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Attorneys for Plaintiffs and the Proposed Settlement Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BOIRON, INC.; and BOIRON USA, INC.,

Defendants.

AND ALL RELATED ACTIONS

Case No. 3:11-CV-2039 JAH NLS
Pleading Type: Class Action

NOTICE OF MOTION AND MOTION (1) GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLMENT, (2) CERTIFYING SETTLEMENT CLASS, (3) APPOINTING CLASS REPRESENTATIVES AND LEAD CLASS COUNSEL, (4) APPROVING NOTICE PLAN, AND (5) SETTING FINAL APPROVAL HEARING

Judge: Hon. John A. Houston
Courtroom: 11 (Second Floor)
Date: April 30, 2012
Time: 2:30 p.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 30, 2012, at 2:30 p.m. or as soon thereafter as may be heard, in Courtroom 11 of the United States District Court for the Southern District of California, before the Honorable John A. Houston, Plaintiffs Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty and Jeanne Prinzivalli, through their counsel of record, the Law Offices of Ronald A. Marron and the Weston Firm, will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23, for an order:

(1) Granting preliminary approval of the Settlement in this matter;

(2) Designating Plaintiffs Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty and Jeanne Prinzivalli as representatives of the Class;

(3) Certifying the Class as defined in the Settlement Agreement;

(4) Appointing the Law Offices of Ronald A. Marron and the Weston Firm as Lead Counsel for the Class;

(5) Approving the Notice Plan attached to the Settlement Agreement as Exhibit F, and directing issuance of the notices to the Class; and

(6) Scheduling a Final Approval Hearing.

This motion is based on this Notice, the Motion itself, the Memorandum of Points and Authorities in Support thereof; the Declarations of Ronald A. Marron, Christina Sarchio and Mark Land, all prior proceedings had, the papers on file in these matters, and any oral argument presented by counsel.

Dated: March 6, 2012

Respectfully Submitted,

/s/ Ronald A. Marron

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Plaintiffs,

v.

BOIRON, INC.; and BOIRON USA, INC.,

Defendants.

AND ALL RELATED ACTIONS

Case No. 3:11-CV-2039 JAH NLS
Pleading Type: Class Action

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

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Plaintiffs Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty, and Jeanne Prinzivalli ("Plaintiffs") through their counsel of record, the Law Offices of Ronald A. Marron and The Weston Firm, submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for an Order: (1) Granting Preliminary Approval of Class Action Settlement; (2) Conditionally Certifying a Settlement Class; (3) Appointing Plaintiffs Class Representatives and Plaintiffs' Attorneys Class Counsel; (4) Approving the Notice Plan; and (5) Setting the Final Approval Hearing and Schedule.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 2, 2011, Plaintiff Salvatore Gallucci filed this putative class action against Defendants Boiron Inc. and Boiron USA, Inc. (collectively, "Defendants" or "Boiron"), manufacturers of homeopathic products. Compl., Dkt. No. 1. On February 6, 2012, Plaintiffs filed a First Amended Complaint ("FAC"), adding Amy Aronica, Kim Jones, Doris Petty, and Jeanne Prinzivalli ("Plaintiffs") as Plaintiffs in this action. FAC, Dkt. No. 57. Defendants market the following homeopathic remedies as relieving ailments and symptoms: Oscillococcinum and Children's Oscillococcinum (collectively "Oscillo"); Arnicare Gel, Arnicare Cream and Arnicare Tablets (collectively "Arnicare"); Chestal Cough Syrup and Children's Chestal Cough Syrup (collectively "Chestal"); Coldcalm and Children's Coldcalm (collectively "Coldcalm"); Quietude; Camilia; and others, in all sizes and doses (collectively "Products"). FAC ¶¶ 2, 12-62. Plaintiffs contend that the active ingredients in the Products, even if otherwise effective, are so greatly diluted as to be effectively non-existent.[1] *Id.* at ¶¶ 23-29, 35, 41, 48, 53, 58, 62. Accordingly, Plaintiffs allege that Defendants' representations regarding the characteristics, benefits, and abilities of the Products are false and misleading, violating the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the False Advertising Law ("FAL"), *id.* §§ 17500, *et seq.*, and Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, and breaching express and implied warranties. *Id.* at ¶¶ 72-114. Because in purchasing the Products, Plaintiffs conferred a benefit upon Defendants, they also bring claims for Money Had and Received, Money Paid, and Unjust Enrichment against Defendants, alleging that under the circumstances it would be inequitable and unjust to permit Defendants to retain such monies. *Id.* at ¶¶ 116-119. Plaintiffs brought this class action on behalf of a nationwide class of purchasers of the Products since January 1, 2000. *Id.* at ¶ 64.

[1] For example, the active ingredient in Oscillo has been diluted 100^{200} times.

The parties stipulated to a protective order with this Court on September 28, 2011. Dkt. No. 15. The Court granted the protective order on September 29, 2011. Dkt. No. 16. Thereafter, Defendants responded to Plaintiffs' targeted discovery, producing over 400,000 documents, with discovery still in progress. Decl. of Ronald A. Marron filed concurrently herewith ("Marron Decl.") ¶ 11. On September 26, 2011, counsel for the parties participated in a conference pursuant to Federal Rule of Civil Procedure 26(f) and subsequently filed their Joint Rule 26 Report on October 6, 2011. Dkt. No. 17. No trial date has been set in this action and the parties have not appeared for a Case Management Conference.

Since the filing of the initial Complaint, Plaintiffs' counsel have vigorously pursued the Complaint's deceptive and false advertising claims, including pointing out discrepancies in one of the peer-reviewed articles which Boiron claimed supported the effectiveness of Oscillo. Pl.'s Opp. to Def.'s Mot. to Dismiss, Dkt. No. 20, at 6. Plaintiffs' counsel also conducted a detailed and comprehensive review of federal drug label laws and their implementing regulations; noting that the Federal Trade Commission (not the Food and Drug Agency ["FDA"], as claimed by Boiron) has authority over interstate misrepresentations on over-the-counter drugs. *Id.* Plaintiffs' counsel believe that they made a strong showing of why Oscillo was misleading, in light of specific representations and the nature of the product, and based on a clinical study referenced by Defendants on their own website. *Id.* Indeed, defense counsel asked for more time to respond to the opposition, due to "the weighty issues" raised by Plaintiffs' counsel. Defs.' Emerg. Mot. to Cont. Hearing Dates, Dkt. No. 23. Plaintiffs' counsel also opposed Boiron USA, Inc.'s Motion to Dismiss on grounds this Court lacked personal jurisdiction over it, setting forth detailed reasons why alter ego theory should apply. Dkt. No. 22.

Defendants, on the other hand, vigorously deny any wrongdoing or liability, and contend that they will be wholly successful in defeating Plaintiffs claims at or before trial. Defendants argue that Oscillo is properly labeled under the Food, Drug, and Cosmetic Act ("FDCA" located at 21 U.S.C. § 301 *et seq.*), and that its product labeling is not false or misleading. Boiron Inc.'s Mot. to Dismiss, Dkt. No. 9. In support thereof, Defendants assert, *inter alia*, that, despite Plaintiffs having the burden to demonstrate that Oscillo does not work, Plaintiffs do not have a single clinical study so showing. Defendants, however, have two independent clinical studies supporting the efficacy claims of Oscillo and that further show that consumers of homeopathic drugs are knowledgeable and sophisticated purchasers that seek alternative forms of medicine. *Id.*

Defendants also argue that Plaintiffs' claims are expressly preempted under the Food and Drug Administration Modernization Act ("FDAMA"), 21 U.S.C. § 379r, impliedly preempted for seeking to frustrate

federal objectives by interfering with federal control over food and product labeling;[2] and barred by the primary jurisdiction doctrine which is regularly applied to claims challenging the label adequacy of an FDA-regulated product. *Id.*

Defendants note that the FDA has brought no enforcement action against Boiron for any of its products (as they have against other homeopathic drug companies), and that private citizens have no private cause of action for claims under the FDA. *Id.* Defendants argue that Plaintiffs, at best, may instead file a Citizen Petition with the FDA. *Id.* at 19 (noting that in August 2011 consumers filed a Citizen's Petition requesting that the Agency require all homeopathic drugs be tested for effectiveness and labeled accurately.) To date, the FDA has brought no enforcement actions against any of Defendants' products.

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. A, Settlement Agreement.[3] The Settlement Agreement is the product of vigorous and competent representation of the Parties; early contact between counsel for the parties to commence a dialog about the merits and risks of the claims and defenses; and substantive negotiations throughout the pendency of the litigation. Marron Decl. ¶¶ 6-8, 12; Declaration of Christina Guerola Sarchio ("Sarchio Decl.") ¶ 2-5.

The settlement was reached with the assistance of an independent, impartial mediator, the Honorable Leo S. Papas (Ret.) of Judicate West. *See* Marron Decl. ¶¶ 7-8. The parties' negotiations, including at least thirteen sessions, both jointly and separately, with Judge Papas, extended over a period of five months.[4] Marron Decl." ¶ 12; Sarchio Decl. ¶ 3. The parties are confident that the settlement fund and broad remedial relief agreed upon demonstrates a more than fair, reasonable, and adequate result, and that the proposed settlement merits preliminary approval. The parties agree that the Settlement Agreement addresses all material terms of the agreed upon Settlement. Marron Decl. Ex. A, Settlement Agreement at § 11.2. Defendants agreed that Plaintiffs' complaint, in

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[2] Boiron contends that federal preemption applies to all of its OTC products because Congress and the FDA have permitted homeopathic drugs to be marketed and sold in the United States. Def. Boiron, Inc.'s Mot. to Dismiss, Dkt. Nos. 9. Boiron claims that no case has ever been successful against a homeopathic drug manufacturer for false advertising or consumer fraud. *Id.*

[3] All initial-capped words hereafter shall refer to the terms and definitions within the Settlement Agreement.

[4] Counsel for the plaintiff in the related action of *Gonzales v. Boiron, Inc., et al.*, Case No. 3:11-cv-02066, were invited to participate in the negotiations, but declined to join in. Marron Decl. ¶ 9. Nevertheless, Mr. Gonzales is covered by the proposed Class because it covers all purchasers of Boiron's Products nationwide; Mr. Gonzales purchased Oscillo and resides in California.

compliance with Rule 11 of the Federal Rules of Civil Procedure, was brought in good faith, was not frivolous, and was being settled on a voluntary basis. *Id.*

II. SUMMARY OF THE SETTLEMENT

A. Proposed Settlement Relief

i. Injunctive Relief

Boiron agrees to provide injunctive relief in the form of modifying its product labels in two significant aspects. First, Boiron will implement a new "FDA Disclaimer" on all of its Products, next to the Drug Facts Panel. Further, Boiron will place an asterisk next to all "Indications of Use," that appear on the front display panel of each of Boiron's Products. Indications of Use were those statements that Plaintiffs identified as false and misleading (e.g., "feeling run down" on Oscillo), regarding the treatment and relief of symptoms or ailments. *Id.* § 4.1. The labels shall set forth the following FDA Disclaimer language, in a visible font size and visible font color: "These 'Uses' have not been evaluated by the Food and Drug Administration." *Id.* § 4.1.2.

Second, Boiron will implement a "Dilution Disclaimer", as a result of Plaintiffs' claims about the deceptive labeling of the dilution of the active ingredients in the Products. The back panel of each Product's outer label or package shall be modified to include the following language in close proximity to the Drug Facts: "C, K, CK, and X are homeopathic dilutions: see www.[Homeopathic Dilution Page] for details." *Id.* § 4.1.3. The Homeopathic Dilution Page shall contain detailed information on the C, K, CK, and X dilutions of Boiron's Products, including what the levels of dilution mean, in a question and answer format understandable to an average member of the public with no knowledge of homeopathic principles. *Id.*

In addition, Boiron has agreed to changes to its many websites. First, Boiron shall modify its boironusa.com website, and all websites it owns in the names of its Products (e.g., oscillo.com, chestal.com, etc.) to include a Homeopathic Dilution Page, containing the more detailed information contemplated by the Dilution Disclaimer, fully explaining to consumers the meaning of the C, K, CK, and X designations in the Drug Facts Panel. *Id.* § 4.1.4. Further, Boiron shall also make the Homeopathic Dilution Page accessible directly on the home page of all of its web sites so that consumers do not have to search for additional information. *Id.* Boiron will also modify its advertising so that the FDA disclaimer will appear wherever a drug facts panel appears in its advertising. *Id.* § 4.1.2.4.

