, and exhibits submitted in support of preliminary approval of the Settlement, filed May 15, 2015;
- The Notice Plan, providing full and fair notice to the Class;
- The existence of only __ objections to and __ exclusions from the Settlement, and the substance of those objections, if any;
- The absence of any objection or response by any official after the provision of all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. §1715;
- The oral presentations of Class Counsel, Counsel for Defendant, and objector(s) at the Fairness Hearing;
- This Court's experiences and observations while presiding over this matter, and the Court's file herein; and
- The relevant law.

Based upon these considerations and the Court's findings of fact and conclusions of law as set forth in the Preliminary Approval Order and in this Final Judgment and Order (1) Approving Class Action Settlement, (2) Awarding Class Counsel Fees and Expenses, (3) Awarding Class Representative Incentive, (4) Permanently Enjoining Parallel Proceedings, and (5) Dismissing Action with Prejudice ("Final Approval Order"), and good cause appearing, **IT IS HEREBY ORDERED AND DECREED:**

1. Definitions. The capitalized terms used in this Final Approval Order shall have the meanings and/or definitions given to them in the Settlement Agreement or, if not defined therein, the meanings and/or definitions given to them in this Final Approval Order.

1 **2. Incorporation of Documents.** This Final Approval Order incorporates the
 2 Settlement Agreement, filed as an Exhibit to the Declaration of Ronald A. Marron in support of
 3 preliminary settlement approval on May 15, 2015, including all exhibits thereto, and the Court's
 4 findings and conclusions contained in its Preliminary Approval Order.

5 **3. Jurisdiction.** The Court has personal jurisdiction over the Parties, the Class
 6 Members, including objectors, and Defendant. The Court has subject matter jurisdiction over
 7 this action, including, without limitation, jurisdiction to approve the Settlement, to settle and
 8 release all claims alleged in the action and all claims released by the Settlement, including the
 9 Released Claims, to adjudicate any objections submitted to the proposed Settlement, and to
 10 dismiss this action with prejudice. All Class Members who did not exclude themselves
 11 according to the Court's prior orders and the terms of the Class Notices have consented to the
 12 jurisdiction of this Court for purposes of this action and the Settlement of this action.

13 **Findings and Conclusions**

14 **4. Definition of the Class and Class Members.** The Court's Preliminary Approval
 15 Order defines the "Class," which is comprised of the "Class Members," as follows:

16 All U.S. consumers who purchased the Products for household or personal use
 17 during the Class Period are included.¹ Excluded from the Class are Triple Leaf;
 18 persons who during or after the Settlement Period were officers or directors of
 19 Triple Leaf, or any corporation, trust or other entity in which Triple Leaf has a
 20 controlling interest; and the members of the immediate families of Triple Leaf's
 employees or their successors, heirs, assigns and legal representatives; any
 judicial officer hearing this Action, and their family members and employees.

21 The Court affirms its certification of the Class, as set forth in the Preliminary Approval
 22 Order. All Class Members are subject to this Final Approval Order and the Final Judgment to be
 23 entered by the Clerk of Court in accordance herewith.

24 **5. Class Certifications (Rule 23)**

25 **A. Numerosity**

26
 27
 28 That is, April 4, 2010 through the Opt-Out Date for purchasers of Triple Leaf Tea, Inc.'s Dieter's
 Green, Ultra Slim, and Super Slim herbal tea products.

1 Defendant's sales in the United States number in the thousands annually. See Decl. of
 2 Vincent Lam in Supp. of Final Approval ¶ 6. For the purposes of this Settlement, no party or
 3 objector contests numerosity. The Court finds that the Class is sufficiently numerous that joinder
 4 of all class claims is impracticable. Fed. R. Civ. P. 23(a)(1).

5 **B. Commonality**

6 The Court finds that there are questions of law and fact common to the Class, as to
 7 whether Defendant made false or deceptive marketing claims about its Products. All Class
 8 Members allege the same injury: loss of money spent purchasing the allegedly deceptive-labeled
 9 Products. All Class Members were exposed to the same or substantially similar contested
 10 labeling claims regarding the health benefits of the Products. Resolution of the common
 11 questions about whether Defendant's labeling claims were deceptive would resolve all of the
 12 claims in one stroke. Accordingly, the Court affirms its prior ruling under Rule 23(a)(2).

13 **C. Typicality**

14 The Court finds that Plaintiff's claims are reasonably co-extensive with those of the other
 15 Class Members so as to meet Rule 23(a)(3)'s requirements. Typicality is a "permissive"
 16 standard under which "representative claims are 'typical' if they are reasonably co-extensive
 17 with those of absent class members; they need not be substantially identical." *Hanlon v. v.*
 18 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). For the purposes of this Settlement, the
 19 Parties and objectors do not contend the Class lacks typicality. The Court therefore affirms its
 20 prior order, finding that the Plaintiff's claims are reasonably coextensive with those of the Class.

21 **D. Adequacy of Class Representative**

22 Having considered the factors set forth in Rule 23(g)(1), the Court finds that Plaintiff and
 23 Class Counsel are adequate class representatives. For the purposes of this Settlement, the Parties
 24 and objectors do not contend the Class lacks adequate representation. Class Counsel has fully
 25 and competently prosecuted all causes of action, claims, theories of liability, and remedies
 26 reasonably available to the Class Members. The Court hereby affirms its appointment of the
 27 Law Offices of Ronald A. Marron, APLC as Class Counsel. The Court also affirms its
 28

1 appointment of Eunice Johnson as Class Representative, finding that she possesses no interests
2 adverse to the Class and is adequate to represent the Class.

3 **E. Rule 23(b) Has Been Satisfied**

4 For the purposes of this Settlement, the Parties contend that the elements of Rules
5 23(b)(2) and (b)(3) have been met. The Court finds that Defendant has acted or refused to act on
6 grounds that apply generally to the class, so that final injunctive relief is appropriate respecting
7 the class as a whole, Fed. R. Civ. P. 23(b)(2); that questions of law and fact as to whether a
8 reasonable consumer would find the Products' packaging deceptive predominate over individual
9 questions. Plaintiff alleges a common injury on behalf of the Class, specifically the loss of the
10 purchase price of the Products, and the Products' respective packaging was standard across the
11 United States and consistent throughout the Class Period. The Court also finds that resolution on
12 a class-wide basis is superior for purposes of judicial efficiency and to provide a forum for
13 absent Class Members, who are unlikely to bring individual suits to recover the sum of
14 approximately \$3 per Product. The Court therefore affirms its prior ruling that the Class satisfies
15 Rule 23(b)(3). The Court also affirms its prior ruling that the Class satisfies Rule 23(b)(2). The
16 primary relief in this claim was injunctive relief in the form of labeling changes to the Products'
17 labels.

18 **6. The Settlement.** The Court finds that the Settlement is fair, reasonable, and
19 adequate to the Class, in light of the complexity, expense, and likely duration of the litigation
20 (including appellate proceedings), and the risks involved in establishing liability, damages, and
21 in maintaining the action as a class action, through trial and appeal. *See Rodriguez v. West*
22 *Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009). The Settlement is the result of arms-length
23 negotiation and there is no evidence of collusion or other conflicts of interest between Plaintiff,
24 Class Counsel, and the Class. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946
25 (9th Cir. 2011).

26 **A.** The Parties reached the proposed Settlement only after proceeding with
27 voluntary investigation and discovery in this action, and following protracted negotiations before
28

1 a capable and well-respected mediator, the Honorable Ronald M. Sabraw of JAMS Arbitration,
2 Mediation, and ADR Services. For a period of over several months, the Parties engaged in
3 extensive negotiations, including joint and individual mediation sessions with Judge Sabraw, and
4 the Parties' own follow-up negotiations, in order to reach agreement over the specific terms of
5 the proposed Settlement.

6 Plaintiff and Class Counsel maintain that this action and the claims asserted herein are
7 meritorious and that Plaintiff and the Class would have prevailed at trial. Notwithstanding,
8 Plaintiff and Class Counsel have agreed to settle the action pursuant to the provisions of the
9 Settlement, after considering, among other things: (i) the substantial benefits to Plaintiff and the
10 Class under the terms of the Settlement; (ii) the uncertainty of being able to prevail at trial; (iii)
11 the uncertainty relating to Defendant's defenses and the expense of additional motion practice in
12 connection therewith; (iv) the issues relating to proving damages on an individual Class Member
13 basis; (v) the attendant risks, difficulties, and delays inherent in litigation, especially in complex
14 actions such as this; and (vi) the desirability of consummating this Settlement promptly in order
15 to provide effective relief to Plaintiff and the Class. Plaintiff and Class Counsel agree that the
16 Settlement is fair, reasonable, and adequate because it provides substantial benefits to the Class,
17 is in the best interests of the Class, and fairly resolves the claims alleged in this action.

18 Defendant expressly denies any wrongdoing alleged in the pleadings in the action, and
19 does not admit or concede any actual or potential fault, wrongdoing, or liability in connection
20 with any facts or claims which have been or could have been alleged against it in the action.
21 Defendant asserts that it sells, manufactures, and markets the Products in accordance with the
22 Food, Drug, and Cosmetic Act. Defendant nonetheless considers it desirable for the action to be
23 settled and dismissed because the proposed Settlement will: (i) avoid further expense and
24 disruption of the management and operation of Defendant's businesses due to the pendency and
25 defense of the action; (ii) finally put Plaintiff's and the Class' claims and the underlying matters
26 to rest; and (iii) avoid the substantial expense, burdens, and uncertainties associated with a
27 potential finding of liability and damages on the claims alleged in the Complaint.

1 The Parties engaged in thorough formal and informal discovery, which included, *inter*
 2 *alia*, claims and defenses on the issue of the federal Food, Drug, and Cosmetic Act ([“FDCA”]
 3 21 U.S.C. § 301, *et seq.*), and whether the Products complied with the FDCA, and California-
 4 specific rules pertaining to Products containing senna leaf. Accordingly, the Parties were well-
 5 versed in the merits, risks, and likelihood of success, should this action have been litigated
 6 through trial.

7 Based upon the stage of litigation reached concerning relevant legal issues and the
 8 Parties’ exchange of information through the discovery process, Plaintiff and Defendant were
 9 fully informed of the legal bases for the claims and defenses herein, and capable of balancing the
 10 risks of continued litigation and the benefits of the Settlement. Class Counsel and Defendant’s
 11 counsel are highly experienced civil litigation attorneys with specialized knowledge in food and
 12 drug labeling issues, and complex class action litigation generally. Class Counsel and
 13 Defendant’s counsel are capable of properly assessing the risks, expenses, and duration of
 14 continued litigation.

15 **B.** The Settlement affords meaningful injunctive relief. Pursuant to the
 16 Settlement Agreement, the labeling of the Products shall be substantially revised. The labeling
 17 for Defendant’s Dieter’s Green will be revised as set forth in Exhibit C; the labeling for
 18 Defendant’s Ultra Slim will be revised as set forth in Exhibit C; and the labeling for Defendant’s
 19 Super Slimming will be revised as set forth in Exhibit C. The key revisions for each tea are as
 20 follows:

21 Dieter’s Green:

- 22 • The name of Dieter’s Green will be changed to Diet Green.
- 23 • Whorled mallow, an ingredient at issue in the Complaint, has been removed
- 24 from this tea.
- 25 • The statement that “Research indicates that green tea’s antioxidants help
- 26 promote health metabolism[]” has been removed.
- 27 • The statement that “Recently, here in the West, people have discovered the
- 28 value of this ancient system which focuses on aiding the body’s own healing
- mechanisms through restoring harmony and balance[]” has been removed.

- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Ultra Slim

- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

Super Slimming

- The name of Super Slimming will be changed to Super Slim.
- Whorled mallow, an ingredient at issue in the Complaint, has been removed from this tea.
- The statement that “Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body’s own healing mechanisms through restoring harmony and balance[.]” has been removed.
- The statement that “The Chinese System of herbology has been recorded in ancient texts which are studied and employed even today[.]” has been removed.
- The statement that “This time tested knowledge has been passed on from generation to generation over the centuries[.]” has been removed.
- The statement, “Remember when dieting to follow a balanced weight loss diet . . .” has been removed.
- The warning that “This tea is not intended to be used for chronic constipation or as an aid to lose weight” has been added.
- The warning that “Frequent or prolonged use of laxatives may result in dependence on laxatives” has been added.
- In addition to the required Senna Notice, the warning that “Senna may result in abdominal pain, cramping, and loose or watery stools” has been added.

In addition, the FDA Disclaimer will remain on the Products’ packaging in a legible font size and will be conspicuously displayed on the package in a readable font color, in comparison to any background coloring on the package. Defendant will modify its website to comport with the modifications to the Products’ packaging and labeling, set forth above.

Defendant shall have eighteen (18) months after the date the Settlement is finally approved to complete the labeling changes referred to in Section 4.1 of the Settlement Agreement. Defendant may continue to market and ship product stock with existing labeling for up to eighteen (18) months following final approval, as contemplated by the eighteen month time period it will take to complete the labeling changes as set forth herein, and that third-party retailers and distributors may have on hand product stock in existing labeling for some time after

1 the Settlement is finally approved. To the extent that any state and/or federal statute, regulation,
 2 policy, and/or code may, in the future, impose other, further, different and/or conflicting
 3 obligations or duties on Defendant with respect to the Products, this injunctive relief shall cease
 4 as to Defendant's conduct covered by that statute, regulation, policy, and/or code as of the
 5 effective date of such statute, regulation, policy, and/or code.

6 The Court has considered the realistic range of outcomes in this matter, including the
 7 amount Plaintiff might receive if she prevailed at trial, the strength and weaknesses of the case,
 8 the novelty and number of the complex legal issues involved, and the risk that Plaintiff and the
 9 Class would receive less than the Settlement relief or take nothing at trial. The relief offered by
 10 the Settlement is fair, reasonable, and adequate in view of these factors.

11 **C.** The Court has found no evidence of collusion between Plaintiff and
 12 Defendant or their respective counsel. The Settlement resulted from extensive arms-length,
 13 adversarial negotiation. Up to and through Settlement, both Parties have vigorously litigated and
 14 negotiated this action. Further, the Court has evaluated the factors set forth by the Ninth Circuit
 15 and determined that there was no collusion. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654
 16 F.3d 935, 947 (9th Cir. 2011) (the three factors are: "(1) when counsel receive a disproportionate
 17 distribution of the settlement, . . . (2) when the parties negotiate a 'clear sailing' arrangement
 18 providing for the payment of attorneys' fees separate and apart from class funds, . . . and (3)
 19 when the parties arrange for fees not awarded to revert to defendants . . ."). Defendant has
 20 agreed to pay Class Counsel \$250,000, which represents their lodestar plus a modest ____
 21 multiplier, well within the range Courts have allowed in the Ninth Circuit. *Id.* The Parties also
 22 agreed to the terms of the Settlement before discussing attorneys' fees, another factor which
 23 weighs against a finding of collusion. *See, e.g., Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS
 24 155472, at *83 (C.D. Cal. Nov. 23, 2011).

25 **D.** The response of the Class to this action, the certification of a class, and the
 26 Settlement, including Class Counsel's application for an award of attorneys' fees, litigation
 27 expenses, and the Class Representative's incentive awards, after full, fair, and effective notice
 28

1 thereof, strongly favors final approval of the Settlement. Out of the estimated hundreds of
2 thousands who received Notice, only ___ class members submitted valid requests for exclusion.
3 Moreover, only ___ objections were filed, which the Court has considered.

4 **7. Notice to the Class.** The Class has received the best practicable notice in light of
5 the fact that Defendant does not collect or maintain information sufficient to identify Class
6 Members. The Parties' selection and retention of KCC as the Class Action Administrator was
7 reasonable and appropriate. Based on the Declaration of ___ of KCC, the Court hereby finds that
8 the Settlement Notices were published to the Class Members in the form and manner approved
9 by the Court in its Preliminary Approval Order. The Settlement Notices provided fair, effective,
10 and the best practicable notice to the Class of the Settlement and the terms thereof. The Notices
11 also informed the Class of Plaintiff's intent to seek attorneys' fees, costs, and incentive
12 payments, and set forth the date, time, and place of the Fairness Hearing and Class Members'
13 rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing. The Court
14 further finds that the Settlement afforded Class Members a reasonable period of time to exercise
15 such rights. *See Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at *82 (C.D. Cal. Nov.
16 23, 2011) (class members' deadline to object or opt out must arise after class counsel's fee
17 motion is filed); *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010)
18 (same). The Settlement Notices fully satisfied all notice requirements under the law, including
19 the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act,
20 Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California
21 Constitutions.

22 **8. Notices Pursuant to 28 U.S.C. § 1715.** The Court finds that Defendant has
23 satisfied all notice requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §
24 1715, as attested to by the ___ Declaration. On _____, 2015, at Defendant's
25 direction, KCC served the notices required by 28 U.S.C. § 1715(b), which included a copy of the
26 Settlement Agreement and other required documents, as well as notice of the date, time, and
27 place of the Fairness Hearing. The Court has received no objection or response to the Settlement
28

1 Agreement by any federal or state official, including any recipient of the foregoing notices. This
2 fact further supports the fairness of the Settlement.

3 **9. Implementation of Settlement.** The Parties are directed to implement the
4 Settlement according to its terms and conditions.

5 **10. Appeal after Implementation.** Any Class Member who failed timely and validly
6 to object to the Settlement has waived any objection. Any Class Member seeking to appeal the
7 Court's rulings must: (a) move to intervene upon a representation of inadequacy of counsel (if
8 they did not object to the proposed Settlement under the terms of the Settlement); (b) request a
9 stay of implementation of the Settlement; and (c) post an appropriate bond. Absent satisfaction
10 of all three requirements, Defendant is authorized, at its sole option and in its sole discretion, to
11 proceed with the implementation of the Settlement, including before the Effective Date, even if
12 such implementation would moot any appeal.

13 **11. Release.** The Release set forth in the Settlement Agreement is expressly
14 incorporated herein in all respects, is effective as of the date of the entry of this Final Order, and
15 forever discharges the Released Parties from any claims or liabilities released by the Settlement,
16 including the Released Claims, and including without limitation a waiver of all rights under
17 Section 1542 of the California Civil Code. This Release covers, without limitation, any and all
18 claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel, the
19 Settlement of this Action, the administration of such Settlement, and the Released Claims, except
20 to the extent otherwise specified in this Order and the Settlement Agreement.

21 **12. Binding Affect and Permanent Injunction.** The Settlement and this Final Order
22 and Judgment shall be forever binding on the Plaintiff and all other Class Members, as well as
23 their heirs, executors and administrators, successors and assigns, and shall have res judicata and
24 other preclusive effect in all pending and future claims, lawsuits, or other proceedings
25 maintained by or on behalf of any such persons, to the fullest extent allowed by law. The Court
26 hereby permanently enjoins all Class Members from filing, commencing, prosecuting,
27 intervening in, maintaining, participating (as class members or otherwise) in, or receiving any
28

benefits from, any lawsuit (including putative class action lawsuits), arbitration, administrative or regulatory proceeding or order in any jurisdiction asserting any claims released by this Order; and from organizing Class Members into a separate class to pursue as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) asserting any claims released by this Order. Nothing in this paragraph, however, shall require any Class Member to take any affirmative action with regard to other pending class action litigation unrelated to this action in which they may be absent class members. Defendant has reserved the right to file motions or to take other actions to enforce the release provisions of the Settlement Agreement and of this injunction, as they may deem appropriate. The Court finds that issuance of this permanent injunction is necessary and appropriate in the aid of the Court's jurisdiction over the action and its judgments.

13. Attorneys' Fees and Litigation Expenses. The Court orders that Class Counsel is entitled to reasonable attorneys' fees and litigation expenses incurred in connection with the action and in reaching this Settlement in the amount of \$250,000, to be paid at the time and in the manner provided in the Settlement Agreement. The fee award sought in the present case is reasonable when judged by the standards of this circuit. Defendant has agreed to not oppose Class Counsel's request for fees in the amount of \$250,000, which represents Class Counsel's lodestar plus a modest __ multiplier, well within the range Courts have allowed in the Ninth Circuit. *Id.* The Parties also agreed to the terms of the Settlement before discussing attorneys' fees, another factor which weighs against a finding of collusion. *See, e.g., Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at *83 (C.D. Cal. Nov. 23, 2011).

A multiplier of __ is justified here, based on the excellent results obtained, the experience and skill of Counsel, the complexity of issues, the risk of non-payment and preclusion of other work, and the reaction of the Class. The fee award requested is also reasonable in light of similar lodestar awards, as set forth in the Fee Motion. Courts have approved multipliers ranging from 2-4 (and higher) in comparably complex litigation and under such circumstances. *See, e.g., Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001); *Behrens v. Wometco Enters.*,

1 *Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988). As reflected in these cases, the requested fee
 2 multiplier falls on the low end of the reasonable range, based on typical multipliers approved in
 3 comparable litigation. The Court also finds that an award of reasonable attorneys' fees and
 4 litigation expenses is appropriate based on the private attorney general doctrine and Code of
 5 Civil Procedure § 1021.5, and the Court's equitable powers under California law.

6 No Named Plaintiff, or any other Class Member, shall have any obligation to pay Class
 7 Counsel any further amounts for attorneys' fees, costs, or litigation expenses in the Action. As
 8 none of the objections was sustained, the Court further finds that no Class Member is entitled to
 9 seek or receive any further payment of attorneys' fees or litigation expenses in connection with
 10 the action.

11 The Court finds the following hourly billing rates reasonable in light of the complexity of
 12 this litigation, the work performed, Class Counsel's reputation, experience, competence, and the
 13 prevailing billing rates for comparably complex work by comparably-qualified counsel in the
 14 relevant market:

- 15 1. For Ronald A. Marron, \$__ per hour;
- 16 2. For Beatrice Skye Resendes, \$__ per hour; and
- 17 3. For Marshall Lurtz and Bill Richards, \$__ per hour;
- 18 4. For future attorney time in connection with settlement administration, a blended
 19 rate of \$__ per hour.

20 The hourly billing rates for work performed by paralegals and law clerks, requested by
 21 the Marron Firm, is likewise reasonable. Paralegal time, which is normally billed to fee-paying
 22 clients, is properly included and reimbursable under a lodestar analysis. *See, e.g., United*
 23 *Steelworkers v. Phelps Dodge Corp.*, 896 F.2d 403, 407-408 (9th Cir. 1990).

24 The time declared to have been expended by Class Counsel is reasonable in amount in
 25 view of the complexity and subject matter of this litigation, the skill and diligence with which it
 26 has been prosecuted and defended, and the quality of the result obtained for the Class.

1 Based on the declaration of Class Counsel submitted in support of the Fee Motion, the
2 Court finds that Class Counsel have incurred out-of-pocket litigation expenses (paid and un-
3 reimbursed, or currently due) in the amount of \$___, that said expenses were of a nature typically
4 billed to fee-paying clients, and that said expenses are recoverable or were reasonable and
5 necessary to the prosecution of this action in light of the extent of proceedings both on and off
6 the Court's docket, the complexity of the legal and factual issues in the case, the amount at stake
7 in this litigation, and the vigorous efforts of counsel for all Parties herein. The Court finds these
8 expenses are reasonable in this case, and shall be included as part of the \$250,000 awarded to
9 Class Counsel, to be paid by Defendant in the time and manner provided in the Settlement
10 Agreement.