Plaintiffs have assisted Defendants' efforts to ensure that the modified labels comply with the UCL, FAL, CLRA, and the Food, Drug and Cosmetic Act ("FDCA") and all of its relevant amendments. Plaintiffs created the Dilution Disclaimer concept, and did so with the average consumer in mind. Plaintiffs also proposed the FDA

Disclaimer. Based upon Plaintiffs' research, both Disclaimers comply with all applicable laws. Boiron has estimated that the cost of changing Boiron's product labels could be as high as $7 million. Land Decl. ¶ 8.

These package modifications will take place on a rolling basis, to be completed within twenty-four months of the Effective Date of any Judgment entered pursuant to the Settlement Agreement. Marron Decl. Ex. A, Settlement Agreement § 4.1.5. However, until the packaging for the Products has been modified as discussed above, Defendants shall continue The Boiron Promise, their money-back guarantee program, through the twenty-four (24) months after the Claim-In Period has expired. *Id.* § 4.1.6. The terms of the program, including requirements for proof of purchase, shall be consistent with those that exist in the money-back guarantee program on the Effective Date. *Id.*

ii. Monetary Relief

Defendants will contribute $5,000,000 to a non-recapture Settlement Fund, meaning Defendants will have no ability to recover any of contributed funds. *Id.* § 4.2.1.

Defendants will provide a full refund to all members of the Class who provide proof of purchase of any of the Products or affirm that they purchased any of the Products, and return a Claim Form within the Claim-In Period. *Id.* § 4.3.1. The refund shall be (i) for any Claimant who provides a Proof of Purchase, the actual purchase price as reflected by a sales receipt, or suggested retail price as determined by information on the packaging, subject to a cap of $100.00 per household, or (ii) for any Claimant who does not provide a Proof of Purchase, $10.00 per Product, subject to a cap of $50.00 per household. *Id.* § 4.3.2. Payments to Class Members may be subject to *pro rata* reduction if the aggregate number of claims exceeds the Net Settlement Fund. *Id.* § 4.3.4.

iii. Costs of Notice and Administration, Attorneys' Fees, and Incentive Awards

All Notice costs shall be distributed from the Settlement Fund. *Id.* §§ 5.1.1, 5.1.2.3. Defendants shall bear their own attorney's fees, costs and expenses. *Id.* § 9.1.

Counsel for Plaintiffs will apply for a court order, awarding reasonable attorneys' fees and costs to Class Counsel related to obtaining the settlement relief, and an incentive award to each of the named Plaintiffs as class representatives. Defendants will have the option of responding to or contesting such application. *Id.* § 9.1. Upon Court approval, the attorneys' fees, expenses, and incentive awards will be paid from the Settlement Fund. *Id.* § 9.2. The Parties recognize the difficulties and cost inherent in identifying and notifying Class Members who purchased the Products during the class period. Class Members are located throughout the country and the Parties, for the most part, do not have Class Member addresses, so individual notice cannot be provided. Moreover, given the dollar amount of an individual's claim, notice costs could swamp the value of those who claim in. This set of facts presents

the prototypical *cy pres* situation. As such, if any funds remain in the Net Settlement Fund after all eligible Claims, attorneys' fees, expenses, and incentive awards have been paid, the Parties shall meet and confer regarding the distribution of any remaining funds to an appropriate organization approved by the Court (as a *cy pres* award), to Claimants (as a supplemental distribution) or a combination thereof. *Id.* §§ 1.20, 4.3.5. The remaining funds, if any, shall not revert to Defendants. *Id.* § 4.3.5.

B. Proposed Notice Plan

The Parties have selected an experienced third-party Class Action Administrator, Gilardi & Co., for creating and managing the notice, and processing claims in relation to the proposed Settlement. *See id.* § 5.1.2. Established in 1984, Gilardi & Co. was created to help attorneys notice consumer class actions. *See* www.gilardi.com/services.html. Since then, the company has grown to be one of the largest sole-purpose class and mass action administrators in the country. *Id.*

Boiron does not sell its products directly to consumers but only to retailers, including traditional "brick and mortar" stores and online sellers. Declaration of Mark Land ("Land Decl.") ¶ 5. Therefore, the Parties have determined that the best way to provide notice to the class is through publication, which shall involve creation of a Settlement Website dedicated to the Settlement, a toll-free number that potential Class Members may use to obtain further information, information provided on www.boironusa.com, and publication in magazines. Marron Decl. Ex. A, Settlement Agreement at § 5.1.3 and Exs. C and F thereto. To the extent that Boiron has a list consumers who have contacted Boiron to complain about any Product covered by the proposed Settlement, Boiron shall provide the Class Action Administrator with information necessary for targeted notice to those customers at their last known mail or e-mail addresses.

The Summary Notice is designed to provide potential class members with information about the settlement and their rights, in easy-to-comprehend language. Marron Decl. Ex. A, Settlement Agreement at Ex. C. The Summary Notice contains a general description of the lawsuit, the settlement relief, how a claim can be filed, and a general description of class members' legal rights. *Id.* The Summary Notice also directs consumers to the Settlement Website and provides the toll-free number, information on how to obtain a claim form, and the claim submission deadline. *Id.* The Summary Notice will appear in various print sources, based on the marketing demographics of persons who purchase homeopathic remedies. Marron Decl. Ex. A, Settlement Agreement at Ex. F. As set forth in the proposed Settlement Agreement, the Summary Notice will appear Natural Health Magazine and Health Magazine. *Id.*

In addition to the Summary Notice, the proposed Class Notice contains detailed information about the lawsuit, the Settlement Agreement, the release of liability, and how to opt-out, object, and exercise other rights under the settlement. Marron Decl. Ex. A, at Ex. C. Included in the Class Notice is the Claim Form. *Id.* at Ex. A, proposed Claim Form. The Class Notice and Claim Form will be available on the dedicated Settlement Website, and will be mailed to persons who call the toll-free number, upon request. *Id.*; *id.* at Ex. C. The Class Notice and Claim Form shall be made available in Spanish translations. *Id.* § 5.1.3.1.

III. THE SETTLEMENT SATISFIES THE CRITERIA FOR PRELIMINARY APPROVAL

A. Standards for Preliminary Approval

Pre-trial settlement of complex class actions is a judicially favored remedy. *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); *see also Linney v Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *West v. Circle K Stores, Inc.*, No. S-04-0438, 2006 WL 1652598, at *1 (E.D. Cal. June 13, 2006). Public policy also "strong[ly] . . . 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. GE*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enters. Secs. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

Preliminary approval of the 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); *see also Officers for Justice*, 688 F.2d at 625. In making this determination, the Court should evaluate the fairness of the settlement in its entirety. *See Hanlon*, 150 F.3d at 1026 ("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."). Moreover, 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 to a lawsuit 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 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *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) ("[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness.") (citation and quotations omitted).

Before preliminarily approving a proposed settlement, a court must 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. Thereafter, approval

of a class action settlement involves a two-step process: (i) the court preliminarily approves the settlement pending a fairness hearing and authorizes notice to be given to the class; and (ii) following the fairness hearing, the court will make a final determination regarding whether to approve the settlement. *West v. Circle K Stores, Inc.*, No. Civ. S-04-0438 WBS GGH, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006).

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); *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"); *Misra v. Decision One Mortg. Co.*, No. SA CV 07-0994 DOC (RCx), 2009 WL 4581276, at *3 (C.D. Cal. Apr. 13, 2009) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval[.]"); *Satchell v. Fed, Ex. Corp.*, Nos. C03-2659 SI, C03-2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (granting preliminary approval after finding that the proposed settlement was non-collusive, had no obvious defects and was within the range of possible settlement approval); *West*, 2006 WL 1652598, at *11 ("At this preliminary approval stage, the court need only determine whether the proposed settlement is within the range of possible approval") (internal quotes omitted).

In this case, as shown herein, the proposed Settlement Agreement falls well within the range of possible approval and, therefore, satisfies the requirement for preliminary approval. Indeed, it is non-collusive, fair, reasonable, and will provide a significant benefit to the class. Nevertheless, because the Court's determination that a class exist is a prerequisite to preliminary approval, this Motion will first address the propriety of class certification and then further explain why the Court should preliminarily approve the Settlement Agreement.

B. The Proposed Class Meets the Qualifications for Conditional Certification.

A proposed class may be conditionally certified if it "satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure applicable to all class actions, namely: (1) numerosity, (2) commonality, (3) typicality, and

(4) adequacy of representation." *Hanlon*, 150 F.3d at 1019 (citing to *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 2248 (1997)). The parties in this case request certification under Rule 23(b)(3) because common questions of law or fact predominate and the class action method is superior to resolution by other available means. *True v. Amer. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010).

The Settlement Agreement defines the Settlement Class as all persons in the United States, excluding Defendants and their officers, directors, employees and immediate families, and the Court, its officers and their immediate families, who purchased the Products on or after January 1, 2000. Marron Decl. Ex. A, Settlement Agreement §§ 1.5, 1.7, 7.1.1. The Class excludes claims for Children's ColdCalm made by members of the class certified in the matter of *Delarosa v. Boiron, Inc*, No. 10-cv-1569-JST (C.D. Cal.) ("all persons who are domiciled or reside in California, who purchased Children's Coldcalm for personal use at any time during the four years preceding the filing" of the Complaint in that action), *see Delarosa v. Boiron, Inc.*, 275 F.R.D. 582 (C.D. Cal. Aug. 24, 2011)), but does not exclude claims made by *Delarosa* Class Members as to all other Products. *Id.* § 7.1.1.

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.").

1. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Plaintiff here seeks to certify a class of nationwide purchasers of Boiron's Products. *See* Marron Decl. Ex. A, Settlement Agreement at Ex. D for list of Products.

While Boiron sells its products to a number of specialty natural food stores as well as to practicing homeopaths, Boiron's sales to mass retail stores in the United States averages approximately $13 million per year. Land Decl. ¶ 6. From January 2007 to September 2011, Boiron sold approximately 12 million units of Products to mass retail stores in the United States. *Id.*

"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). "As a general rule, classes of forty or more are considered sufficiently numerous." *Mazza v. Am. Honda Motor Co.*, 254

F.R.D. 610, 617 (C.D. Cal. 2008); *see also Harris v. Palm Springs Alpine Estates*, 329 F.2d 909, 913-914 (9th Cir. 1964). The proposed Settlement Class potentially consists of tens of thousands of claimants, which can reasonably be inferred from Boiron's annual sales volume of the Products in the United States. Relying on Boiron's sales volume of a much smaller product, Children's Coldcalm, the Central District of California recently found that the Plaintiff had adequately shown numerosity. *Delarosa*, 275 F.R.D. at 587. Here, the number of claimants from multiple states for multiple Boiron products would be so numerous that joinder would be impracticable. *See* Fed. R. Civ. P. 23(a)(1); *Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982) (ruling that numerosity is met where joinder of all class members is difficult or inconvenient).

i. Commonality

Rule 23(a)(2) requires that "there are 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). All class members must "have suffered the same injury." *Dukes*, 131 S. Ct. at 2551 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)).

In the context of claims for false or deceptive advertising, there is essentially a single misrepresentation (that 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*, 275 F.R.D. at 589 (summarizing Boiron's alleged violations under the UCL and CLRA for Children's Coldcalm as "a single misrepresentation . . . made identically to all potential class members. . . . Plaintiff's injury is purchasing [Children's] Coldcalm in reliance on the alleged misrepresentation that it would provide relief from the common cold, when it fact it does not provide such relief."). Thus, this action presents common questions of law or fact regarding whether Boiron made false or deceptive representations about its Products, and determination of whether the representations were true or deceptive would resolve all claims "in one stroke." *Dukes v. Wal-Mart*, 131 S.Ct. 2541, 2551 (2010). [5]

[5] This case does not pose commonality problems that might arise in an employment class action case, where a defendant supervisor may have subjected different plaintiffs to disparate, discriminatory treatment. *See Dukes*, 131 S.Ct. at 2554 (noting that commonality could be proved 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).

Boiron makes uniform representations on the label and/or in advertising throughout the United States and does not differentiate for any specific market or region. Land Decl. ¶ 7. Since the representations made to each Class Member are the same, and imprinted on the package label, Class Members share a common injury because they have all been exposed to the same representations on each Product.

Not only will all potential Class Members have been exposed to Boiron's uniform advertisements, but due to the nature of Boiron's OTC remedies, all Class Members had the same reason for purchasing Defendants' Products: to cure themselves of a sickness or relieve a health symptom.

ii. Typicality

The typicality prerequisite of Rule 23(a)(3) is also a "permissive standard" and the named plaintiffs' claims are typical if they are "reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. They "need not be identical or even substantially identical . . . [but] need only be similar . . . ." *Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 618 (C.D. Cal. 2008) (emphasis in original). Also, the representative plaintiff must be a member of the class they seek to represent. *Falcon*, 457 U.S. at 156.

The proposed Class Representatives have claims that are typical to the Settlement Class because they have sought out one or more of Boiron's Products based upon Boiron's representations of its efficacy to cure an ailment, believed those representations, and suffered the same injury in fact—loss of money in the amount of the purchase price—when the product was not effective for that ailment. The absent Class Members' claims are reasonably co-extensive with the Class Representatives because all persons were exposed to Boiron's representations as to each respective Product. Since absent Class Members' claims need not be "substantially identical," the inclusion of the other Products not necessarily purchased by Plaintiffs still present factual claims that are "reasonably co-extensive" to the Class Representatives' claims because the fundamental basis for all the claims is lack of efficacy of Boiron's Products. *Hanlon*, 150 F.3d at 1020.

iii. Adequacy of Representation

Rule 23(a)(4) requires that the Class Representatives "fairly and adequately represent the interests of the class." There are two issues to be resolved for adequacy: (1) whether the Class Representative has interests that conflict with the proposed Class; and (2) the qualifications and competency of proposed Class counsel. *Dukes*, 603 F.3d at 614 *rev'd on other grounds*, 131 S. Ct. 2541.

Plaintiffs do not have interests that conflict with the proposed Settlement Class. Plaintiffs and the Class Members all purchased the Products believing the representations on the product packages that they were effective

for the named illnesses and ailments. Moreover, the packaging of each Product is the same throughout the United States.

Regarding qualifications of proposed Class Counsel, the Court should analyze "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs' counsel drafted a Complaint with five potential causes of action, and sought out expert scientific advice in drafting the efficacy portions of the Complaint. Marron Decl. ¶¶ 4-5 and Ex. B; FAC, Dkt. 57 at 16-24 . Further, Plaintiffs' Counsel have performed extensive work to date in successfully mediating and negotiating the proposed Settlement. *Id.* ¶¶ 6-8, 12. As set forth in the Declaration of Mr. Marron, filed concurrently herewith, Plaintiffs' counsel have numerous years' experience, and demonstrated success, in bringing the same types of false labeling claims at issue in this action. *Id.* ¶¶ 15-27. This action involves a complex statute (FDCA), its implementing regulations, common law theories, and California statutory requirements for bringing CLRA, UCL and FAL actions. *See Delarosa*, 8:10-cv-10569, at n.4 (regarding CLRA, UCL and FAL claims about an OTC homeopathic drug, and observing that "this action concerns novel legal theories in a specialized area of law"). Proposed Class Counsel are competent, qualified, and will more than adequately protect the Class Member's interests. Based on the foregoing, they request the Court order that Plaintiffs' counsel shall be Conditional Class Counsel pursuant to Rule 23(g)(1) (requiring a certified class to also have appointed class counsel).

iv. The Requirements of Rule 23(b)(3)

The Settlement Agreement contemplates that the Class will be certified only under 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 difference 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)). There are two fundamental conditions to certification under Rule 23(b)(3): (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

a. Common questions of law and fact predominate over issues affecting only individual members of the Class.

While Rule 23(a) requires only the existence of common questions among members of the proposed class, certification under Rule 23(b)(3) requires a finding that those common questions predominate over individual ones. If common questions "present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication," then "there is clear justification for handling the dispute on a representative rather than on an individual basis," and the predominance test is satisfied. *Hanlon*, 150 F.3d at 1022. "Predominance is a test readily met in certain cases alleging consumer . . . fraud . . . ." *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997).

The predominance prerequisite "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). See also NEWBERG ON CLASS ACTIONS, §§ 4.21, 4.25.

Furthermore, "[i]mplicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). *See also In re Sugar Indus. Antitrust Litig.*, MDL Dkt. No. 201, 1976 WL 1374, at *23 (N.D. Cal. May 21, 1976) (certifying class because "the evidence to be presented by the plaintiff representatives on these elements will be the same as that which would otherwise have to be introduced by the absent class members").

Plaintiffs allege that the Class Members are entitled to the same legal remedies premised on the same alleged wrongdoing. The central issue for every Class Member is whether the alleged misrepresentations made on the Products' packaging were likely to deceive a reasonable consumer. Under these circumstances, Class Counsel believes there is sufficient basis to find that the requirements of Rule 23(b)(3) are present. *See Wiener*, 255 F.R.D. at 669 (predominance satisfied when alleged misrepresentation of product's health benefits were displayed on every package).

b. Class treatment is the superior means to adjudicate Plaintiffs' Claims.

When certifying a class for settlement purposes, the court examines three factors in evaluating whether a class action is superior: "(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. A fourth factor—the difficulties of managing the class action—is not considered when certification is used only for purposes of settlement. *Id.* at n.12.

As it stands now, there is already a duplicative class action case before this Court: the related case of *Gonzales v. Boiron, Inc. et al.*, Case No. 3:11-cv-02066.[6] Resolving these lack-of-efficacy claims in one proceeding will preserve efficiency for the parties, and judicial economy. Continued litigation of this matter without class certification will likely "dwarf potential recovery." *Hanlon*, 150 F.3d at 1023. It is neither economically feasible, nor judicially efficient, for the tens of thousands of Class Members to pursue their claims against Defendants on an individual basis. *Hanlon*, 150 F.3d at 1023; *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980); *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971).

Finally, California has a strong interest in resolving these claims because the state consists of a very large and diverse consumer base. Cal. AB 9, *Comm. on Jobs, Econ. Dev. & Econ.: Bill Analysis* 9 (May 23, 2011) (noting that "California is one of the largest . . . economies in the world with a state gross domestic product (GDP) of over $1.9 trillion in 2009. If California were an independent nation, it would rank as the eighth largest economy in the world.").

C. The Court Should Preliminarily Approve the Proposed Settlement.

As noted above, the Court should grant preliminary approval of the Settlement Agreement if it appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with[in] the range of possible approval. *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009). As discussed herein, the Settlement Agreement readily satisfies these criteria.

1. The Settlement Was Reached at Arm's Length after Investigation and Discovery.

"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 also involved the services of a competent, experienced, and independent mediator, the Honorable Leo S. Papas (Ret.). Marron Decl. ¶¶ 7-9;

[6] The following pending cases also concern duplicative claims regarding Boiron's Products: *Fernandez v. Boiron*, No. 11-cv-01867 (C.D. Cal.); *Bohn v. Boiron*, No. 11-cv-08704 (N.D. Ill.); *Jovel v. Boiron*, No. 11-cv-10803 (C.D.Cal.); and *Farley v. Boiron*, No. RC1202159 (Cal. Sup. Ct.).

Sarchio Decl. ¶ 5. Plaintiffs had two independent law firms—The Law Offices of Ronald A. Marron and The Weston Firm—representing their interests and the interests of the putative Class; Defendants are represented jointly by Patton Boggs LLP and Wilson Turner Kosmo, LLP. The fact that the Settlement was prompted by an experienced mediator 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."); *In re Indep. Energy Holdings PLC*, No. 00 Civ. 6689(SAS), 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("the fact that the settlement was reached after exhaustive arm's length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable"). The initial mediation session with Judge Papas was followed by five months of detailed and contentious negotiations between the Parties, both with and without Judge Papas, before the Settlement Agreement was finalized. Marron Decl. ¶¶ 7-9, 12; Sarchio Decl. ¶ 2-5.

Additionally, the Settlement Agreement's prohibition on Defendants recovering any amounts that remain in the Settlement Fund provides substantial assurance that the Settlement Agreement reflects good faith on the part of the Parties. *See Stuart v. Radioshack Corp.*, No. C-07-4499-EMC, 2010 WL 3155645, at *4 (N.D. Cal. Aug. 9, 2010) (that there is "no reversion" of settlement monies to defendant "provides substantial assurance that the settlement reflect[s] good faith on the part of the negotiating parties").

The exchange of arguments through the motions to dismiss gave both parties' counsel a clear view of the strengths and weaknesses of the case. The parties also engaged in substantial discovery in this matter, including production of Boiron's internal documentation in four main areas: website materials; package and label design for approximately seventeen products; financial statements; and advertising information. Marron Decl. ¶ 9. Approximately four hundred thousand documents were produced to Plaintiffs. *Id.* Boiron also shared confidential information through mediation, and document production is on-going.[7] *Id.* Plaintiffs' counsel, who are experienced in prosecuting complex class action claims, were therefore in a strong position to make an informed decision regarding the reasonableness of the settlement terms. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see also Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996).

[7] To date, Defendants have not produced documents in the related *Gonzales* litigation.

2. The Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class.

The Settlement Agreement provides nearly the same relief to all Class Members, including the Class Representatives. Marron Decl. Ex. A, Settlement Agreement § 4.3.1. Indeed, as discussed above, Defendants will provide a full refund to all members of the Class, including the Class Representatives, who provide proof of purchase of any of the Products or affirm that they purchased any of the Products, and return a Claim Form within the Claim-In Period. *Id.* § 4.3.2. Moreover, payments to Class Members may be subject to pro rata reduction if the aggregate number of claims exceeds the Net Settlement Fund. *Id.* § 4.3.4.

The Settlement Agreement, however, does grant the Representative Plaintiffs the right to apply to the court for an incentive award. *Id.* § 9.1. As such, the amount of any award is within the Court's discretion and, thus, will not be unreasonable in light of the Representative Plaintiffs' 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 could be thought the equivalent nonlegal but essential case-specific expenses. *Misra v. Decision One Mortg. Co.*, No. SA CV 07-0994 DOC (RCx), 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) ("A class representative is entitled to some compensation for the expense he or she incurred on behalf of the class lest individuals find insufficient inducement to lend their names and services to the class action."). Accordingly, the Settlement Agreement does not give preferential treatment to any of the Class Representatives or segments of the class.

3. Not Only Does the Proposed Settlement Fall Within the Range of Possible Approval and Have No Obvious Deficiencies, It is Fair, Adequate, and Reasonable.

Under Federal Rules 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 court should evaluate the proposed settlement as a whole rather than its individual parts, and may not revise or strike out provisions of the proposed settlement, because that would hold the parties to a different agreement than the one they voluntarily reached. *Officers for Justice*, 688 F.2d at 628. The court's review is "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." *Id.* at 625.

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 the plaintiffs' 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 and views of counsel; and (7) the reaction of the class members to the proposed settlement.[8] *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1996); *see also Molski v. Gleich*, 318 F.3d 937, 956 (9th Cir. 2003). As explained by the court in *West v. Circle K Stores, Inc.*, "[g]iven that some of these factors cannot be fully assessed until the court conducts its fairness hearing, a full fairness analysis is unnecessary at [the preliminary approval] stage[.]" No. Civ. S-04-0438 WBS GGH, 2006 WL 1652598, at *9. (E.D. Cal. June 13, 2006) (internal quotations omitted). Accordingly, when determining whether to grant preliminary approval, the Court should "simply conduct a cursory review of the terms of the [P]arties' settlement for the purpose of resolving any glaring deficiencies before ordering the [P]arties to send the proposal to class members." *Id.*

While the Court need not at the preliminary approval stage review the Settlement Agreement to determine whether it is fair and adequate for the purposes of final approval, a review of the final approval factors shows that the Settlement Agreement falls well within the range of possible approval sufficient to obtain preliminary approval.

(a) The Strength of Plaintiffs' Case.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, and to the extent courts assess this factor, it is to determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case." *Misra v. Decision One Mortg. Co.*, No. SA CV 07-0994 DOC (RCx), 2009 WL 4581276, at *7 (C.D. Cal. Apr. 13, 2009) (internal citation and quotations omitted).