11 **14. Class Representative's Incentive.** The named Plaintiff in this action, which the
12 Court appointed Class Representative in its Preliminary Approval Order, has actively
13 participated in and assisted Class Counsel with this litigation for the substantial benefit of the
14 Class despite facing significant personal limitations. Ms. Johnson waived her right to pursue
15 potential individual claims or relief in the Action. Apart from the requested incentive, Ms.
16 Johnson will receive no settlement payments or benefits of any nature, other than the injunctive
17 relief available to the Class generally. The Court hereby approves incentive awards for Ms.
18 Johnson, to be paid by Defendant at the time and in the manner provided in the Settlement
19 Agreement. The amount of the incentive award shall be \$1,500. Ms. Johnson was actively
20 involved throughout the Litigation and contributed significant time and expense in seeing this
21 action to fruition. The Court approves this incentive payment to compensate the Class
22 Representative for the burdens of her active involvement in the Litigation and her commitment
23 and effort on behalf of the Class.

24 **15. Class Member Objections.** Having considered the ___ written objections, oral
25 argument at the Fairness Hearing, the Parties' written and oral response to these objections, and
26 the documents and record on file in this Action, the Court overrules all objections.

1 The Court finds no evidence of collusion. Likewise, the Objectors have raised no valid
2 concerns regarding the adequacy of the relief the Settlement provides, taking into account the
3 weaknesses in Plaintiff's case along with the strengths of Defendant's defenses and the obstacles
4 to class-wide recovery. Further, Defendant's agreement to modify the Products' label and
5 packaging, website, and marketing in a number of significant ways, as well as remove potentially
6 harmful ingredients from its Products, all of which adequately address the very claims raised in
7 Plaintiff's Complaint, provides value to the Class, and came within the thirty (30) day time frame
8 set forth in the CLRA, precluding a damages' finding at trial.

9 The Court has found that the Notice was fair, reasonable, and adequate, and provided the
10 best practicable notice to the Class in compliance with all applicable laws. The fact that the
11 chosen Administrator could effectuate notice in a manner widely approved for classes such as
12 this one, where names of individual class members are unknown, for a cost less than other more
13 expensive administrators, is a benefit to the Class, and not objectionable. The Notice in this case
14 also included statutory newspaper publication within the State of California pursuant to
15 California Civil Code § 1781.

16 The Court also considered objections concerning the Fee Motion. The objections are
17 refuted by the lodestar analysis and the exceptional results achieved on behalf of the Class. The
18 Court therefore overrules the objections as to the Fee Motion.

19 **16. Modification of Settlement Agreement.** The Parties are hereby authorized,
20 without needing further approval from the Court, to agree to and adopt such amendments to, and
21 modifications and expansions of, the Settlement Agreement, if such changes are consistent with
22 this Order and do not limit the rights of any person or Class Member entitled to relief under this
23 Agreement.

24 **17. Enforcement of Settlement.** Nothing in this Final Order shall preclude any
25 action to enforce or interpret the terms of the Settlement. Any action to enforce or interpret the
26 terms of the Settlement shall be brought solely in this Court.

1 **18. Retention of Jurisdiction.** The Court expressly retains continuing jurisdiction as
2 to all matters relating to the Settlement, and this Final Order, and for any other necessary and
3 appropriate purpose. Without limiting the foregoing, the Court retains continuing jurisdiction
4 over all aspects of this case including but not limited to any modification, interpretation,
5 administration, implementation, effectuation, and enforcement of the Settlement, the
6 administration of the Settlement and Settlement relief, including notices, payments, and benefits
7 thereunder, the Settlement Notice and sufficiency thereof, any objection to the Settlement, any
8 request for exclusion from the certified Class, the adequacy of representation by Class Counsel
9 and/or the Class Representative, the amount of attorneys' fees and litigation expenses to be
10 awarded Class Counsel, the amount of any incentives to be paid to the Class Representative, any
11 claim by any person or entity relating to the representation of the Class by Class Counsel, to
12 enforce the release and injunction provisions of the Settlement and of this Order, any remand
13 after appeal or denial of any appellate challenge, any collateral challenge made regarding any
14 matter related to this litigation or this Settlement or the conduct of any party or counsel relating
15 to this litigation or this Settlement, and all other issues related to this action and Settlement.
16 Further, the Court retains continuing jurisdiction to enter any other necessary or appropriate
17 orders to protect and effectuate the Court's retention of continuing jurisdiction provided that
18 nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights
19 under the Settlement Agreement.

20 **19. No Admissions.** This Final Order and Judgment and the Settlement, all
21 provisions herein or therein, all other documents referred to herein or therein, any actions taken
22 to carry out this Final Order and Judgment and the Settlement, and any negotiations, statements,
23 or proceedings relating to them in any shall not be construed as, offered as, received as, used as,
24 or deemed to be evidence of any kind, including in this Action, any other action, or in any other
25 judicial, administrative, regulatory, or other proceeding, except for purposes of obtaining
26 approval of the Settlement and the entry of judgment in the Action, enforcement or
27 implementation of the Settlement, or to support any defense by Defendant based on principles of
28

1 res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or
2 reduction, full faith and credit, setoff, or any other theory of claim preclusion, issue preclusion,
3 release, injunction, or similar defense or counterclaim to the extent allowed by law. Neither the
4 Settlement Agreement nor any related negotiations, statements, mediation positions, notes,
5 drafts, outlines, memoranda of understanding, or Court filings or proceedings relating to the
6 Settlement or Settlement approval, shall be construed as, offered as, received as, used as, or
7 deemed to be evidence or an admission or concession by any person, including but not limited to,
8 of any liability or wrongdoing whatsoever on the part of Defendant or as a waiver by Defendant
9 of any applicable defense, including without limitation any applicable statute of limitation.

10 **20. Dismissal of Action.** This action, including all individual and Class claims
11 resolved in it, shall be dismissed on the merits and with prejudice, without an award of attorneys'
12 fees or costs to any party except as provided in this Order.

13 **IT IS SO ORDERED.**

14
15 DATED: _____

The Honorable Maxine M. Chesney
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

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Gut Check: A Reference Guide for Media on Spotting False Weight Loss Claims

To make it easier to spot false weight loss representations – “gut check” claims – the FTC has compiled a list of seven statements in ads that are likely to be a tip-off to deception.

- [Introduction](#)
- [Weight Loss Advertising Basics](#)
- [The 7 “Gut Check” Claims](#)



Introduction

Misleading ads for weight loss products target consumers desperate for results. But let's face it: When it comes to dieting, there are no easy answers. If a product promises weight loss without effort and sacrifice, it's bogus.

That doesn't stop some marketers from trying to make a quick buck at consumers' expense. What's more, they often use the reputation of respected media outlets as cover. “It has to be true,” consumers conclude. “The ad ran on my favorite channel” – or on the radio, in a national magazine, in a local newspaper, or on a trusted website.

The Federal Trade Commission, the nation's consumer protection agency, has brought hundreds of cases challenging deceptive weight loss claims and will continue their law enforcement efforts. But spotting false claims *before* they're published or aired – and *before* consumers risk their money and perhaps even their health on a worthless product – is something only you can do. That's why the FTC is asking for your help.

Of course, there's no one-size-fits-all way to spot every deceptive weight loss claim, but scientists have established that there are some statements that simply can't be true. In consultation with experts, the FTC has come up with a list of seven representations – we call them “gut check” claims – that media outlets should think twice before running.

How does that work in the day-to-day operation of your business? Before you run any ad, someone in your company already gives it the once-over to make sure it meets your standards. But if it has one of those seven can't-be-true weight loss claims, it's time for that gut check – a quick second look to make sure you're not getting ready to risk your reputation by running a claim known to be false. Train your sales staff to speak to a supervisor if an ad makes a “gut check” claim. Of course, just because a claim in a weight loss ad isn't a “gut check” claim doesn't mean it's legitimate. But taking a moment to stop an obviously bogus “gut check” claim should be standard operating procedure in your office.

Why is that “gut check” important? Because:

- no legitimate media outlet wants to be associated with fraud. Accuracy is your company's stock in trade. Why sully your good name by being known as a publication or station that promotes rip-offs?
- if scammers are willing to cheat consumers, there's a good chance they'll cheat you by not paying their bills. By the time fly-by-nighters have made a quick killing, they've disappeared – and left you holding a stack of worthless receivables.
- you want to protect loyal readers, listeners, and viewers from bogus products that can't possibly work as advertised.
- reputable advertisers don't want to associate their brands with media outlets used by con artists.

For the most part, the examples we're talking about apply to dietary supplements, including herbal remedies, over-the-counter drugs, as well as patches, creams, wraps, and similar products worn on the body or rubbed into the skin. They don't apply to prescription drugs, meal replacement products, low-calorie foods, surgery, hypnosis, special diets, or exercise equipment.

If you spot a “gut check” claim, take a step back and look at the ad from the point of view of the average consumer. Is it

really worth tarnishing your reputation by running a false claim?

The basics about advertising weight loss products

It's the law – and it's always been the law – that before companies can run ads for weight loss products, they need scientific proof to support objective claims their ads make.

False or misleading claims can be conveyed in words and in images. Some brazen scammers just flat-out lie. Others use eye-catching before-and-after pictures. A word about consumer endorsements (sometimes called testimonials): Endorsements from supposedly satisfied customers – “D.G. lost 38 pounds in just 3 weeks” or “Jane from Springfield dropped 4 dress sizes in 30 days!” – are a staple of weight loss ads. Too often, advertisers cherry-pick their best cases or even make up bogus endorsements, deceptively conveying to consumers that they'll get similar results. Under the law, advertisers that choose to use endorsements have two choices: Either the results in the ad must be typical of what other consumers can expect to achieve or the ad must clearly and conspicuously disclose what the typical results are.

Even for the most effective products, services, or programs, weight loss of more than a pound a week over a long period is unusual. As a rule, endorsements from people who claim to have lost an average of two pounds or more per week for a month or more – or endorsements from people who say they lost more than 15 pounds overall – should be accompanied by a disclosure of how much weight consumers typically can expect to lose.

What makes a disclosure “clear and conspicuous”? Simply put, it stands out in an ad. It finds you; you don't have to look for it. In general, disclosures should be:

- close to the claims they relate to – for example, consumer testimonials – and not buried in footnotes or blocks of text people aren't likely to read;
- in a font that's easy to read and at least as large as other fonts the advertiser uses to convey the claim;
- in a shade that stands out against the background;
- for video ads, on the screen long enough to be noticed, read, and understood;
- for video or radio ads, read at a cadence that's easy for consumers to follow; and
- in words consumers will understand.

If disclosures are hard to find, tough to understand, obscured by other elements in the ad, or buried in unrelated details, they don't meet the “clear and conspicuous” standard. Furthermore, it's not enough to say “results not typical” or “your results will vary.”

Although the seven “gut check” claims apply just to dietary supplements, over-the-counter drugs, and products rubbed into the skin or worn on the body, the rules about consumer endorsements apply across the board, including all weight loss products, programs, and services. If an ad features endorsers making weight loss claims that aren't likely to be typical – but there's no disclosure of typical results or the disclosure isn't clear and conspicuous – ask the advertiser to make a good disclosure or show you that the results are typical.

The 7 Gut Check Claims

To make it easier to spot false weight loss representations – the “gut check” claims – the FTC has compiled a list of seven statements in ads that experts say simply can't be true. If you spot one of these claims in an ad a marketer wants to run in your media outlet, it's likely to be a tip-off to deception.