In this case, Plaintiffs are confident in the strength of their claims. Based on extensive investigation and discovery, Plaintiffs believe that they could obtain class certification, defeat all dispositive motions filed by Defendants, and proceed to a trial on the merits. Plaintiffs further believe that, at trial, they could meet their burdens, including, without limitation, demonstrating that Oscillo does not work, or that its labels were deceptive.

[8] Another factor identified by the court was the presence of a governmental participant. However, because there are no governmental parties to this action, this factor is neutral in this case.

Nevertheless, Plaintiffs recognize that Defendants have raised several factual and legal defenses that, if successful, would defeat or substantially impair the value of Plaintiffs' claims. These include, *inter alia*, that Plaintiffs might not be able to: (1) satisfy their burden of demonstrating that Oscillo does not work as the result of Plaintiffs having only one study so demonstrating, coupled with Defendants having two independent clinical studies supporting the efficacy claims of Oscillo; (2) establish consumer fraud and show that a significant portion of the recipients of the allegedly false statements were deceived because research demonstrates that most individuals who purchase homeopathic products are knowledgeable consumers familiar with homeopathic principles; (3) overcome the fact that their claims are expressly preempted under the FDAMA, 21 U.S.C. § 379r, impliedly preempted for seeking to frustrate federal objectives by interfering with federal control over food and product labeling, and are barred by the primary jurisdiction doctrine, which is regularly applied to claims challenging the label adequacy of an FDA-regulated product; or (4) as discussed more fully below, retain class certification through trial.

In sum, given the many defenses asserted by Defendants in this action, there is a significant risk of an outcome unfavorable to the Plaintiffs. "The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation." *In re Nvidia Derivs. Litig.*, No. C-06-06110-SBA (JCS), 2008 WL 5382544, at *3 (N.D. Cal. Dec. 22, 2008).

(b) Complexity, Expense, and Probable Length of the Class Litigation

Plaintiffs' claims involve complex legal issues and the costs and risks associated with continuing to litigate this action would require extensive resources and Court time. "[A]voiding a trial and inevitable appeals in this complex . . . suit strongly weigh in support of approval of the Settlement, rather than prolonged and uncertain litigation." *Rodriguez v. West Publ. Corp.*, No. CV-05-3222 R9MCx), 2007 WL 2827379, at *8 (C.D. Cal. Sept. 10, 2007). Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

If the Settlement Agreement is not approved, then the merits of Plaintiffs' claims would have to be litigated, which would require, at a minimum, the testimony of expert witnesses from both sides on the efficacy of *each* of Boiron's Products. And while Plaintiffs believe their claims would withstand a motion to dismiss, Defendants withdrew theirs before the Court issued a ruling, Dkt. No. 42, leaving the outcome of such a motion uncertain should the case proceed to litigation. Additionally, a number of other obstacles remain before any relief could be obtained absent settlement: Defendants' summary judgment motion, a potential decision by the Court or jury for Defendants

on liability or damages, and post-judgment appeals of any decision by the Court or jury in Plaintiffs' favor. The complexities of this case and the litigation to date, including the cost and expense to parties and the Court, strongly weigh in favor of preliminary approval of the Settlement.

(c) The Risk of Maintaining Class Action Status Throughout Trial

While Plaintiffs strongly believe that class treatment is appropriate for all reasons discussed herein, Defendants have raised numerous arguments against class certification creating a genuine risk that Plaintiffs will not be able to maintain class action status through trial. In fact, other than consenting to class certification for the purposes of settlement only, Defendants have indicated that they intend to vigorously oppose class certification. Therefore, if the "Court were to refuse certification, the unrepresented potential plaintiffs would likely lose their chance at recovery entirely. [Moreover, e]ven if the Court were to certify the class, there is no guarantee the certification would survive through trial, [because Defendants might seek] decertification or modification of the class." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d, 1036, 1041 (N.D. Cal. 2007).

To be clear, Defendants have expressed to Plaintiffs that they believe that it is highly unlikely that the Class would remain certified through trial. Defendants argue, *inter alia*, that: (1) Plaintiffs will be unable to satisfy the requirement that all plaintiffs in the class have Article III standing because (i) the class necessarily encompasses individuals whose purported injury cannot be traced to Defendants' alleged misrepresentations on Boiron's labels, (ii) for many potential Class Members Boiron's products worked in alleviating the purchasers' symptoms, and (iii) innumerable doctors and pharmacists recommend the Products who have themselves witnessed the benefits of homeopathy for their patients; (2) Plaintiffs will fail the predominance requirement because (i) their proposed class lacks cohesion, having been exposed to disparate information in deciding to purchase the Products, (ii) even though each Class Member's consumer protection claim should be governed by the consumer protection laws of the jurisdiction in which the transaction took place, Plaintiffs are attempting to certify a single, nationwide class, and (iii) with respect to their CLRA claims, Plaintiffs will be unable to demonstrate that the challenged statements were material to a sufficient number of consumers; and (3) Plaintiffs will not satisfy the typicality requirement because the Plaintiffs will be unable to demonstrate that the challenged statements were actually false as applied to all (or even most) class members and, for many potential Class Members, the Products worked in alleviating their symptoms.

With the success of Plaintiffs' certification attempts uncertain, the settlement allows the class to avoid the delay and expense that would be associated with such proceedings. As such, this factor weighs in favor of settlement.

See Rodriguez v. West Pub'g Corp., 563 F.3d 948, (9th Cir. 2009) (indicating that defendants' intention to seek decertification of the nationwide class weighed in favor of the settlement).

(d) Amount of Recovery

The Agreement provides strong monetary relief for the Class. The proposed Settlement achieves 100% of what Plaintiffs sought in their putative class action Complaint and is fair, reasonable and adequate: the Settlement Agreement allows the Class to be compensated up to $100 for a household of class members that have proof of purchase(s) and up to $50 for a household of class members that do not have proof of purchase(s), without the delay associated with further litigation, trial, and a likely appeal. Even if found liable at trial, Defendants would argue that full restitution of the purchase price is excessive in light of the fact that even if the product was found to be falsely or misleadingly labeled, Class Members still received a product value that should equitably offset restitution. An additional consideration is that the agreement provides that unclaimed funds will not revert to Defendant, but to *cy pres* use agreed upon by the parties and approved by the Court. *See White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086, 1098 (C.D. Cal. 2011) (noting that the detriment that a settlement with no reversionary interest imposes on Defendants ought to be considered alongside the benefit that a settlement confers on the class members); *Ozga v. U.S. Remodelers, Inc.*, No. C 09-05112 JSW, 2010 WL 3186971, at *2 (N.D. Cal. Aug. 9, 2010) (finding the fact that none of the settlement funds would revert to defendant supported final approval of the settlement as reasonable); *Stuart v. Radioshack Corp.*, No. C-07-4499-EMC, 2010 WL 3155645, at *4 (N.D. Cal. Aug. 9, 2010) (that there is "no reversion" of settlement monies to defendant "provides substantial assurance that the settlement reflect[s] good faith on the part of the negotiating parties"). The strong monetary relief, to an unlimited number of purchasers, and the injunctive changes to the Products' packaging and website, militate in favor of preliminary approval of the settlement. *See* Marron Decl. ¶¶ 13-14; Sarchio Decl. ¶ 6-8. Considering the risks, resources needed, and delays inherent in continuing to litigate this Action, the Parties believe that the proposed Settlement provides a substantial recovery in the best interests of the Class Members.

A court cannot reject a settlement solely because it does not provide complete victory to the plaintiffs. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair."); *see also Mangone v. First Bank*, 206 F.R.D. 222, 228 (S.D. Ill. 2001). Settlements, by their nature, do not typically yield 100 percent recovery for plaintiffs. *Mangone*, 206 F.R.D. at 228. Moreover, even if a proposed settlement could have been better, it does not mean that the settlement presented is not fair, reasonable, or adequate. *Hanlon*,

150 F.3d at 1027 ("Of course it is possible . . . that a settlement could have been better. But this possibility does not mean that [the] settlement presented [is] not fair, reasonable or adequate. . . . The question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."); *see also Jaffe v. Morgan Stanley & Co.*, No. C 06-3903 THE, 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.").

"[C]ourts [have also] recognized that even where 'the total settlement fund is small,' in comparison to the possible recovery available after trial, the settlement may not be 'unreasonable in light of the perils plaintiffs face' in continuing to litigate their case." *White*, 803 F. Supp. 2d at 1099 (quoting *In re Critical Path, Inc.*, 2002 WL 3267559, at *7 (N.D. Cal. June 18, 2002)). Certainly, "[c]ourts 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." *Id.* at *29 (internal citations and quotations omitted).

Additionally, the injunctive relief provided for in the settlement cannot be overlooked. Indeed, it will address the harm allegedly caused to consumers who might not otherwise be reached by the settlement and provide Plaintiffs with the relief they most desire–a change in product labeling, at a cost to Defendants of an estimated $7 million. Land Decl. ¶ 8. The value of this substantive and widespread change to Defendants' practices, thus, cannot be overstated. *See Riker v. Gibbons*, No. 3:08-cv-00115-LRH-VPC, 2010 WL 4366012, at *4 (D. Nev. Oct. 27, 2010) (approving a settlement agreement for injunctive and declaratory relief, finding that it "achieve[d] the goals of the lawsuit"); *McAlarnen v. Swift Transp. Co.*, No. 09-1737, 2010 WL 365823, at *9 (E.D. Pa. Jan. 29, 2010) (approving a settlement agreement for injunctive and declaratory relief because the risk of establishing liability and damages weighed in favor of settlement); *Glasser v. Volkswagen of Am., Inc.*, No. CV-06-2562-ABC-(JTLx) (C.D. Cal. Oct. 6, 2008) (mem. op.) (finding a class action settlement agreement fair, reasonable and adequate, even though it provided no monetary relief to the class); *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 353-54 (E.D.N.Y. 2000) ("In addition, the toy consuming public will benefit from the injunctive relief and from the antitrust deterrent inherent in the successful and expeditious conclusion of this litigation. The decision to forego individual recoveries was sensible, given the difficulty of identifying proper claimants and the difficulty, and especially the costs, that such recoveries and their administration would have entailed."); *Young v. Katz*, 447 F.2d 431, 434 (5th Cir. Tex. 1971) (approving a settlement agreement providing only injunctive relief, though damages were initially sought, because

counsel testified that they had "not been able to find anything in the way of damages that [they felt they] could prove").

(e) 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) (quoting *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 241 (5th Cir. 1982) (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 v. Decision One Mortg. Co.*, No. SA CV 07-0994 DOC (RCx), 2009 WL 4581276, at *8 (C.D. Cal. Apr. 13, 2009); *see also Taifa v. Bayh*, 846 F. Supp. 723, (N.D. Ind. 1994) (noting that although the parties commenced in settlement discussions at an early stage of the litigation, class counsel had engaged in an extensive and thorough investigation of the background and facts pertinent to the claims raised).

In this case, not only has significant discovery occurred, the Parties' have shared information and cooperated in providing access to necessary data resulting in counsel having sufficient information to make an informed decision about the Settlement Agreement. As discussed more fully above, to date, the Parties have filed briefs on Defendants' motion to dismiss providing arguments which set forth a clear view of the strengths and weaknesses of each Parties' case. The Parties also engaged in substantial discovery in this matter, including Defendants' production of Boiron's internal documentation resulting in approximately four hundred thousand documents. Marron Decl. ¶ 11. Boiron also shared confidential information through mediation, and document production is on-going. *Id.* In sum, Plaintiffs' counsel, the Parties were in a strong position to make an informed decision regarding the reasonableness of the Settlement Agreement.

(f) The Experience and Views of Counsel.

In contemplating the preliminary approval of a proposed settlement, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Knight*, 2009 WL 248367, at *4 (citing *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)); *see also Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528(C.D. Cal. 2004) (noting that "great weight" should be give given to the recommendations of counsel); *In re Employee Benefit Plans Secs. Litig.*, No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) ("The court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement."). Indeed, "Parties represented by competent counsel are better positioned than courts to produce a

settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enters. Secs. Litig.*, 47 F.3d at 378. Thus, "the Court should not without good cause substitute its judgment for [counsel's]." *Boyd*, 485 F. Supp. at 622; *see also DIRECTV*, 221 F.R.D. at 528 ("the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its judgment for that of counsel") (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). Here, "[i]n addition to being familiar with the present dispute, Plaintiff[s'] counsel has considerable expertise in . . . consumer and class action litigation." *Knight*, 2009 WL 248367, at *4. There "is nothing to counter the presumption that counsel's recommendation is reasonable." *Id.*

Additionally, each of the Parties' counsel support approval of the Settlement Agreement. In the declarations being submitted concurrently herewith, counsel for Plaintiffs and counsel for Defendants have set forth the basis for his/her recommendation. Therefore, this factor should weigh heavily in favor of preliminarily approving the terms of the Settlement Agreement.

(g) The Reaction of the Class Members to the Proposed Settlement.

At the preliminary approval stage, the reaction of class members to the proposed settlement is usually not known because notice has not yet been sent to the class. As such, at this stage this factor is not as meaningful of a consideration as it may be at the fairness hearing where class members will have a chance to object to the proposed settlement. Nevertheless, one court has recognized that granting preliminary approval and directing notice to the class members when the class has not been certified prior to settlement may actually enhance the class member's opt-out rights. *See In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995). The court explained that "a settlement class in complex litigation . . . actually enhances absent class members' opt out rights because the right to exclusion is provided simultaneously with the opportunity to accept or reject the terms of a proposed settlement" and, thus, class members are better able to weigh the importance and consequences of their options. *Id.*; *see also In re Baldwin-United Corp.*, 105 F.R.D. 475, 481 (S.D.N.Y. 1984). Likewise, the Class Members in this case will benefit from the simultaneous class certification and notice of proposed settlement. Accordingly, this factor also weighs in favor of preliminary approval.

IV. THE PROPOSED FORM AND METHOD OF CLASS NOTICE ARE APPROPRIATE AND SATISFY THE REQUIREMENTS OF RULE 23

Fed. R. Civ. P. 23 requires that notice of a settlement be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). *See also* NEWBERG ON CLASS ACTIONS, §8.2 at 162-65. The notice must contain "information that

a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment." *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977).

If the court's *prima facie* review of the relief offered and notice provided by the settlement are fair and adequate, it should order that notice be sent to the class. *Manual for Complex Lit.*, § 21.632 at 321. The threshold requirement regarding Class Notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the right to opt out or object to the settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 159, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

A notice program must be adequate, but the mechanics of the program are left to the discretion of the Court, subject only to the broad "reasonableness" standard imposed by Due Process. In the Ninth Circuit, a notice of settlement satisfactorily meets Due Process if the notice "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)); *Hanlon*, 150 F.3d at 1025.

The proposed Class Notice and Notice Plan are adequate and reasonable. The Class Notice is written in easy to understand and clear language, giving consumers (1) basic information about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of how Class Members can obtain settlement benefits; (4) an explanation of how Class Members can exercise their right to opt-out or object to the settlement; (5) an explanation that any claims against Boiron that could have been litigated in this action will be released if the Class Member does not opt out; (6) the names of counsel for the Class and information regarding attorneys' fees; (7) the fairness hearing date, along with an explanation of eligibility for appearing at the fairness hearing; and (8) the settlement web site and a toll free number where additional information, including Spanish translations of all forms, can be obtained.

Further, since Boiron does not sell its OTC homeopathic Products directly to consumers, the Publication Notice will achieve the goal of advising consumers of their potential rights, and how to take action if a putative Class Member wishes to further those rights by making a claim, opting out, or objecting. The Summary Notice will be targeted to magazines that consumers of homeopathic remedies are likely to read, such as Health Magazine, and will also be published on the Defendants' own main web site, www.boironusa.com. The Class Action Administrator will also create a dedicated Settlement Website, where the Class Notice and the Claim Form will be available on a 24/7

basis to potential claimants; a Facebook page; and will engage in targeted online banner notification. Marron Decl. Ex. A, Settlement Agreement at Ex. F (Notice Plan). The Notice Plan uses the best practical means for disseminating the information under the circumstances applicable to the Products, and accordingly complies with the requirements of Rule 23.

V. THE PROPOSED TIMELINE FOR EVENTS SHOULD BE ADOPTED

The timeline of events, such as the time to complete publication of the Class Notice or to opt-out or object, is based on preliminary approval of the Settlement Agreement. The related dates are as follows:

Event	**Date**
Preliminary Approval Granted	Day 1
Class Settlement Website Activated	Day 15
Notice First Published in Print Sources	Day 30 or as soon as reasonably possible after Order Granting Preliminary Approval
Motion for Fees, Costs, and Incentive Awards Due	Day 73
Last Day to Postmark Written Opt Out or Objection	Day 80
Parties to File Motion for Final Approval	Day 96
Final Approval Hearing	Day 110
Last Day to Submit a Claim Form	Day 155

Accordingly, the parties request that the Court schedule a Final Approval Hearing 110 days after granting preliminary approval, or as soon thereafter as the Court's schedule permits.

VI. CONCLUSION

For the reasons set forth above, plaintiffs respectfully request the Court (1) grant preliminary approval of the Class Action Settlement Agreement; (2) conditionally certifying the Settlement Class; (3) appoint Plaintiffs Class Representatives and Plaintiffs' Attorneys Class Counsel; (4) approve the Notice Plan; and (5) set the final approval hearing and schedule.

Dated: March 6, 2012

Respectfully Submitted,

/s/ Ronald A. Marron
Ronald A. Marron

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BOIRON, INC.; and BOIRON USA, INC.,

Defendants.

AND ALL RELATED ACTIONS

Case No. 3:11-CV-2039 JAH NLS
Pleading Type: Class Action

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

Judge: Hon. John A. Houston
Courtroom: 11 (Second Floor)
Date: April 30, 2012
Time: 2:30 p.m.

[PAGE 26 OF EXHIBIT A ATTACHED HERETO FILED UNDER SEAL]

1. I am counsel of record for Plaintiffs in this action. I am a member in good standing of the State Bar of California and the United States District Courts for the Northern, Central and Southern Districts of California.

2. I submit this declaration in support of the joint motion by Plaintiffs Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty, Jeanne Prinzivalli and Defendants Boiron, USA, Inc. and Boiron, Inc. for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Issuance of Notice to the Class, and Setting of Final Approval Hearing. I make this Declaration based on my personal knowledge and if called to testify I could and would competently testify to the matters contained thereto.

Facts Relevant to Plaintiffs' Motion

3. Attached hereto as **Exhibit A** is a true and correct of the final Settlement Agreement between the parties.

4. Plaintiffs' Complaint contains five potential causes of action. Plaintiffs' counsel consulted with two scientists to help prepare the efficacy portions of the Complaint.

5. Plaintiffs' counsel also retained a scientific specialist, Noel R. Rose, M.D., Ph.D., Professor of Pathology, Molecular Microbiology and Immunology at The Johns Hopkins Medical Institutions, and Director of Johns Hopkins Center for Autoimmune Research, to assist in prosecuting this action. Dr. Rose was retained to help us evaluate clinical studies concerning the efficacy of Oscillo, and to testify in this action, if necessary. Attached hereto as **Exhibit B** is Dr. Rose's Curriculum Vitae.

6. Shortly after this action commenced, Boiron's counsel, Christina Sarchio of Patton Boggs, contacted me by telephone, stating that Boiron was interested in discussing the possibility of an early resolution, and suggesting formal mediation. Since then, the counsel for the parties have been engaged in a dialogue about the claims and defenses of this action and the possibility of the settlement.

7. On September 21, 2011, my office and co-counsel, Jack Fitzgerald from the Weston Firm, engaged in an initial mediation telephonic conference with the Boiron Defendants and their

counsel in front of the Honorable Leo S. Papas (Ret.). The conference was productive, with the parties discussing parameters for a substantive mediation, such as which documents Boiron should produce for Plaintiffs' review. The parties and Judge Papas also set up a series of individual "mini meetings" prior to engaging in a fuller joint session with Judge Papas in January 2012.

8. My firm and the Weston Firm (collectively, "Plaintiffs' counsel") engaged in at least ten separate mediation caucuses and three joint sessions with Judge Papas and Defendants' counsel, Patton Boggs LLP.

9. Counsel for plaintiff in the related action, *Gonzales v. Boiron, Inc. et al.*, Case No. 3:11-cv-02066, were invited to participate in the negotiations with Judge Papas, but declined to join in.

10. Plaintiffs' Counsel have been pursuing the Complaint's deceptive and false advertising claims while the settlement negotiations were still pending. During the parties' Rule 26(f) conference, the parties discussed a Protective Order. The parties stipulated to a Protective Order, which was subsequently filed on September 28, 2011.

11. The parties engaged in substantial discovery in this matter, including production of Boiron's internal documentation in four main areas: web site materials; package and label designs; sales information; financial statements; and advertising information. Boiron also shared confidential information through mediation. To this date, Boiron has produced approximately 400,000 documents, with settlement discovery still in progress.

12. Plaintiffs' Counsel have been conducting extensive and contentious negotiations with the Defendants' counsel for five months before the Settlement Agreement was reached. During the course of those negotiations, we edited and revised the settlement agreement multiple times and had lengthy telephone conferences and e-mail exchanges regarding the contested terms of the agreement.

13. The Settlement Agreement, which grants cash refunds to the Class, on a nationwide basis, and for all of Boiron's OTC products, provides an exceptional result for the proposed Class. The Settlement also achieves Plaintiffs' goal of injunctive relief to protect the public from misleading and false OTC drug labeling, and is more than fair, reasonable, and adequate.

14. In my opinion as an experienced class action attorney, further litigation will only diminish Boiron's willingness to re-negotiate such a comprehensive settlement package as the Settlement Agreement before the Court. Thus, the best course of action for our clients and other class members is to have this Settlement approved.

Ronald A. Marron Firm's Qualifications and Experience

Prosecuting Consumer Class Action Lawsuits

15. My work experience and education began in 1984 when I enlisted in the United States Marine Corps (1984-1990) and thereafter received my Bachelor of Science in Finance from the University of Southern California (1991). While attending Southwestern University School of Law (1992-1994), I also studied Biology and Chemistry at the University of Southern California and interned at the California Department of Corporations with emphasis in consumer complaints and fraud investigations. I was admitted to the State Bar of California in 1995 and have been a member in good standing since that time. In 1998, I started my own law firm with an emphasis in consumer fraud. My firm currently employs three full-time attorneys, two law clerks, a legal assistant and support staff.

16. Over the years I have acquired extensive experience in class actions and other complex litigation and have obtained large settlements as lead counsel.

17. On November 14, 2011, the Honorable Marilyn L. Huff appointed my firm, together with the Weston Firm, Class Counsel and certified the California class of purchasers of Nutella® spread, who allege defendants conducted a long-standing deceptive advertising campaign, in an action before the Southern District of California styled *In re Ferrero Litigation*, Case No. 11-cv-205-H-CAB (S.D. Cal.). Thereafter, on November 28, 2011, the case settled during a Mandatory Settlement Conference before the Magistrate Judge Cathy Ann Bencivengo. *See In re Ferrero Litig.* Dkt. No. 97. Subsequently, on January 19, 2012, the parties filed a Joint Motion for Preliminary Approval of Settlement, which the Court granted on January 23, 2012. *Id*. at Nos. 105-108. Accordingly, a Fairness Hearing in this case is set for July 9, 2012. *Id*. at No. 108.

18. On November 14, 2011 the Honorable David O. Carter appointed my firm, together with the Weston Firm, Class Counsel and certified a nationwide class of purchasers of a dietary supplement in an action styled *Bruno v. Quten Research Institute, LLC, and Tishcon Corp.*, Case No. 8:11-cv-00173 DOC (Ex) (USDC, C.D. Cal.).

19. On June 14, 2011, the Honorable Richard Seeborg appointed my firm, together with the Weston Firm, Interim Class Counsel, over a competing application from a former partner at the New York law firm Milberg Weiss. *See Chacanaca v. Quaker Oats Co.*, 2011 U.S. Dist. LEXIS 65023, at *8-9 (N.D. Cal. June 14, 2011) ("There is no question here that both the Weston/Marron counsel…have ample experience handling class actions and complex litigation. It is also clear that both have particular familiarity with suits involving issues of mislabeling in the food industry.")