By the way, several of the “gut check” claims refer to “substantial weight loss.” This means “a lot of weight” and includes weight loss of a pound a week for more than four weeks or a total weight loss of more than 15 pounds in any time period. But as the examples illustrate, advertisers can convey that “substantial weight loss” message without using specific numbers. Substantial weight loss can be suggested by reference to dress size, inches, or body fat.

If one of these seven claims crosses your desk, do a gut check. Consult the appropriate person in your company and think twice before running any ad that says a product:

1. causes weight loss of two pounds or more a week for a month or more without dieting or exercise;
2. causes substantial weight loss no matter what or how much the consumer eats;
3. causes permanent weight loss even after the consumer stops using product;
4. blocks the absorption of fat or calories to enable consumers to lose substantial weight;
5. safely enables consumers to lose more than three pounds per week for more than four weeks;
6. causes substantial weight loss for all users; or
7. causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

Some gutsy con artists may repeat a “gut check” claim verbatim. That's a sure sign that false advertising is afoot. But “gut check” claims can be conveyed in more subtle ways, too. Knowing you'll be on the look-out for specific false claims, some advertisers are careful not to use the exact wording of “gut check” claims. Others may try to work in limiting phrases that consumers may not catch. For example, they may claim a product “helps consumers lose substantial weight without diet or exercise” or that people can take off “up to three pounds a week for a month or more.”

You can outfox the fraudsters by understanding what makes each of those claims bogus. Fine-tuning your falsity detector

will make it easier for you to spot deception when marketers try to slip a false claim past you by paraphrasing or using synonyms.

CLAIM #1: Causes weight loss of two pounds or more a week for a month or more without dieting or exercise

Gut check. Meaningful weight loss requires taking in fewer calories than you use. It's that simple. But it's also that difficult for people trying to shed pounds. That means ads promising substantial weight loss without diet or exercise are false. And ads suggesting that users can lose weight fast without changing their lifestyles – even without mentioning a specific amount of weight or length of time – are false, too. Some ads might try a subtler approach, say, by referring to change in dress size or lost inches, but the effect is the same. That's why these variations on that claim should fail your gut check:

- "I lost 30 pounds in 30 days – and still ate all my favorite foods."
- "Lose up to 2 pounds a day without diet or exercise."
- "Drop four dress sizes in just a month without changing your eating habits or enduring back-breaking trips to the gym."
- "Finally there's FatFoe, an all-natural weight loss compound so powerful, so effective, so relentless in its awesome attack on bulging fatty deposits that it eliminates the need to diet." (Next to the consumer endorsement, "I lost 36 pounds in 5 short weeks.")

CLAIM #2: Causes substantial weight loss no matter what or how much the consumer eats

Gut check. It's impossible to eat unlimited amounts of food – any kind of food – and still lose weight. It's a matter of science: To lose weight, you have to burn more calories than you take in. To achieve success, dieters have to put the brakes on at the dinner table. If an ad says users can eat any amount of any kind of food they want and still lose weight, the claim is false. That's why these variations on that claim should fail your gut check:

- "Need to lose 20, 30, 40 pounds or more? Eat your fill of all the foods you crave and watch the weight disappear!"
- "Who needs rabbit food? Enjoy any mouth-watering foods you want anytime you want, and blast away dress sizes and belt notches."
- "This revolutionary product lets you enjoy all your favorites – hamburgers, fries, pasta, sausage, and even gooey desserts – and still lose weight. One FatFoe tablet before meals does the work for you and you'll lose all the weight you want."

CLAIM #3: Causes permanent weight loss even after the consumer stops using product

Gut check. Without long-term lifestyle changes – like continuing to make sensible food choices and upping the activity level – weight loss won't last once consumers stop using the product. Even if dieters succeed in dropping pounds, maintaining weight loss requires lifelong effort. That's why these variations on that claim should fail your gut check:

- "Take it off and keep it off. Kiss dieting goodbye forever."
- "Thousands of people have used FatFoe and kept the weight off for good."
- "It's not another weight loss gimmick. It's a unique metabolism accelerator that changes how your body burns fat. Why settle for temporary weight loss when you can get rid of those flabby thighs and that unsightly muffin top once and for all."
- "No more yo-yo dieting. Eat more. Weigh less. And finally – yes, finally – stay slim for the rest of your life."

CLAIM #4: Blocks the absorption of fat or calories to enable consumers to lose substantial weight

Gut check. Without lifestyle changes, no over-the-counter product can block enough fat or calories to cause the loss of lots of weight. To work, even legitimate "fat blockers" must be used with a reduced-calorie diet. That's why these variations on that claim should fail your gut check:

- "Super Flablock Formula is an energized enzyme that can absorb up to 900 times its own weight in fat. Relax and enjoy rich favorites like ice cream, butter, and cheese, confident that you'll still blast off up to 5 pounds per week – or more!"
- "Take a StarchBloxIt tablet before meals. It dissolves into a gel that absorbs excess sugars and carbs, preventing them from forming body fat. Eat what you want and still lose weight."
- "Block fat before your body absorbs it. The pounds and inches will melt away."

CLAIM #5: Safely enables consumers to lose more than three pounds per week for more than four weeks

Gut check. Medical experts agree: Losing more than three pounds a week over multiple weeks can result in gallstones and other health complications. So if an ad says dieters can safely and quickly lose a dramatic amount of weight on their own, it's false. That's why these variations on that claim should fail your gut

check:

- "Take off up to 10 pounds a week safely and effectively. Imagine looking into the mirror two months from now and seeing a slim reflection."
- "Even if you have 40, 50, 60 or more pounds to lose, doctors recommend Fat Foe as the no-risk way to blast off the weight and inches in a few short months. Just in time for bikini season or that class reunion."

CLAIM #6: Causes substantial weight loss for all users

Gut check. People's metabolisms and lifestyles are different. So is how they'll respond to any particular weight loss product. The upshot: No product will cause every user to drop a substantial amount of weight. Any ad that makes a universal promise of success is false. That's why these variations on a claim should fail your gut check:

- "Lose excess body fat. You can't fail because no will power is required."
- "Lose 10-15-20 pounds. Gelaslim works for everyone, no matter how many times you've tried and failed."
- "FatFoe is guaranteed to work for you. Melt away the pounds regardless of your body type or size."
- "Maybe you want to drop a dress size before that get-together next month or perhaps you need to take off 50 pounds or more. Your search for a weight loss miracle is over. We've found the diet supplement guaranteed to work 100% of the time – regardless of how much you want to lose."

CLAIM #7: Causes substantial weight loss by wearing a product on the body or rubbing it into the skin

Gut check. Weight loss is an internal metabolic process. Nothing you wear or apply to the skin can cause substantial weight loss. So weight loss claims for patches, creams, lotions, wraps, body belts, earrings, and the like are false. There's simply no way products like that can live up to what the ads say. That's why these variations on the claim should fail your gut check:

- "Ancient healers knew that a metabolism-boosting energy current runs from the earlobe to the stomach, making it easy to shed 30, 40, even 50 pounds. That's the secret behind our Dieter's Earrings. Why starve yourself when an attractive piece of fashion jewelry can do the weight loss work for you?"
- "Rub Melt-X Gel into your problem areas and watch the active ingredient penetrate the skin layers to melt fat at the cellular level. Use Melt-X around your mid-section to whittle a contoured, streamlined waist. You'll melt away 20 pounds in just a month."
- "Slink into those skinny jeans in no time. Our patent-pending body wrap will increase the metabolism around your hips to burn fat faster. You'll lose 2-3 pounds per week just by wearing the body wrap while relaxing. Blast off 25 pounds in 8 short weeks."

RSS - Plain
Language Guidance

RSS - Legal
Resources

RSS - Blog

RSS - Multimedia

RSS - Español

your gut reactions? [Take this quiz](#) featuring the kinds of claims advertisers may want to run on your station. Are the representations plausible or do they have the telltale signs of a bogus "gut check" claim?



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EXHIBIT 3

LAW OFFICE OF RONALD A. MARRON, APLC

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Firm Resume (As of May 12, 2015)

FIRM OVERVIEW

The Law Offices of Ronald A. Marron is a recognized class action and complex litigation firm based out of San Diego, California, representing clients across the nation. Founded in 1998 with an emphasis in consumer and securities fraud, the firm has expanded its practice to include complex cases such as Ponzi schemes and shareholder derivative suits. The firm has skillfully litigated hundreds of lawsuits and arbitrations against investment advisors and stockbrokers, such as Morgan Stanley, LPL Financial, Merrill Lynch, Banc of America Securities, and Citigroup, who placed clients into unsuitable investments, failed to diversify, and who violated the Securities Act of 1933 and/or 1934. Aptly and competently prepared to represent its clients, the firm has taken on cases against the likes of Shell Oil, Citigroup, Wells Fargo, Union Bank of California, American Express Advisors, Morgan Stanley and Merrill Lynch. In recent years, the firm has devoted part of its practice to the area of false and misleading labeling of food, drug and over-the-counter products, as well as seeking to protect consumers from unauthorized and unsolicited telephone calls, SMS or text messages to cellular phones from corporations under the Telephone Consumer Protection Act. The firm employs five attorneys, whose qualifications are discussed in brief below.

THE MARRON FIRM'S ATTORNEYS:

Ronald A. Marron

Mr. Marron is a member in good standing of the State Bar of California and the United States District Courts for the Northern, Central, Eastern and Southern Districts of California; and of the United States Court of Appeals for the Ninth Circuit, and has been practicing law for more than 19 years. He was a member of the United States Marine Corps from 1984 to 1990 (Active Duty 1984-1988, Reserves 1988-1990) and thereafter received a B.S. in Finance from the University of Southern California in 1991. While attending Southwestern University School of Law (1992-1994), he interned at the California Department of Corporations with emphasis in consumer complaints and fraud investigations. Mr. Marron has extensive experience in class actions and other complex litigation and has obtained hundreds of millions of dollars on behalf of consumers as lead counsel. Mr. Marron has represented plaintiffs victimized in Ponzi schemes, shareholder derivative suits, and securities fraud cases.

Mr. Marron has assisted two United States Senate Subcommittees and their staff in investigations of financial fraud, plus the Senate Subcommittee on Aging relating to annuity sales practices by agents using proceeds from reverse mortgages. Mr. Marron's clients have testified before the United States Senate Subcommittee on Investigations relating to abusive sales practices alleged in a complaint he filed against All-Tech Investment Group. The hearings resulted in federal legislation that: (a) raised the minimum capital requirements, and (b) required written risk disclosure signed by consumer. The civil action resulted in return of client funds and attorneys' fees pursuant to the private attorney general statute and/or Consumers Legal Remedies Act. Mr. Marron conducted the legal research and co-wrote the brief that resulted in the largest punitive damages award (500%) in NASD history for aggrieved investors against Dean Witter Reynolds in securities arbitration. Mr. Marron's opinion on deferred annuity sales practices targeting the elderly has often been sought by major financial news organizations and publications such as Forbes, the Wall Street Journal, the Kiplinger's Retirement Report, CNN and FOX News affiliates. In addition, he has devoted significant energy and time educating seniors and senior citizen service providers, legislators, and various non-profits (including Elder Law & Advocacy) about deferred annuity sales practices targeting the elderly. Mr. Marron had numerous speaking engagements at both FAST (Fiduciary Abuse Specialist Team) which is an organization devoted to the detection of, prevention and prosecution of elder financial abuse, Adult Protective Services, and Elder Law & Advocacy, a non-profit dedicated to assisting seniors who have been the victims of financial fraud. He has litigated hundreds of lawsuits and arbitrations against major corporations, such as Shell Oil, Citigroup, Wells Fargo, Morgan Stanley and Merrill Lynch. In recent years, Mr. Marron has devoted almost all of his practice to the area of false and misleading labeling of food, dietary supplements and over-the-counter products.

Skye Resendes

Ms. Resendes has been working in the legal field for over 20 years. Prior to attending law school, she worked as a judicial secretary in the San Diego Superior Court for approximately 6 years, and as a legal assistant at large and mid-sized San Diego firms (such as DLA Piper f/k/a Gray Cary Ware & Freidenrich, and Best, Best & Krieger) for over 15 years. Ms. Resendes is a recipient of the prestigious, national Burton Award for Excellence in Legal Writing, for her published student note on the federal Food, Drug and Cosmetic Act, 32 T. Jefferson L. Rev. 95 (Fall 2009), and graduated from law school *summa cum laude* in May 2011. Ms. Resendes clerked for the Honorable Jeffrey B. Barton of the San Diego Superior Court and was a Jefferson Fellow Research Assistant during law school. She has received twelve Witkin Awards for Legal Excellence, a national Inns of Court Outstanding Program Award and was editor of Thomas Jefferson Law Review for three years. Her recent briefing in another homeopathic drug false advertising case led to a favorable decision on behalf of the firm's clients in the face of the recent 9th Circuit decision in *Mazza v. American Honda*. See *Allen v. Hyland's, Inc.*, No. CV 12-01150 DMG (MANx), 2012 WL 1656750 (C.D. Cal. May 2, 2012). To our

knowledge, the *Allen* decision is one of only two post-*Mazza* decisions interpreting that case favorably to plaintiffs. *See id.* The second favorable decision was in another case in which my firm was co-counsel: *Bruno v. Eckhart Corp. (Quten)*, 2012 U.S. Dist. LEXIS 30873 (C.D. Cal. Mar. 6, 2012), which settled favorably on the eve of trial and was granted final approval on March 14, 2013. Since joining my firm in November of 2011, Ms. Resendes has dedicated her practice to the prosecution of plaintiff-side consumer cases. She is a member of the State Bar of California, the Southern, Central and Northern Districts of California, and the Ninth Circuit Court of Appeals.

Alexis Wood

Ms. Wood graduated *cum laude* from California Western School of Law in 2009, where she was the recipient of the Dean's Merit Scholarship for Ethnic & Cultural Diversity and also Creative Problem Solving Scholarships. In addition, during law school, Ms. Wood was the President of the Elder, Child and Family Law Society and participated in the study abroad program on international and comparative human rights law in Galway, Ireland. Ms. Wood interned for the Alternate Public Defender during law school as well as held a judicial externship with the San Diego Superior Court. Upon graduation, Ms. Wood obtained her Nevada Bar license and worked at the law firm Alverson Taylor Mortensen & Sanders in Las Vegas, Nevada where she specialized in medical malpractice. Ms. Wood then obtained her license to practice law in California in 2010 and worked at the bankruptcy firm Pite Duncan, LLP in San Diego, California in which she represented financial institutions in bankruptcy proceedings. Ms. Wood additionally worked for the national law firm Gordon & Rees, LLP as an associate attorney in the professional liability defense and tort & product liability practice groups. Ms. Wood joined the Law Office of Ronald Marron in September of 2012 and has dedicated her practice to consumer advocacy. She is additionally a foster youth advocate with Voices for Children.

Kas L. Gallucci

Ms. Gallucci graduated *cum laude* from California Western School of Law in 2012, where she ranked in the top 12% of her graduating class and was listed on the Dean's Honor List for four terms. During law school, Ms. Gallucci received the highest grade in her Legal Skills and Advanced Legal Research classes. She also participated in the Capitals of Europe Summer Study Abroad Program, where Honorable Samuel A. Alito, Jr. was a Distinguished Guest Jurist. Ms. Gallucci has worked for my firm with a number of years' experience in consumer fraud cases and is currently prosecuting violations of the Telephone Consumer Protection Act and regularly assists with the firm's food, drug and cosmetic cases.

William B. Richards Jr.

Mr. Richards has a track record of distinguished academic excellence and legal experience, acquired through working for a number of small San Diego law firms and recognized "Super Lawyers," including Lisa Damiani of Damiani Law Group, APC and Matthew Butler of The Butler Firm, APC. While employed with Damiani Law Group, APC, Mr.

Richards assisted with various employment and criminal law related matters. Subsequent positions with The McMillan Law Firm, APC, followed by The Butler Firm, APC further enhanced his proficiency in employment/labor law and business litigation at both the state and federal levels, including individual and class actions. After earning his B.S. in Business Administration (Management) from San Diego State University, Mr. Richards graduated *magna cum laude* from Thomas Jefferson School of Law, ranking in the top 9% of his graduating class and making either the Honor Roll or Distinguished Honor Roll list every semester. While attending law school, Mr. Richards was named a Jefferson Fellow and received the highest grade in his Civil Procedure II and Jurisprudence courses, earning him the Witkin Award for Academic Excellence, CALI Excellence for the Future Award, and Jefferson Medal for both courses. To further hone his complex legal research and writing skills, Mr. Richards served as an editor for the *Thomas Jefferson Law Review* after writing a Student Note titled: *Fool Me Once: The Inherent Unconstitutionality of Compelling DNA Abandonment Through Deceit*, exploring the Fourth Amendment implications of state-sanctioned warrantless DNA collection and analysis by employing deceit to induce DNA “abandonment.” Mr. Richards was also elected to the Student Bar Association and its Community Events Committee; served as a Teaching Assistant for a Federal Rules of Evidence course for three consecutive semesters; interned for the San Diego Office of the Primary Public Defender; and attended Pepperdine University School of Law for a winter intersession program. After graduating law school, Mr. Richards obtained his California Bar license, California Real Estate Salesperson license, and worked for several plaintiff-oriented law firms specializing in employment/labor law and business litigation. Mr. Richards now dedicates his practice to consumer advocacy as an associate with The Law Offices of Ronald A. Marron, APLC.

Mike Houchin, Law Clerk

Mr. Houchin is a third-year law student at Thomas Jefferson School of Law, where he ranks in the top 6% of his class and was listed on the Honor Roll for five semesters. During law school, Mr. Houchin has received three Witkin Awards for highest grade achieved in his Legal Writing II, Constitutional Law I, and California Civil Procedure courses. He also serves as an editor on the *Thomas Jefferson Law Review* and helped prepare a student Note for publication during the spring 2014 semester. Mr. Houchin has worked for the Law Offices of Ronald A. Marron as a law clerk for close to two years and has assisted its attorneys with prosecuting class action lawsuits involving the Telephone Consumer Protection Act and the California Consumers Legal Remedies Act.

Support Staff

The Marron Firm also employs a number of support staff, including law clerks, paralegals, legal assistants, and other support staff.

EXAMPLES OF MARRON FIRM'S SUCCESSES ON BEHALF OF CONSUMERS

Burton v. Ganeden Biotech, Inc., No. 3:11-cv-01471-W-NLS (S.D. Cal.)

Action alleging false and deceptive advertising of dietary supplement. On March 13, 2012, my firm settled the case for \$900,000 in a common fund plus injunctive relief in the form of labeling changes. Final approval was granted on October 5, 2012.

Carr v. Tadin, Inc., No. 3:12-cv-03040-JLS-JMA (S.D. Cal.)

An injunctive relief class action settlement, requiring manufacturer of diet teas and other health supplements to re-label their products to avoid alleged consumer confusion, was filed in January 2014 before the Honorable Janis L. Sammartino. The Marron Firm was certified as class counsel and the classwide settlement was granted final approval on December 5, 2014.

Clark v. National Western Life Insurance Co., No. BC321681 (L.A. Co. Super. Ct.)

Class action involving allegations of elder financial abuse and fraud. After litigating the case for well over six years, including Mr. Marron being appointed class counsel, the case resulted in a settlement of approximately \$25 million for consumers.

Gallucci v. Boiron, Inc., No. 3:11-cv-2039-JAH (S.D. Cal.)

The firm was class counsel for consumers of homeopathic drug products in an action against Boiron, Inc., the largest foreign manufacturer of homeopathic products in the United States, involving allegations that Boiron's labeling and advertising were false and misleading. We obtained a nation-wide settlement for the class which provided injunctive relief and restitution from a common fund of \$5 million. The settlement was upheld by the Ninth Circuit on February 214, 2015. The case also set an industry standard for homeopathic drug labeling. See www.homeopathicpharmacy.org/pdf/press/AAHP_Advertising_Guidelines.pdf.

Hohenberg v. Ferrero U.S.A., Inc., No. 3:11-CV-00205-H-CAB (S.D. Cal.)

This case involved false and deceptive advertising of sugary food product as a healthy breakfast food for children. After successfully defeating a motion to dismiss, *Hohenberg*, 2011 U.S. Dist. LEXIS 38471, at *6 (S.D. Cal. Mar. 22, 2011), the Hon. Marilyn Huff certified a class on November 15, 2011, resulting in a published decision, *In re Ferrero Litig.*, 278 F.R.D. 552 (S.D. Cal. 2011). A final settlement consisting of injunctive relief labeling and marketing changes, plus a \$550,000 common fund for monetary relief to the class was finally approved on July 9, 2012.

In re Quaker Oats Labeling Litigation, No. 5:10-cv-00502-RS (N.D. Cal.)

False and deceptive advertising case concerning Instant Oats, Chewy Granola Bars and Oatmeal To Go products, including use of partially hydrogenated vegetable oil in the products while also representing the products as healthy snacks. An injunctive relief class action settlement was granted preliminary approval on February 2, 2014, with my firm

being appointed Class Counsel. On July 29, 2014, the court granted the settlement final approval.

In re Qunol CoQ10 Liquid Labeling Litigation, No. 8:11-cv-173-DOC (C.D. Cal.)

This case involved false and deceptive consumer advertising of a dietary supplement. My firm was appointed class counsel and successfully defeated defendants' motion to decertify the class following the Ninth Circuit's decision in *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). See *Bruno v. Eckhart Corp.*, 2012 U.S. Dist. LEXIS 30873 (C.D. Cal. Mar. 6, 2012); see also *Bruno v. Quten Research Inst., LLC*, 2011 U.S. Dist. LEXIS 132323 (C.D. Cal. Nov. 14, 2011). The case settled on the eve of trial (originally scheduled for October 2, 2012) for cash payments to the class and injunctive relief.

Iorio v. Asset Marketing Systems, Inc., No. 05cv00633-IEG-CAB (S.D. Cal.)

This action involved allegations of elder financial abuse and fraud. Mr. Marron was appointed class counsel on August 24, 2006, and certified a class on July 25, 2006. After nearly six years of intensive litigation, including "challenges to the pleadings, class certification, class decertification, summary judgment,...motion to modify the class definition, motion to strike various remedies in the prayer for relief, and motion to decertify the Class' punitive damages claim," plus three petitions to the Ninth Circuit, attempting to challenge the Rule 23(f) class certification, a settlement valued at \$110 million was reached and approved on March 3, 2011. *Iorio*, Dkt. No. 480. In granting final approval to the settlement, the Court noted that class counsel were "highly experienced trial lawyers with specialized knowledge in insurance and annuity litigation, and complex class action litigation generally" and "capable of properly assessing the risks, expenses, and duration of continued litigation, including at trial and on appeal." *Id.* at 7:18-22.

Martinez v. Toll Brothers, No. 09-cv-00937-CDJ (E.D. Penn.)

Shareholder derivative case alleging breach of fiduciary duty, corporate waste, unjust enrichment and insider trading, filed derivatively on behalf of Toll Brothers and against individual corporate officers. Under a joint prosecution agreement, this action was litigated along with other consolidated and related actions against Toll Brothers in a case styled *Pfeiffer v. Toll Brothers*, No. 4140-VCL in the Delaware Chancery Court. After extensive litigation, the case settled in September 2012 for \$16.25 million in reimbursement to the corporation.