20. I was appointed class counsel in *Peterman v. North American Company for Life and Health Ins., et al.*, No. BC357194, (L.A. Co. Sup. Ct.), which was litigated for over 4 years and achieved a settlement of approximately $60 million for consumers. In granting preliminary approval of the settlement, the Hon. Carolyn B. Kuhl noted that "the excellent work that the plaintiffs' side has done in this case has absolutely followed through to the settlement…The thought and detail that went into the preparation of every aspect was very impressive to me." Excerpts from Transcript of Dec. 21, 2009 Hearing, at 2:12-17, a true and correct copy of which is attached hereto as **Exhibit C**.

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

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

23. After nearly 6 years of intensive litigation, a settlement valued at $110 million was reached in *Iorio, supra*, and approved on March 3, 2011, by the Honorable Janis Sammartino. Dkt. No. 480. Co-counsel and I successfully defended multiple motions brought by defendant in the Southern District of California, 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. *Iorio*, Final Order Approving (1) Class Action Settlement, (2) Awarding Class Counsel Fees and Expenses, (3) Awarding Class Representatives Incentives, (4) Permanently Enjoining Parallel Proceedings, and (5) Dismissing Action with Prejudice, entered on Mar. 3, 2011, at 6:9-15, a true and correct copy of which is attached hereto as **Exhibit D** (commenting 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). Judge Sammartino also noted "the complexity and subject matter of this litigation, and the skill and diligence with which it has been prosecuted and defended, and the quality of the result obtained for the Class." *Id*. at 17:25-27.

24. In *Tabares v. Equitrust Life Insurance Company*, No. BC390195 (L.A. Co. Sup. Ct.), my firm obtained a class certification order and was appointed class counsel.

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

- *Stanley v. Bayer, LLC* Case No. 3:11-cv-00862-IEG-NLS (USDC, S.D. Cal.) (motion for class certification pending);
- *Burton v. Ganeden, Biotech, Inc. et al.* No. 3:11-cv-01471-W-NLS (USDC, S.D. Cal.) (settlement negotiations pending);
- *Henderson v. The J.M. Smucker Co.*, Case No. 2:10-cv-04524 GHK (VBKx) (USDC, C.D. Cal.) (motion for class certification pending);
- *Reid v. Johnson & Johnson and McNeil Nutritionals, LLC*, Case No. 3:11-cv-01310 L POR (USDC, S.D. Cal.);
- *Lee v. DTG Operations, Inc.*, Case No. 37-2011-00084470-CU-OE-CTL (USDC, C.D. Cal.);
- *Martinez v. Toll Brothers, et al.*, Case No. 09-cv-00937-CDJ (USDC, E.D. Penn.);

- *Vaccarino v. Midland National Life Insurance Co.*, CV 11-05858 CAS (MANx) (C.D. Cal.);
- *Allen v. Hyland's et al.,* Case No. 2:12-cv-01150-DMG-MAN (USDC C.D. Cal.);
- *Allen v. Similasan et al.*, Case No. 2:12-cv-0376-BTM-WMC (USDC S.D. Cal.);
- *Siddiqi v. Gerber et al.*, Case No. 2:12-cv-01188-PA-RZ (USDC C.D. Cal.);
- *Thomas v. Gerber et al.*, Case No. 2:12-cv-00835-JLL-MAH (USDC N.J.);
- *Allen v. Nelsons et al.*, Case No. 3:12-cv-0495-L-NLS (USDC S.D. Cal.).

26. 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 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 Acts of 1933 and/or 1934.

27. My firm is fully committed to prosecuting this action against Defendants to achieve a successful outcome for the proposed Class.

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

Executed on March 6, 2012 in San Diego, California.

/s/ Ronald A. Marron
Ronald A. Marron

TABLE OF CONTENTS OF EXHIBITS

Exhibit	Document
A	Settlement Agreement
B	Curriculum Vitae of Noel R. Rose, M.D, Ph.D
C	Transcript of Dec. 21, 2009 hearing in *Peterman v. North American Company for Life and Health Ins., et al.*, No. BC357194, (L.A. Co. Sup. Ct.)
D	Final Order Approving (1) Class Action Settlement, (2) Awarding Class Counsel Fees and Expenses, (3) Awarding Class Representatives Incentives, (4) Permanently Enjoining Parrallel Proceedings, and (5) Dismissing Action with Prejudice, entered on Mar. 3, 2011, in *Iorio v. Asset Marketing*, No. 05cv00633-IEG (CAB) (S.D. Cal.).

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, individually and on behalf of all others similarly situated, Plaintiffs, v. BOIRON, INC. and BOIRON USA, INC., Defendants. AND ALL RELATED ACTIONS	Case No. 3:11-cv-02039-JAH-NLS **CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (the "Settlement"), dated February 27, 2012, is made and entered into by and between the Representative Plaintiffs, on behalf of themselves and the Class, and Defendants (together, the "Parties" or "Settling Parties") to settle and compromise this action (hereinafter, the "Litigation") and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

1. PROCEDURAL BACKGROUND

1.1 WHEREAS, on September 2, 2011, Plaintiff Salvatore Gallucci filed an action in the United States District Court for the Southern District of California against Defendants, titled *Gallucci v. Boiron, Inc. et al.*, No. 11-cv-2039-JAH (NLSx), bringing claims under California's Consumer Legal Remedies Act ("CLRA"), Cal. Code Civ. P. §§ 1750, *et seq.*, Unfair

Competition Law ("UCL"), Cal. Bus. & Prof. Code § § 17200 *et seq.*, and for Breach of Express and Implied Warranty.

1.2 WHEREAS, on February 6, 2012, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs filed a First Amended Complaint to add additional plaintiff parties, a claim under California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, and to state legal challenges to additional products manufactured and sold by Defendants.

1.3 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, Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Settlement.

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, 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, and as further described in Paragraph 5.1.4.

1.2. "Claim Form" means the document to be submitted by Claimants seeking payment pursuant to this settlement agreement, attached as Exhibit A.

1.3. "Claim-In Period" means a period of forty-five days after the date the Court enters Judgment.

1.4. "Claimant" means a settlement class member who submits a claim for payment.

1.5. "Class" means all persons in the United States who purchased the Products as defined in Paragraph 1.27 within the Class Period as defined in Paragraph 1.7.

1.6. "Class Action Administrator" means the company or companies jointly selected by the Parties and approved by the Court to provide notice to the Class, CAFA Notice, and to administer the claims process.

1.7. "Class Period" means January 1, 2000 through Final Judgment.

1.8. "Class Counsel" means the Representative Plaintiffs' counsel of record in the Litigation, the Law Office of Ronald A. Marron, APLC and the Weston Firm.

1.9. "Class Member" means a Person who falls within the definition of the Class set forth in Paragraph 7.1.1.

1.10. "Court" means the United States District Court for the Southern District of California.

1.11. "Defendants" means Boiron, Inc. and Boiron USA, Inc., collectively, as well as their past, present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.12. "Defense Counsel" means Defendants' counsel of record in the Litigation, Patton Boggs LLP and Wilson, Turner and Kosmo LLP.

1.13. "Dilution Disclaimer" means the injunctive relief provided for in paragraph 4.1.3.

1.14. "Effective Date" means the first date by which any Judgment entered pursuant to the Agreement becomes Final.

1.15. "FDA" means the United States Food and Drug Administration.

1.16. "FDA Disclaimer" means the injunctive relief provided for in paragraph 4.1.2.

1.17. "Final" means (a) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the Appellate Judgment is filed and denied, the date the petition is denied; or (d) if a petition for a writ of certiorari is filed and denied, the date the petition is denied; or (e) if a petition for a writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys' fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

1.18. "Judgment" means the judgment to be entered by the Court pursuant to the Settlement.

1.19. "Litigation" means *Gallucci et al. v. Boiron et al.*, No. 11-cv-2039-JAH-NLS, currently pending in the U.S. District Court for the Southern District of California.

1.20. "Net Settlement Fund" shall mean the Settlement Fund, as defined herein, less claims administration expenses, notice expenses, any fee award, reimbursement of expenses, any incentive award, and tax expenses.

1.21. "Notice" means a document, substantially in the form of Exhibit B hereto, and "Summary Notice" means a document substantially in the form of Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto.

1.22. "Notice Plan" means the method of providing the Class with notice of the settlement, as approved by the Court.

1.23. "Opt-Out Date" means the date that is the end of the period to request exclusion from the Class established by the Court and set forth in the notice.

1.24. "Parties" means the Representative Plaintiffs and Defendants.

1.25. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, and assignees.

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

1.27. "Products" means the homeopathic products manufactured by Defendants and sold in the United States specifically identified in Exhibit D and also includes all generic or other-named products manufactured by Defendants, including any variations, formats, dosages, dilution or packages.

1.28. "Released Claims" means, with the exception of claims for personal injury, any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and

description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal and/or state law, that any Representative Plaintiff and/or Class Member has or may have against the Released Persons arising out of or related in any way to statements made in or in connection with Defendants' advertising, marketing, packaging, labeling, promotion, manufacturing, sale and distribution of the Products, that have been brought, could have been brought, or are currently pending, by any Class Member against Released Persons, in any forum in the United States (including territories and Puerto Rico).

1.29. "Released Persons" means Defendants, their parent companies, subsidiary companies, affiliated companies, past, present, and future officers (as of the Effective Date), directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.30. "Representative Plaintiffs" means Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty, and Jeanne Prinzivalli.

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

1.32. "Settlement Fund" means the $5,000,000 deposited by Defendants into the Settlement Fund described in Paragraph 4.2 of this Agreement, and any interest earned thereon.

1.33. "Settling Parties" means, collectively, Defendants, the Representative Plaintiffs, and all Class Members.

1.34. "The Boiron Promise" means the consumer money-back guarantee in effect as of the date of this Settlement under which Boiron commits to refunding the purchase price, less any state or local taxes, coupons, rebates, and other discounts if, within 14 days of purchase, a

consumer sends to Boiron the original UPC from the Boiron product purchased, the original dated cashier register receipt with the purchase price circled, and complies with other terms and conditions as described at http: www.boironusa.com/promise/.

1.35. 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

2.1. Defendants deny the material factual allegations and legal claims asserted by the Representative Plaintiffs 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.

3. THE BENEFITS OF SETTLEMENT

3.1. Class Counsel and the Representative Plaintiffs recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendants 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 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 Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Representative Plaintiffs and the Class.

4. SETTLEMENT CONSIDERATION

4.1. **Injunctive Relief**

4.1.1. Defendants will provide the Class injunctive relief by way of modification of the label and packaging for Products.

4.1.2. FDA Disclaimer: Defendants shall include the following language on the same outer label or package panel that bears the Drug Facts box, "These 'Uses' have not been evaluated by the Food and Drug Administration," according to the below provisions:

4.1.2.1. This statement shall appear on the outer label or package of each Product in a font size no smaller than the smallest font used elsewhere on the Product label or package, in a readable font color.

4.1.2.2. If the principal display panel contains Indications for Use, the Indications for Use shall be followed by an asterisk, and the language identified in Section 4.1.2 shall be preceded by a corresponding asterisk.

4.1.2.3. Products in small packages (e.g. tube products) shall also include the FDA Disclaimer as specified in 4.1.2.1 and 4.1.2.2.

4.1.2.4. The FDA Disclaimer shall also apply to all of Defendants' advertising that depicts a readable version of a Product's label.

4.1.3. Dilution Disclaimer: The back panel of each Product's outer label or package shall be modified to include the following language in close proximity to the Drug Facts: "C, K, CK, and X are homeopathic dilutions: see www. [link created pursuant to Paragraph 4.1.4] for details."

4.1.3.1. This statement shall appear in a font size no smaller than the smallest font used elsewhere on the Product label or package, in a readable font color.

4.1.3.2. Paragraph 4.1.3 shall not apply to Products in small packages (e.g. tube products) unless leaflets, pamphlets, or other documents are provided to

consumers in conjunction with the tubes, in which case the Dilution Disclaimer shall appear on those materials in close proximity to the Drug Facts and in a font size no smaller than the smallest font used elsewhere, in a readable font color.

4.1.4. Defendants shall also modify the www.boironusa.com web page, and all web pages that Defendants own as to each of the Products (i.e., www.chestal.com, www.childrenschestal.com, www.oscillo.com, www.childrensoscillo.com, www.arnicare.com, and www.camiliateething.com, the "Individual Product Web Sites"), as follows:

4.1.4.1. The Homeopathic Dilution Page currently on www.boironusa.com at http://www.boironusa.com/homeopathy/homeopathic-dilution.php shall be moved so that it is accessible from the Home page, instead of its current placement underneath the Homeopathy tab ("Homeopathic Dilution Page");

4.1.4.2. The Homeopathic Dilution Page shall also appear as a direct link on the Home page of each of the Individual Product Web Sites and on every other one of Defendants' individual product web site now existing or in development;

4.1.4.3. The Homeopathic Dilution Page shall provide an explanation of the K, CK and X dilutions that substantially conform to the explanations provided by the HPUS and homeopathic literature, and shall include a question and answer format, explaining the level of dilution or method, as provided in Exhibit E.

4.1.4.4. The link to the FDA web site for the CPG § 400.400 document, located at http://www.boironusa.com/homeopathy/what-is-homeopathy.php, shall be

fixed so that it is a working link. Defendants shall take reasonable steps to ensure that the link remains working in future.

4.1.4.5. These provisions shall not otherwise prevent Defendants from making any other changes or including or excluding any other information on the Homeopathic Dilution Page or any other websites owned by Defendants as Defendants see fit.

4.1.5. Defendants shall modify the packaging for Products on a rolling basis to be completed within twenty-four (24) months of the Effective Date.

4.1.6. For twenty-four (24) months after the Claim-In Period has expired or until the package for a Product has been modified as provided above, whichever comes first, Defendants shall continue the Boiron Promise for that particular Product.

4.1.7. The injunction shall apply only to current products manufactured by Defendants. To the extent that any state and/or federal statute, regulation, policies, and/or code may at any time impose other, further, different and/or conflicting obligations or duties on Defendants at any time with respect to the Products, this Agreement and any Judgment which may be entered pursuant thereto, as well as the Court's continuing jurisdiction with respect to implementation and enforcement of the terms of this Agreement, shall cease as to the Class Members' and Defendants' conduct covered by that statute, regulation and/or code as of the effective date of such statute regulation and/or code. In the event the parties dispute whether there is such a conflict or inconsistency, this Court shall retain jurisdiction to hear disputes, provided, however, that if either party requests mediation, such dispute shall be resolved first by way of non-binding mediation conducted by the independent mediator, Judge Leo Papas (Ret.) or a substitute mediator agreed upon by the Parties or appointed by the Court if the parties cannot agree upon a

substitute mediator or neutral. To the extent a dispute is raised by the parties to this Agreement, Defendants shall pay for the costs of the mediator, although not attorneys' fees and expenses related to the mediation itself, provided that the dispute is made in good faith.

4.1.8. Nothing in this Agreement will prohibit Defendants from making any representation in the labeling, advertising, or marketing of the Products that is permitted by applicable law, regulations, or policies promulgated by the FDA or other state or federal agencies.

4.1.9. Defendants shall be bound by any labeling laws or regulations that restrict or expand the scope of claims for which the Products are eligible, and any laws or regulations that have a bearing on the labeling or advertising of the Products shall supersede any terms of this Agreement to the extent they are inconsistent with the terms of this Agreement.

4.2. **Settlement Fund**

4.2.1. Within (10) days after the Preliminary Approval Order, Defendants will contribute a sum total of $5,000,000 to the Settlement Fund, which will be non-recapture, *i.e.*, the Defendants shall have no ability to recover from the fund amounts they have paid into the fund.

4.2.2. The Settlement Fund shall be established and managed by the Class Action Administrator.

4.2.3. Refunds provided under Section 4.3 will be paid from the Net Settlement Fund.

4.2.4. Any taxes and tax expenses related to the fund shall be taken from the Net Settlement Fund.

4.3. **Refunds to Class Members**

4.3.1. The Settlement Fund shall provide for a full refund for any of the Products purchased by any member of the settling Class from any retailer who makes a claim within the Claim-In Period. Adequate and customary procedures and standards will be used by the Class Action Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims.

4.3.2. The amount of the refund for any claim shall be determined as follows:

4.3.2.1. For any Claimant who provides proof of purchase (e.g., receipt or packaging) ("Proof of Purchase"), the Claimant shall be entitled to a refund of the amount(s) shown on the receipt, or the suggested retail price of the Product as determined by information on the packaging, such as bar or SKU code, subject to a cap of $100.00 per household for all Proof of Purchase claims;

4.3.2.2. For any Claimant who does not provide Proof of Purchase, but who swears or affirms under penalty of perjury that he or she purchased a Product during the Class Period, the actual amount paid to each Class Member will be $10.00 per Product, with a cap of $50.00 per household.

4.3.3. Payment will be made directly to the Class Member by first class mail after entitlement to payment has been verified, and in no event more than six months after the close of the Claim-In Period, unless Class Counsel permits an extension of time.

4.3.4. Payments to Class Members may be subject to *pro rata* reduction if the aggregate number of claims exceeds the Net Settlement Fund.

4.3.5. If all eligible Claims have been paid and funds remain in the Net Settlement Fund 270 days following the close of the Effective Date, Class Counsel shall direct the Settlement Administrator to distribute fifty (50) percent of any remaining funds to a Court-approved non-

profit organization or organizations solely dedicated to informing consumers of food and drug labeling concerns; and fifty (50) percent to Claimants as a supplemental distribution. The remaining funds, if any, shall not revert to Defendants.

5. ADMINISTRATION AND NOTICE

5.1.1. All costs and expenses of administering the Settlement and providing Notice in accordance with the Preliminary Approval Order ("Administrative Costs") shall be distributed from the Settlement Fund.

5.1.2. **Appointment and Retention of Notice Administrator**

5.1.2.1. The Parties shall jointly retain one or more class action administrator(s) (including subcontractors) to help implement the terms of the Settlement Agreement.

5.1.2.2. The Class Action Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice, although Defendants shall retain ultimate responsibility for effecting CAFA notice within the required time.

5.1.2.3. The costs of the Class Action Administrator will be paid from the Settlement Fund.

5.1.3. **Class Settlement Website**

5.1.3.1. The Class Action Administrator will create and maintain the Class Settlement Website, to be activated within 15 days of Preliminary Approval. The Class Action Administrator's responsibilities will also include securing an appropriate URL, such as www.BoironClassActionSettlement.com. The Class Settlement Website will post the settlement documents and case-related documents such as the Settlement Agreement, the Long-Form Notice, the Claim Form (in English and Spanish versions), and the Preliminary Approval Order.

In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment has been entered, and when the Effective Date has been reached.

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

5.1.3.3. All costs and expenses related to the Class Settlement Website shall be distributed from the Settlement Fund.

5.1.4. **CAFA Notice**

5.1.4.1. The Parties agree that the Class Action Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

5.1.4.2. Notwithstanding, Defendants shall have ultimate responsibility to ensure that CAFA notice is in fact effected consistent with the statutory requirements.

5.1.4.3. All costs and expenses related to the CAFA Notice shall be distributed from the Settlement Fund.

5.1.4.4. Defendants will file a certification with the Court stating the date(s) on which the CAFA notices were sent. Defendants will provide Class Counsel with any substantive responses received in response to any CAFA notice.

5.1.5. **Notice Plan**

5.1.5.1. The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

5.1.5.2. Within thirty (30) days after preliminary approval by the Court of this Settlement, the Settlement Administrator shall provide notice to the Settlement Class according to the Notice Plan as attached in Exhibit F.

5.1.5.3. The Parties agree to the content of these notices substantially in the forms attached to this Agreement as Exhibits B and C.

5.1.6. **Taxes**

5.1.7. Settlement Class Members, Representative Plaintiffs and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

5.1.8. Taxes due in connection with the Settlement Fund and Net Settlement Fund prior to distribution to the Class shall be paid by the Settlement Administrator from the Net Settlement Fund.

6. RELEASES

6.1. Upon the Effective Date, the Representative Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims, meaning, with the exception of claims for personal injury, any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or

unknown, matured or unmatured, at law or in equity, existing under federal and/or state law, that any Representative Plaintiff and/or Class Member has or may have against the Released Persons arising out of or related in any way to statements made in or in connection with Defendants' advertising, marketing, packaging, labeling, promotion, manufacture, sale and distribution of the Products, that have been brought, could have been brought, or are currently pending, up to the date of the Effective Date, by any Class Member against Released Persons, in any forum in the United States (including their territories and Puerto Rico).

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

6.3. All Parties to this Settlement Agreement, including the Settlement Class, specifically acknowledge that they have been informed by their legal counsel, via the Notice, of Section 1542 of the California Civil Code and they expressly waive and relinquish any rights or benefits available to them under this statute. California Civil Code § 1542 provides:

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

6.4. Notwithstanding Section 1542 of the California Civil Code, or any other federal or state statute or rule of law of similar effect, this Settlement 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

7.1.1. The Parties agree that, for settlement purposes only, this Litigation shall be certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) with Representative Plaintiffs as Class Representatives and Class Counsel as counsel for the Class, defined as follows:

> All persons in the United States who purchased the Products as defined in Paragraph 1.27 and Exhibit D, within the Class Period as defined in Paragraph 1.7. The Class expressly excludes Defendants and their officers, directors, employees and immediate families; and the Court, its officers and their immediate families.
>
> The Class also excludes claims for Children's ColdCalm made by members of the Class certified in the matter of *Delarosa v. Boiron, Inc. et al.*, No. 10-cv-1569-JST (C.D. Cal.) ("all persons who are domiciled or reside in California, who purchased Children's Coldcalm for personal use at any time during the four years preceding the filing" of the Complaint in that action. *See Delarosa v. Boiron, Inc.*, 275 F.R.D. 582 (C.D. Cal. Aug. 24, 2011)) ("*Delarosa* Class Members"), but does not exclude claims made by *Delarosa* Class Members as to all other Products.

7.1.2. 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. Promptly after execution of this Agreement, the 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 the Fee Application should be granted ("Settlement Hearing").

8.2. **Procedures for Objecting to the Settlement**

8.2.1. Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval, subject to each of the subprovisions contained in Paragraph 8.2. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the Court, with a copy served on Class Counsel, Counsel for Defendants, and the Notice Administrator at the addresses set forth in the Class Notice, and postmarked no later than thirty (30) days prior to the Final Approval Hearing Date. Class Members may object either on their own or through an attorney hired at their own expense.

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

8.2.3. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Gallucci et al. v. Boiron et al.*, No. 11-cv-2039-JAH-NLS" and also shall contain the following information: (i) the objector's name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for

the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for their standing as a Class Member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of the Products; (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (vi) the payment terms of any fee agreement between the objector and the objector's attorney with respect to the objection; and (vii) any attorneys' fee sharing agreement or referral fee agreement between or among the objector, the objector's attorney, and/or any third party, including any other attorney or law firm, with respect to the objection. If an objecting party chooses to appear at the hearing, no later than thirty (30) days before the Final Approval Hearing, a notice of intention to appear, either in person or through an attorney, must be filed with the Court and list the name, address and telephone number of the attorney, if any, who will appear.

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

8.2.5. If a Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified

in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at the Final Approval Hearing. While the declaration described above is prima facie evidence that the objector is a member of the settlement Class, Plaintiffs or Defendants or both may take discovery regarding the matter, subject to Court approval.

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

8.2.7. Any Class Member who does not object to the Agreement is deemed to be a Class Member and bound by the Settlement Agreement or any further orders of the Court in this Litigation.

8.3. **Right to Respond to Objections**

8.3.1. Class Counsel and Defendants shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendants.

8.4. **Opt Outs**

8.4.1. Any Class Member who does not wish to participate in this Settlement must write to the Claims Administrator stating an intention to be "excluded" from this Settlement. This

written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than thirty (30) days before the date set for the Final Approval Hearing. The Request for Exclusion must be personally signed by the Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

8.4.2. Any Class Member who does not request exclusion from the Settlement has the right to object to the Settlement as set forth in paragraphs 8.2.1 to 8.2.7 above. If a Class Member submits a written Request for Exclusion, he or she shall be deemed to have complied with the terms of the opt out procedure and shall not be bound by the Agreement if approved by the Court. However, any objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement and by all proceedings, orders and judgments in the Litigation.

9. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

9.1. Plaintiffs will apply to the Court for attorneys' fees, expenses, and incentive awards and Defendants shall have the option of responding to any such application, including by contesting any fees, expenses, or incentive award requested. Defendants will bear their own attorney's fees, costs and expenses.