Mason v. Heel, Inc., No. 3:12-cv-3056-GPC-KSC (S.D. Cal.)

Action alleging false and deceptive advertising of over-the-counter homeopathic drugs. On October 31, 2013, the Hon. Gonzalo P. Curiel granted preliminary approval to a nationwide class settlement of \$1 million in monetary relief for the class plus four significant forms of injunctive relief. Final approval was granted on March 13, 2014. See *Mason v. Heel, Inc.*, 3:12-CV-03056-GPC, 2014 WL 1664271 (S.D. Cal. Mar. 13, 2014).

Nigh v. Humphreys Pharmacal, Inc., No. 3:12-cv-02714-MMA-DHB (S.D. Cal.)

Case involving allegations of false and deceptive advertising of homeopathic over-the-counter drugs. On October 23, 2013, a global settlement was granted final approved by the Hon. Michael M. Anello, involving a common fund of \$1.4 million plus five significant forms of injunctive relief for consumers.

Peterman v. North American Co. for Life & Health Insurance, No. BC357194, (L.A. Co. Super. Ct.), involved allegations of elder financial abuse. This case was litigated for over four years and achieved a settlement of approximately \$60 million for consumers.

Vaccarino v. Midland Nat'l Life Ins. Co., No. 2:11-cv-05858-CAS(MANx) (C.D. Cal)

This action involved allegations of elder financial abuse and fraud. On June 17, 2013, the Honorable Christina A. Snyder appointed the Marron Firm as Class Counsel, and on February 3, 2014, the Court certified a class of annuities purchasers under various theories of relief, including breach of contract and the UCL. On September 22, 2014, the court granted final approval to a class action settlement that achieved a settlement of approximately \$5.55 million for consumers, including *cy pres* relief to the Congress of California Seniors.

CURRENT APPOINTMENTS AS CLASS COUNSEL***Allen v. Hyland's, Inc.***, No. 12-CV-1150 DMG (MANx)

Nationwide class of consumers certified for false and deceptive advertising against largest U.S.-based manufacturer of homeopathic drugs, involving ten over-the-counter homeopathic drug products. A nationwide class was certified after two years of vigorous litigation, including Marron firm counsel surviving against two motions to dismiss, a motion for judgment on the pleadings, and a motion to strike punitive damages. *See --- F.R.D. ---*, 2014 WL 3819713 (C.D. Cal. Aug. 1, 2014).

Allen v. Similasan Corp., No. 12-cv-376 BAS (JLB)

A California class of consumers alleging false and deceptive advertising of six homeopathic drugs was certified by the Honorable Cynthia A. Bashant on March 30, 2015. Judge Bashant also denied summary judgment on the class' claims that the drug products were not effective, as advertised, and certified claims under California's Consumers Legal Remedies Act, Unfair Competition Law, False Advertising Law, breach of express and implied warranty, and violation of the federal Magnuson-Moss Warranty Act.

Augustine v. Natrol, LLC, Adv. Case No. 14-50795-BLS (Del. Bankruptcy Ct.)

Plaintiff in this case alleged false and deceptive advertising of Senna Leaf teas sold as weight loss aids to dieters. Plaintiff alleged that Senna Leaf is a stimulant laxative and not effective for weight loss. On behalf of a putative class, Plaintiff alleged violation of consumer fraud laws. After our firm successfully defended against a motion to dismiss

before the Honorable Marilyn Huff in the Southern District of California, Defendant filed bankruptcy. My firm retained bankruptcy counsel to assist and we successfully negotiated a class wide settlement that will provide injunctive relief to the class. Preliminary approval was granted by the bankruptcy court, and my firm was appointed Class Counsel on April 16, 2015.

Perry v. Truong Giang, Corp., Case No. BC539568 (L.A. Co. Super. Ct.)

This case alleged false and deceptive advertising of senna leaf teas for weight loss. Brought on behalf of a putative class of consumers, my firm successfully negotiated class wide relief in the form of labeling changes. Preliminary approval of the class wide settlement was granted by the Honorable Kenneth Freeman on March 30, 2015 and my firm was appointed Class Counsel.

Tabares v. Equitrust Life Ins. Co., No. BC390195 (L.A. Co. Super. Ct.).

This case involves allegations of elder financial fraud. Mr. Marron obtained a class certification order and was appointed Class Counsel on July 6, 2011, and has successfully opposed numerous attempts to decertify the class, including a petition to the California Supreme Court.

OTHER ACTIONS RESULTING IN BENEFITS TO CONSUMERS

Henderson v. The J.M. Smucker Company, No. 2:10-cv-4524-GHK (C.D. Cal.)

This action was the catalyst forcing the defendant to reformulate a children's frozen food production to remove trans fat. On June 19, 2013, the Honorable George H. King held the firm's client was a prevailing Private Attorney General and entitled to her costs and attorneys' fees.

Red v. Kraft Foods Global, Inc., No. 2:10-1028-GW (C.D. Cal)

The firm represents consumers in their action against one of the world's largest food companies and was appointed lead counsel in a consolidated putative class action. Though not fully settled, the action has resulted in a permanent injunction barring the use of deceptive health claims on Nabisco packaged foods containing artificial trans fat, and the Court has also granted an interim award of attorney fees.

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Attorney for Defendant
TRIPLE LEAF TEA, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf
of all others similarly situated, and the general
public,

Plaintiff,

v.

TRIPLE LEAF TEA, INC.,

Defendant.

Case No. 3:14-cv-01570 MMC
CLASS ACTION

**DECLARATION OF RYAN B. POLK IN
SUPPORT OF MOTION FOR AN ORDER (1)
GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, (2)
CERTIFYING SETTLEMENT CLASS, (3)
APPOINTING CLASS REPRESENTATIVES
AND CLASS COUNSEL, (4) APPROVING
NOTICE PLAN, AND (5) SETTING FINAL
APPROVAL HEARING**

Judge: Hon. Maxine M. Chesney
Date/Time: June 19, 2015 at 9:00 a.m.
Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014
Trial Date: Not Assigned

1 I, Ryan B. Polk, declare:

2 1. I am an attorney in the law firm of Gordon & Rees LLP, counsel for Defendant Triple
3 Leaf Tea, Inc. ("Triple Leaf") in the above-captioned action. I have personal knowledge of the facts
4 stated herein. I affirm that the facts stated herein are true and correct and, if called as a witness, I could
5 and would testify competently thereto.

6 2. Triple Leaf is in the business of selling teas (the "Products") to consumers.

7 3. In February of 2014, Triple Leaf received a demand letter pursuant to the CLRA from
8 Ronald Marron, counsel for Plaintiff Eunice Johnson. In March 2014, Triple Leaf responded to
9 Plaintiff's CLRA notice letter, denying all of Plaintiff's allegations as factually and legally without merit
10 and reserving all of its right and remedies should Plaintiff file suit.

11 4. On October 31, 2014, the Parties attended a Case Management Conference before The
12 Honorable Maxine M. Chesney, Senior District Judge. At the Case Management Conference, the
13 Parties, through their counsel of record, thoroughly discussed each contention identified in the Parties'
14 respective statements and agreed to private mediation in an effort settle the matter. The Court ordered
15 the mediation to be conducted within 120 days of the conference. *See* Dkt. No. 41.

16 5. In November 2014, Plaintiff sent an email identifying the targeted discovery questions
17 they requested in preparation for mediation. These questions requested information concerning Triple
18 Leaf's sales information, operating costs, and profits and losses. In December 2014, Triple Leaf
19 produced and Plaintiff reviewed substantial documentary evidence, including profit and loss statements
20 and financial statements for 2010 through 2014, plus gross and net sales for each of the Products
21 referenced in the complaint, comprising over 1,500 documents.

22 6. On February 2, 2015, the Parties attended a mediation before the Honorable Ronald M.
23 Sabraw (Ret.) of JAMS. Following the mediation on February 2, 2015, the Parties managed to establish
24 a framework for settlement, but still needed to work out the material terms and details of a final
25 memorialized agreement. The Parties diligently negotiated over the course of February through May
26 2015 to resolve those differences, ultimately leading to the formal Settlement Agreement for which the
27 Parties now seek preliminary approval.

28 7. The Settlement Agreement is the product of vigorous, adversarial, and competent

1 representation of the Parties and substantive negotiations throughout the pendency of this litigation;
 2 early contact between counsel for the Parties to commence a dialog about the merits and the risks of the
 3 claims and defenses; substantive negotiations throughout the pendency of the litigation; and the
 4 assistance of an independent, impartial mediator, the Ronald M. Sabraw (Ret.) of JAMS, as well as
 5 through the assistance of Magistrate Judge Chesney.

6 8. I have approximately 11 years of an experience as an attorney, and have defended
 7 multiple class action cases for a number of national companies. As a result, through the course of this
 8 litigation and the extensive settlement negotiations between the Parties, I have gained a clear view of the
 9 nature of this action and the likely risks and costs associated with litigating this matter through trial and
 10 appeals.


11 9. In my experienced judgment, the proposed settlement is more than fair, reasonable, and
 12 adequate with respect to Plaintiff and any putative Class. Had this matter proceeded to trial, I believe
 13 Triple Leaf would have prevailed and Plaintiff would have obtained no relief whatsoever. However,
 14 given the inherent risk, and accompanying expense, of litigating this action through trial, Triple Leaf has
 15 agreed to settle the matter.

16 10. The negotiations between the parties resulted in extensive injunctive relief for the Class
 17 including alternations to the products' ingredients as well as substantial revisions to the Products'
 18 packaging and Defendant's website. This relief strongly militates in favor of approval of the Settlement
 19 Agreement.

20 11. In sum, based on the above considerations, in my experienced judgment, the proposed
 21 Settlement Agreement is fair, reasonable, and adequate to the Representative Plaintiff and all Class
 22 Members.

23 I declare under penalty of perjury under the laws of the United States and the State of California
 24 that the foregoing is true and correct.

25 Executed on this 15th day of May 2015 in San Francisco, California.

26
 27 
 28 Ryan B. Polk

LAW OFFICE OF RONALD A. MARRON, APLC

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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf
of all others similarly situated, and the general
public,

Plaintiff,

v.

TRIPLE LEAF TEA, INC.,

Defendant.

Case No. 3:14-cv-01570 MMC
CLASS ACTION

**DECLARATION OF EUNICE JOHNSON IN
SUPPORT OF JOINT MOTION FOR AN
ORDER (1) GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, (2) CERTIFYING
SETTLEMENT CLASS, (3) APPOINTING
CLASS REPRESENTATIVES AND CLASS
COUNSEL, (4) APPROVING NOTICE PLAN,
AND (5) SETTING FINAL APPROVAL
HEARING**

Judge: Hon. Maxine M. Chesney
Date/Time: June 19, 2015 at 9:00 a.m.
Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014
Trial Date: Not Assigned

Johnson v. Triple Leaf Tea, Inc., 3:14-cv-01570 MMC

DECLARATION OF EUNICE JOHNSON IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

1 I, Eunice Johnson, declare:

2 1. I am a Plaintiff in this action. I am over the age of eighteen, and have personal
3 knowledge of the facts set forth in this Declaration. If called upon as a witness, I could and would
4 testify competently to these same facts.

5 2. Since early 2014, I have been actively involved in this case, including helping my
6 attorneys achieve the Proposed Settlement Agreement that was reached. Prior to the filing of the
7 Complaint, I aided my attorneys in sending an initial demand letter to Triple Leaf Tea, Inc. ("Triple
8 Leaf") advising it of the false and misleading claims on its product labels.

9 3. I have had numerous conferences with my attorneys over the course of the litigation. I
10 have assisted them with their investigation into the Triple Leaf Products and have reviewed the
11 Complaint prepared for this case.

12 4. During the mediation of this case, I was on standby to answer questions. I discussed the
13 Proposed Settlement terms with my attorneys and I believe that the settlement is fair and reasonable.

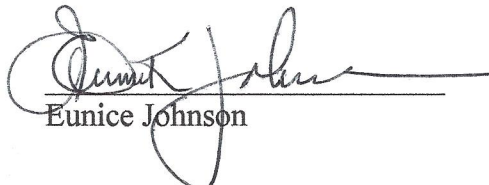
14 5. I brought this case because I felt deceived by the labeling on Triple Leaf's diet tea
15 Products. I was, and am, committed to achieving truthful labeling on food and supplements, in
16 particular, products for effective weight loss.

17 6. I purchased Triple Leaf's Dieter's Green tea, believing it to be an herbal supplement for
18 weight loss, and also believing Triple Leaf's representations that the Products would work as advertised.

19 7. I believe the labeling changes agreed to will help future consumers understand the nature
20 of Triple Leaf's tea products, so that they can make an informed choice for themselves and their families
21 in purchasing the product. As a consumer, I am pleased with the corrective actions Triple Leaf agreed to
22 implement, as set forth in the Proposed Settlement Agreement.

23 I declare under penalty of perjury under the laws of the United States and the State of California
24 that the foregoing is true and correct.

25 Executed on this 7 th day of May 2015 in Jurlock, California.

26
27 
28 Eunice Johnson

1 **GORDON & REES LLP**
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12 TRIPLE LEAF TEA, INC.

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 EUNICE JOHNSON, individually, on behalf
16 of all others similarly situated, and the general
17 public,

18 Plaintiff,

19 v.

20 TRIPLE LEAF TEA, INC.,

21 Defendant.

Case No. 3:14-cv-01570 MMC
CLASS ACTION

**REDACTED DECLARATION OF VINCENT
LAM IN SUPPORT OF MOTION FOR AN
ORDER (1) GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, (2) CERTIFYING
SETTLEMENT CLASS, (3) APPOINTING
CLASS REPRESENTATIVES AND CLASS
COUNSEL, (4) APPROVING NOTICE PLAN,
AND (5) SETTING FINAL APPROVAL
HEARING**

Judge: Hon. Maxine M. Chesney
Date/Time: June 19, 2015 at 9:00 a.m.
Courtroom: 7 (19th Floor)

Complaint Filed: April 4, 2014
Trial Date: Not Assigned

[FILED UNDER SEAL]

1 I, Vincent Lam, declare:

2 1. I am over the age of eighteen and am competent to make this declaration. I am employed
3 by Defendant Triple Leaf Tea, Inc. ("Triple Leaf"). I have personal knowledge of the facts stated
4 herein. I affirm that the facts stated herein are true and correct and, if called as a witness, I could and
5 would testify competently thereto.

6 2. All of the statements in this declaration are based upon my personal knowledge, review
7 of corporate and business records, and facts supplied by other employees.

8 3. I currently serve as President of Triple Leaf. I have served as Triple Leaf's President
9 since August 1, 2009.

10 4. Triple Leaf is in the business of selling teas and herbal supplements (the "Products") to
11 consumers.


12 5. Triple Leaf made uniform representations on the Products' labeling as to their dietary and
13 health-related properties, the labeling was uniform throughout the United States, and did not
14 differentiate for any specific market or region.

15 6. From April 4, 2010 through October 9, 2014, Triple Leaf's sales of the Products
16 generated approximately \$[REDACTED] in net profits.

17 7. To perform its obligations of the injunctive relief portion of the Proposed Settlement
18 Agreement, Defendant will incur substantial costs in the form of repackaging its labeling. This amount
19 is approximately \$50,000.

20 I declare under penalty of perjury under the laws of the United States and the State of California
21 that the foregoing is true and correct.

22 Executed on this 15th day of May 2015 in South San Francisco, California.

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Vincent Lam

EUNICE JOHNSON, individually, on behalf of all others similarly situated, and the general public,)	CASE NO. 3:14-cv-01570-MMC
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
v.)	ORDER PRELIMINARILY
)	APPROVING CLASS ACTION
TRIPLE LEAF TEA INC.,)	SETTLEMENT, CERTIFYING THE
)	CLASS, APPOINTING CLASS
Defendant.)	REPRESENTATIVES AND CLASS
)	COUNSEL, APPROVING NOTICE
)	PLAN, AND SETTING FINAL
)	APPROVAL HEARING
)	
)	Judge: Hon. Maxine M. Chesney
)	Date: June 19, 2015
)	Time: 9:00 a.m.
)	Courtroom: 7 (19 th Floor)
)	
)	Complaint Filed: April 4, 2014

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1 The capitalized terms used in this Preliminary Approval Order shall have the meanings
2 and/or definitions given to them in the Agreement, or if not defined therein, the meanings and/or
3 definitions given to them in this Preliminary Approval Order.

4 For a number of months before, and during the pendency of, the Litigation, Class
5 Counsel conducted an extensive examination and evaluation of the relevant facts and law to
6 assess the merits of the named Plaintiff's and Class' claims to determine how best to serve the
7 interests of Plaintiff and the Class. In the course of this extensive examination, Class Counsel
8 reviewed numerous documents, which consisted of marketing data, label and package
9 mechanicals, sales figures, unit sales, promotional materials, package materials, and detailed
10 financial information produced by Defendant. Class Counsel has conducted thorough review of
11 the federal Food, Drug and Cosmetic Act ("FDCA"), its numerous changes over the years, and
12 the FDCA's implementing regulations with respect to dietary supplements. Class Counsel
13 propounded interrogatories, requests for admission, and requests for production of documents on
14 Defendant, to which Defendant responded. Class Counsel has carefully considered the merits of
15 Plaintiff's and the Class' claims, and the defenses raised by Defendant.

16 The proposed settlement was reached only after extensive investigation and discovery in
17 the matter, and was the result of protracted negotiations conducted by the Parties with the
18 assistance of The Honorable Ronald M. Sabraw (Ret.) at JAMS Arbitration, Mediation, and
19 ADR Services. In addition, the Parties engaged in numerous settlement discussions after the
20 mediation with Judge Sabraw in order to reach the terms of the Agreement, over the course of
21 several months. Based on the negotiations between counsel for the Parties, the Parties fully
22 understood the nature, strength, and weaknesses of each other's claims and defenses.

23 Plaintiff and Class Counsel maintain that the Litigation and the claims asserted therein
24 are meritorious and that Plaintiff and the Class would have prevailed at trial. Notwithstanding,
25 Plaintiff and Class Counsel have agreed to settle the Litigation pursuant to the provisions of the
26 Agreement, after considering, among other things: (i) the substantial benefits to Plaintiff and the
27 Class under the terms of this Agreement; (ii) the uncertainty of being able to prevail at trial; (iii)

1 the uncertainty relating to Defendant's defenses and the expense of additional motion practice in
 2 connection therewith; (iv) the issues relating to proving damages on an individual Class Member
 3 basis; (v) the attendant risks of litigation, especially in complex actions such as this, as well as
 4 the difficulties and delays inherent in such litigation; and (vi) the desirability of consummating
 5 this Settlement promptly in order to provide effective relief to Plaintiff and the Class.

6 Plaintiff and Class Counsel agree that this Agreement is fair, reasonable, and adequate
 7 because it provides substantial benefit to the Class, is in the best interests of the Class, and fairly
 8 resolves the claims alleged in this Litigation.

9 Defendant expressly denies any wrongdoing alleged in the pleadings in the Litigation,
 10 and does not admit or concede any actual or potential fault, wrongdoing, or liability in
 11 connection with any facts or claims which have been or could have been alleged against it in the
 12 Litigation. Defendant nonetheless considers it desirable for the Litigation to be settled and
 13 dismissed, because the proposed settlement will: (i) avoid further expense and disruption of the
 14 management and operation of Defendant's business due to the pendency and defense of the
 15 Litigation; (ii) finally put Plaintiff's and the Class' claims and the underlying matters to rest; and
 16 (iii) avoid the substantial expense, burdens, and uncertainties associated with a potential finding
 17 of liability and damages for Plaintiff and the Class on the claims alleged in the Complaint in the
 18 Litigation.

19 The Court has read and considered the Agreement and all exhibits thereto, including the
 20 proposed notices and claim form, and finds there is sufficient basis for: (1) granting preliminary
 21 approval of the Agreement; (2) certifying a class for settlement purposes; (3) appointing Plaintiff
 22 Eunice Johnson as Class Representative and her counsel as Class Counsel; (4) directing that
 23 Notice be disseminated to the Class; and (5) setting a hearing at which the Court will consider
 24 whether to grant final approval of the Agreement.

25 The Court now **GRANTS** the motion for preliminary approval and makes the following
 26 findings and orders:
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1 1. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby certifies this
2 Litigation as a class action on behalf of the following certified Class:

3 All U.S. consumers who purchased the Products for household or personal use
4 during the Class Period are included.¹ Excluded from the Class are Triple Leaf;
5 persons who during or after the Settlement Period were officers or directors of
6 Triple Leaf, or any corporation, trust or other entity in which Triple Leaf has a
7 controlling interest; and the members of the immediate families of Triple Leaf's
8 employees or their successors, heirs, assigns and legal representatives; any
9 judicial officer hearing this Action, and their family members and employees.

10 2. The Court finds that the Class meets the requirements of Rule 23(a), (b)(2), and
11 (b)(3) of the federal Rules of Civil Procedure. Joinder of all Class Members in a single
12 proceeding would be impracticable, if not impossible, because of their numbers and dispersion.
13 Common issues exist among Class Members and predominate over questions affecting
14 individual Class Members only. In particular, each Class Member's claim depends on whether
15 the representations made by Defendant on the packaging, labeling, and marketing of the
16 Products, which were uniform throughout the United States, were misleading to a reasonable
17 consumer. Plaintiff's claims are typical of, indeed identical, to those of the Class, as Plaintiff
18 was exposed to Defendant's diet and health-related claims and purchased the Product(s) in
19 reliance on those claims. Plaintiff and her counsel will fairly and adequately protect the interests
20 of the Class, as Plaintiff has no interests antagonistic to the Class, and has retained counsel who
21 are experienced and competent to prosecute this matter on behalf of the Class. Finally, a class
22 settlement is superior to other methods available for a fair resolution of the controversy.

23 3. The Court approves Eunice Johnson as Class Representative.

24 4. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of
25 Civil Procedure, the Court appoints Plaintiff's counsel, the Law Offices of Ronald A. Marron,
26 APLC, to serve as Class Counsel.

27 5. The Court preliminarily approves the Agreement, finding that its terms appear
28 sufficient, fair, reasonable, and adequate to warrant dissemination of Notice of the proposed

That is, April 4, 2010 through the Opt-Out Date for purchasers of Triple Leaf Tea, Inc.'s
DIETER'S GREEN, ULTRA-SLIM, and SUPER-SLIMMING herbal tea products.

1 settlement to the Class. The Agreement contains no obvious deficiencies and the Parties have
 2 entered into the Agreement in good faith, following arms-length negotiation between their
 3 respective counsel. The Court's approval of this Agreement is made subject to further
 4 consideration at the Final Approval Hearing Date.

5 6. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court will
 6 hold a final approval hearing (the "Final Approval Hearing Date") on _____, 2015
 7 at _____ a.m./p.m., in the Courtroom of the Honorable Maxine M. Chesney, United States
 8 District Court for the Northern District of California, for the following purposes:

- 9 a. finally determining whether the Class meets all applicable requirements of
 10 Federal Rules of Civil Procedure 23(a) and (b), and, thus, the Class'
 claims should be certified for purposes of effectuating the Settlement;
- 11 b. determining whether the proposed Settlement of the Litigation on the
 12 terms and conditions provided for in the Agreement is fair, reasonable,
 and adequate and should be approved by the Court;
- 13 c. considering the application of Class Counsel for an award of attorneys'
 14 fees and costs, as provided for in the Agreement;
- 15 d. considering the application of the named Plaintiff for a class representative
 incentive award, as provided for in the Agreement;
- 16 e. considering whether the Court should enter the [Proposed] Judgment,
 17 Final Order and Decree;
- 18 f. considering whether the release by the Class Members of the Released
 Claims as set forth in the Agreement should be provided; and
- 19 g. ruling upon such matters as the Court may deem just and appropriate.

20 7. Class Members must file and serve any objections to the proposed settlement no
 21 later than thirty (30) calendar days prior to the Final Approval Hearing Date, including any
 22 memoranda and/or submissions in support of the objections, which deadline will be set forth in
 23 the Class Notice.

24 8. All papers in support of the Agreement must be filed with the Court and served at
 25 least fourteen (14) calendar days prior to the Final Approval Hearing date. Any response to an
 26 objection must be filed and served at least seven (7) days prior to the Final Approval Hearing
 27 date.

1 9. Any application for an award of attorneys' fees and costs and class representative
2 incentive award must be filed with the Court and served at least forty-five (45) days prior to the
3 Final Approval Hearing date. After filing, the application for fees and costs, and incentive award
4 shall be posted on the Settlement Website for review by Class Members.

5 10. The Court approves the form and procedure for disseminating Notice of the
6 proposed Settlement to the Class as set forth in the Agreement. This Litigation concerns retail
7 products for which the Parties do not have direct notice information for class members.
8 Accordingly, the Notice Plan provides for notice to the Class by publication. The Court finds
9 that the Notice Plan submitted by the Parties constitutes the best notice practicable under the
10 circumstances, and constitutes valid and sufficient notice to the Class in full compliance with the
11 requirements of applicable law, including Rule 23 of the Federal Rules of Civil Procedure and
12 the Due Process Clause of the United States Constitution.

13 11. Within thirty (30) days after the date of entry of this Order, Defendant shall
14 disseminate the Class Notice in the form attached to the Agreement as Exhibits A and B. The
15 manner and form of such dissemination shall be as set forth in the Notice Plan attached as
16 Exhibit D to the Agreement.

17 12. The Court approves the designation of KCC to serve as the Court-Appointed
18 Class Action Administrator for the settlement. The Class Action Administrator shall disseminate
19 Class Notice and supervise and carry out the Notice Plan, and other administrative functions, and
20 shall respond to Class Member inquiries under the direction and supervision of the Court.

21 13. The Court directs the Class Action Administrator to establish a Class Settlement
22 Website, making available copies of this Order, Class Notice, the Settlement Agreement and all
23 exhibits thereto, a toll-free hotline, and such other information as may be of assistance to Class
24 Members or required under the Agreement. The Class Settlement Website shall be made
25 available to Class Members no later than fifteen (15) calendar days after the date of this Order,
26 and continuously thereafter until thirty (30) days after the Final Approval Hearing (defined
27 below).

1 14. As set forth in the Agreement, within seven (7) calendar days of the date of this
2 Order, Triple Leaf shall pay up to \$50,000 for the purpose of Plaintiff providing notice to the
3 Class, including all costs and expenses associated with the Class Notice, creating and
4 maintaining the Class Settlement Website, and all other Class Action Administrator and Class
5 Notice expenses. The Parties shall jointly retain the services of KCC as their Class Action
6 Administrator but Triple Leaf shall bear the full cost of notice if final approval is not granted.

7 15. No later than fourteen (14) days prior to the Final Approval Hearing Date,
8 Defendant, through the Class Action Administrator, shall file an affidavit and serve a copy on
9 Class Counsel, attesting that notice was disseminated as required by the terms of the Notice Plan
10 or as ordered by the Court. Defendant shall also notify Class Counsel of the costs of attaining
11 the labeling changes per the injunctive relief set forth in the Agreement.

12 16. All Class Members shall be bound by all determinations and judgments in the
13 Litigation concerning the settlement, whether favorable or unfavorable to the Class.

14 17. Any person falling within the definition of the Class may, upon his or her request,
15 be excluded from the Class. Any such person must submit a completed request for exclusion to
16 the Clerk of the Court postmarked or delivered no later than thirty (30) calendar days before the
17 Final Approval Hearing date (“Opt-Out and Objection Deadline”), as set forth in the Class
18 Notice. Requests for exclusion purportedly filed on behalf of groups of persons are prohibited
19 and will be deemed void.

20 18. Any Class Member who does not send a completed, signed request for exclusion
21 to the Clerk of the Court postmarked or delivered on or before the Opt-Out and Objection
22 Deadline will be deemed to be a Class Member for all purposes and will be bound by all further
23 orders of the Court in this Litigation and by the terms of the settlement, if finally approved by the
24 Court. The written request for exclusion must request exclusion from the Class, must be signed
25 by the potential Class Member and include a statement indicating that the person is a member of
26 the Class. All persons who submit valid and timely requests for exclusion shall not be bound by
27 the Agreement or the Final Judgment and Order.

1 19. Any person falling within the definition of the Class may object to the Agreement.
 2 Objections purportedly filed on behalf of groups of persons are prohibited and will be deemed
 3 void. To be considered, all objections must be timely, in writing, signed and dated by the
 4 objector (or his or her attorney, if applicable), must reference the abbreviated name and case
 5 number of the Litigation, and must contain the following information: (i) the objector's name,
 6 address, and telephone number; (ii) the name, address, and telephone number of any attorney for
 7 the objector with respect to the objection; (iii) the factual basis and legal grounds for the
 8 objection; (iv) identification of the case name, case number, and court for any prior class action
 9 lawsuit in which the objector has objected to a proposed class action settlement, the general
 10 nature of such prior objection(s), and the outcome of said prior objection(s); (v) identification of
 11 the case name, case number, and court for any prior class action lawsuit in which the objector
 12 and the objector's attorney (if applicable) has objected to a proposed class action settlement, the
 13 general nature of such prior objection(s), and the outcome of said prior objection(s); (vi) the
 14 payment terms of any fee agreement between the objector and the objector's attorney with
 15 respect to the objection; and (vii) any attorneys' fee sharing agreement or referral fee agreement
 16 between or among the objector, the objector's attorney, and/or any third party, including any
 17 other attorney or law firm, with respect to the objection.

18 20. A request for exclusion or an objection that does not include all of the foregoing
 19 information, that is sent to an address other than the one designated in the Class Notice, or that is
 20 not received within the time specified, shall be invalid and the person serving such a request
 21 shall be deemed a member of the Class, and shall be bound as a Class Member by the
 22 Agreement. The Class Action Administrator shall promptly forward copies of all requests for
 23 exclusion and objections to Class Counsel and counsel for Defendant.

24 21. If a Class Member hires an attorney to represent him or her in support of a timely
 25 and properly submitted objection, and the attorney wishes to appear at the Final Approval
 26 Hearing, in addition to the foregoing requirements, that attorney must (1) file both an entry of
 27 appearance and a notice of intention to appear and participate at the Final Approval Hearing with
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1 the Clerk of the Court no later than thirty (30) calendar days before the Final Approval Hearing,
2 and (2) mail copies of the entry of appearance and the notice of intention to appear and
3 participate at the Final Approval Hearing to Counsel for Defendant and Class Counsel,
4 postmarked no later than thirty (30) calendar days before the Final Approval Hearing.

5 22. A Class Member who appears at the Final Approval Hearing, either personally or
6 through counsel, will be permitted to argue only those matters that were set forth in the timely
7 and validly submitted written objection filed by such Class Member. No Class Member shall be
8 permitted to raise matters at the Final Approval Hearing that the Class Member could have raised
9 in his/her written objection, but failed to do so, and all objections to the Agreement that are not
10 set forth in a timely and validly submitted written objection are deemed waived.

11 23. If a Class Member wishes to present witnesses or evidence at the Final Approval
12 Hearing in support of a timely and validly submitted objection, all witnesses must be identified
13 in the objection, and true and correct copies of all supporting evidence must be appended to, or
14 filed and served with, the objection. Failure to identify witnesses or provide copies of supporting
15 evidence in this manner waives any right to introduce such testimony or evidence at the Final
16 Approval Hearing. While the declaration described above is prima facie evidence that the
17 objector is a member of the Class, Plaintiff or Defendant or both may take discovery regarding
18 the matter, subject to Court approval.

19 24. Any Class Member who fails to comply with the applicable provisions of the
20 preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or
21 she may have to object, appear, present witness testimony, and/or submit evidence, shall be
22 barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval
23 Hearing, and shall be bound by all the terms of the Agreement and by all proceedings, orders,
24 and judgments in the Litigation.

25 25. All objections must be filed with the Clerk and served on the Parties' counsel no
26 later than the Opt-Out and Objection Deadline. Objections received after the Opt-Out and
27 Objection Deadline will not be considered at the Final Approval Hearing. A Class Member's
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1 failure to submit a written objection within the Opt-Out and Objection Deadline, in conformance
2 with the procedures set forth in the Class Notice, and above, waives any right the Class Member
3 may have to object to the settlement, the Agreement, attorneys' fees and costs, the Class
4 Representative's incentive award, or to appeal or seek other review of the Final Judgment and
5 Order.

6 26. Class Members who do not oppose the settlement, the applications for attorneys'
7 fees and costs, or Class Representative incentive award need not take any action to indicate their
8 approval.

9 27. Class Members are preliminarily enjoined from filing, commencing, prosecuting,
10 intervening in, participating in, maintaining as class members or otherwise, directly or indirectly
11 through a representative or otherwise, or receiving any benefits from, any lawsuit, arbitration,
12 government action, administrative or regulatory proceeding or order in any jurisdiction, forum or
13 tribunal asserting any Released Claims. In addition, all persons are preliminarily enjoined from
14 filing, commencing or prosecuting a lawsuit as a class action (including by seeking to amend a
15 pending complaint to include class allegations or by seeking class certification in a pending
16 action in any jurisdiction) on behalf of Class Members, or asserting any Released Claims.
17 Nothing herein shall require any Class Member to take any affirmative action with regard to
18 other pending class action litigation in which he or she may be an absent class member.

19 28. The Agreement and the proceedings and statements made pursuant to the
20 Agreement or papers filed relating to the approval of the Agreement, and this Order, are not and
21 shall not in any event be construed as, offered in evidence as, received in evidence as, and/or
22 deemed to be evidence of a presumption, concession, or an admission of any kind by any of the
23 Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been,
24 could have been, or in the future might be asserted in the Litigation, any other litigation, court of
25 law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative
26 proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of
27 the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff.
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1 Nothing contained herein shall be construed to prevent a Party from offering the Agreement into
2 evidence for the purposes of enforcement of the Agreement.

3 29. The certification of the Class shall be binding only with respect to the settlement
4 of this Litigation. In the event that the Agreement is terminated pursuant to its terms or is not
5 finally approved by the Court, or such approval is reversed, vacated, or modified in any material
6 respect by this or any other Court, the certification of the Class shall be deemed vacated, the
7 Litigation shall proceed as if the Class had never been certified (including Defendant's right to
8 oppose any subsequent motion for class certification), and no reference to the Class, the
9 Agreement, or any documents, communications, or negotiations related in any way thereto shall
10 be made for any purpose.

11 **IT IS SO ORDERED.**

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13 DATED: _____

14 The Honorable Maxine M. Chesney
15 UNITED STATES DISTRICT JUDGE
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