9.2. Upon appropriate Court order so providing, any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Settlement Fund immediately upon award by the Court, notwithstanding the existence of any timely filed objections thereto, or appeal (actual or potential) there from, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund plus interest at the same rate earned on the Settlement Fund, if and when, as a result of any

appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced.

9.3. Any incentive payments awarded by the Court will be taken from the Settlement Fund.

10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

10.1. The Effective Date of this Agreement shall be the date the Judgment has become Final, as defined in Paragraph 1.16.

10.2. If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of the date the Motion for Preliminary Approval is filed. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

10.3. No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds for cancellation or termination of this Agreement.

11. MISCELLANEOUS PROVISIONS

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

11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

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

11.4. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement.

11.5. Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

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

11.7. This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

11.8. Class Counsel, on behalf of the Class, are expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class that Class Counsel deem appropriate.

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

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

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

11.12. Except as provided in Paragraph 4.1.9, the Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The

language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

11.14. This Agreement shall be deemed the "proposed agreement" filed with the Court within the meaning of 15 U.S.C. § 1715 as of the date on which Preliminary Approval is granted by the Court.

11.15. In addition to whatever termination rights are set forth in this Agreement, Defendants have the right to terminate this Settlement in accordance with the terms reflected in the Addendum to this Agreement which Plaintiffs will file under seal and will remain under seal until and through the Opt-Out Date. Effective the first business day after the Opt-Out Date, the Addendum will be unsealed. Any denial to file such Addendum under seal, however, shall not serve as grounds to terminate this Agreement.

11.16. This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice-of-law principles.

//

FILED UNDER SEAL

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February 27, 2012.

Dated: _____

Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: 3-6-2012

Name: Mark Land
Title: Vice President Operations & Regulatory Affairs
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

Salvatore Gallucci

Dated: _____

Amy Aronica

Dated: _____

Kim Jones

Dated: _____

Doris Petty

Dated: _____

Jeanne Prinzivall

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of March __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title: _____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: 3/5/12

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: _____

_____
Kim Jones

Dated: _____

_____
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title:_____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: 3-5-12

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: _____

_____
Kim Jones

Dated: _____

_____
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and
Boiron USA, Inc.

Dated: _____

_____
Name:
Title:_____
On Behalf of Defendants Boiron, Inc. and
Boiron USA, Inc.

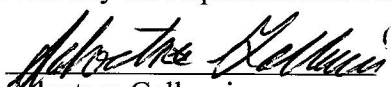
Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____


Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: _____

_____
Kim Jones

Dated: _____

_____
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title: _____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: 3/2/2012


Amy Aronica

Dated: _____

_____
Kim Jones

Dated: _____

_____
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title:_____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: 3/3/2012

Kimberly Jones
Kim Jones

Dated: _____

_____
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February __, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title:_____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: _____

_____
Kim Jones

Dated: 3/3/12

Doris Petty
Doris Petty

Dated: _____

_____
Jeanne Prinzivalli

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys, dated as of February 29, 2012.

Dated: _____

_____
Christina Guerola Sarchio
PATTON BOGGS LLP
Attorney for Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Name:
Title:_____
On Behalf of Defendants Boiron, Inc. and Boiron USA, Inc.

Dated: _____

_____
Ronald Marron
The Law Office of Ronald Marron
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Greg Weston
The Weston Firm
Attorney for Representative Plaintiffs and the Class

Dated: _____

_____
Salvatore Gallucci

Dated: _____

_____
Amy Aronica

Dated: _____

_____
Kim Jones

Dated: _____

_____
Doris Petty

Dated: 2-29-12

_____
Jeanne Prinzivalli

EXHIBIT A

MUST BE POSTMARKED NO LATER THAN [Date XX, 2012]

[DRAFT] CLASS ACTION SETTLEMENT CLAIM FORM

You must complete this Claim Form in its entirety using blue or black ink. Please print all information clearly. This Claim Form only relates to qualifying purchases of products manufactured by Boiron such as Oscillococcinum, Children's Oscillococcinum, Arnicare, Quietude, Camilia or Coldcalm (a "Boiron Product"). Do not complete this Claim Form if you did not make a qualifying purchase of a Boiron Product. **All information requested on this Claim Form is required including a proof of purchase, where available, for each purchase that you claim.**

You may submit only one Claim Form, and two people cannot submit Claim Forms for the same qualifying purchase of a Boiron Product. All Claim Forms must be postmarked by [month, day, year].Mail your fully completed and signed Claim Form and, where available, the required proof of purchase of a Boiron Product to: Claims Administrator, [Address], [City, State, Zip Code]

CLAIMANT INFORMATION

All of the information below is required. If you do not provide all of the information below, your claim may be denied.

NAME: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CLAIM INFORMATION

All of the information below is required. You must provide the information in the table below for **each** purchase of Oscillococcinum or any other Boiron product. (If additional space is needed, please submit on a separate sheet, and attach that sheet to your completed claim form.) If available, you must provide proof of each purchase you list below. If you cannot provide proof of a particular purchase, you may still submit your claim as detailed below. If you do not provide all of the information below, your claim may be denied.

QUALIFYING PURCHASES OF BOIRON PRODUCTS

PRODUCT NAME*	DATE OF PURCHASE (MM/DD/YYYY)	PURCHASE PRICE	STORE NAME	STORE LOCATION (CITY/STATE)	PROOF OF PURCHASE ATTACHED?

* For a full list of products, go to www.XXXXXSettlement.com.

PROOF OF PURCHASE

If available, proof of purchase is required for each qualifying purchase of a Boiron product listed above. Include your proof(s) of purchase, sign the Certification Under Penalty of Perjury below, and mail the fully completed and signed Claim Form to: Claim Administrator, [Address], [City, State, and Zip Code]. There is a limit of $100.00 per household for claims containing proof(s) of purchase.

NO PROOF OF PURCHASE

If you do not have a proof of purchase, you may submit a claim for Boiron products you purchased by completing the Claim Information table above to the best of your knowledge and signing the below Certification Under Penalty of Perjury. Non-proof-of-purchase claims will be processed after claims that are submitted with a proof of purchase. Non-proof of purchase claims are subject to a $50.00 per household limit, and may be reduced based on the number of claims received.

CERTIFICATION UNDER PENALTY OF PERJURY

I hereby certify under penalty of perjury, as follows:

a) All of the information on this Claim Form is true and correct;

b) If I have proof of a qualifying purchase of any Boiron product that I have listed on this Claim Form, I am providing such proof with the submission of this Claim Form. If I do not have a proof of purchase for a qualifying purchase listed on this Claim Form, I certify that I purchased the product for which I submit the claim.

c) I understand that the Claim Administrator may contact me to verify any of the information that I have provided on this Claim Form or to verify any of the proofs of purchase that I have submitted with this Claim Form; and

d) I understand that the decision of the Claim Administrator is final and binding on me.

Signature: _____ Date: _____

Printed Name: _____

* For a full list of products, go to www.XXXXXSettlement.com.

EXHIBIT B

If you purchased a product manufactured by Boiron such as Oscillococcinum, Children's Oscillococcinum, Arnicare, Quietude, Camilia or Coldcalm, you may be entitled to a cash refund from a class action settlement.

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

This Notice advises you of a proposed class action settlement. The settlement resolves a lawsuit over whether Boiron Inc. and Boiron USA, Inc. falsely advertised that its Oscillococcinum and Children's Oscillococcinum, Arnicare, Quietude, Camilia, Coldcalm or other products manufactured by Boiron (collectively, the "Products") relieve the symptoms they are advertised to relieve. Boiron stands by its advertising and denies it did anything wrong. You should read the entire Notice carefully because your legal rights are affected whether you act or not.

YOUR LEGAL RIGHT AND OPTIONS IN THIS SETTLEMENT	
SUBMIT THE CLAIM FORM	The only way to get a cash refund.
EXCLUDE YOURSELF	Get out of the lawsuit and the settlement Get no cash refund.
OBJECT OR COMMENT	Write the Court about why you do, or do not, like the settlement.
DO NOTHING	You will get no cash refund and you give up your rights.

Your rights and options – and the deadlines to exercise them – are explained in this notice.

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

EXHIBIT C

LEGAL NOTICE

If you purchased a product manufactured by Boiron such as Oscillococcinum, Children's Oscillococcinum, Arnicare, Quietude, Camilia or Coldcalm between [DATE] and [DATE] your rights may be affected by a proposed class action settlement.

Para una notificación en Español, llamar o visitar nuestro website.

WHAT IS THIS CASE ABOUT?

A proposed settlement has been reached in a class action lawsuit regarding Oscillococcinum, Children's Oscillococcinum, Arnicare, Quietude, Camilia, Coldcalm and other products manufactured by Boiron ("the Products"). The lawsuit claims advertising concerning the Products was not true. The manufacturer of the Products stands by its advertising and denies it did anything wrong. The manufacturer has settled to avoid the cost and distraction of the lawsuit.

ARE YOU A CLASS MEMBER?

You are a Class Member and may be eligible to receive a settlement benefit if you purchased the Products between January 1, 2000 and **[DATE of PRELIM. APPROVAL]**. You are not a Class Member if you were a California resident whose only purchase of a Boiron product was of Children's Coldcalm in California between August 31, 2006 and August 31, 2010.

WHAT DOES THIS SETTLEMENT PROVIDE?

A settlement fund of $5 million is being set up to pay claims to eligible Class Members, attorneys' fees and costs, and the notice and claims administration costs. The manufacturer of the Products is also agreeing to make certain changes to the manner in which it advertises the Products. The Settlement Agreement is found at www.XXXXXXSettlement.com.

WHAT ARE YOUR OPTIONS?

File a Claim: To get a settlement benefit, Class Members must send in a completed claim form and, if available, proof of purchase of the Products **to the Claims Administrator at the address below postmarked no later than [DATE].** Class Members who file timely and valid claims are eligible to receive up to $100.00 per household.

Object to the settlement: If you want to object to the settlement you must **file a written statement with the Court and serve a copy on Class Counsel, Counsel for Defendants and the Claims Administrator, postmarked by [DATE].** Any objection regarding or related to the Agreement shall contain certain information about the objector's standing as a Class member, the facts supporting the objection, the legal grounds on which the objection is based, and verification under oath of the contents of that written statement. If an objecting party chooses to appear at the hearing, a notice of intent to appear must also be filed with the Court. The instructions for how to object are explained in the detailed notice at **www.XXXXXXSettlement.com**.

Exclude Yourself: 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 written request for exclusion must include a full name and current address, a statement indicating that the person is a member of the Class, a statement that they are requesting exclusion from the Class, and a signature by the potential Settlement Class Member. 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. If you do not exclude yourself from the settlement or do nothing, you will be bound by the Court's decisions.

The Court will hold a hearing in this case on **[DATE]** at **[TIME]** at the federal courthouse located at **940 Front Street, Courtroom 11, San Diego, CA 92101,** to consider final approval of the settlement, including payment of reasonable attorneys' fees and costs to Class Counsel related to obtaining the settlement relief, an incentive award to each of the named Plaintiffs, and related issues. The motion(s) by Class Counsel for attorneys' fees and costs and incentive awards for the Class Representatives 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.

The detailed notice describes in detail 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.XXXXXXSettlement.com** or call, toll-free, **[1-800-XXX-XXXX]**, or write to Claims Administrator, 3301 Kerner Blvd., San Rafael, CA 94901**.**

EXHIBIT D

BOIRON PRODUCT LIST FOR SETTLEMENT

1.	Acidil
2.	Arnicare
3.	Avenoc
4.	Calendula
5.	Camilia
6.	Chestal
7.	Chestal Children's
8.	Cocyntal
9.	Coldcalm
10.	Coldcalm Children's (except sales to "CALIFORNIA RESIDENTS WHO PURCHASED CHILDREN'S COLDCALM IN THE STATE OF CALIFORNIA AT ANYTIME SINCE AUGUST 31, 2006, AND RESIDED IN CALIFORNIA AT THE TIME OF PURCHASE")
11.	Cyclease
12.	Gasalia
13.	Optique
14.	Oscillococcinum
15.	Oscillococcinum Children's
16.	Quietude
17.	Roxalia
18.	Sabadil
19.	Sabadil Children's
20.	Sedalia
21.	Sinusalia
22.	Sportenine
23.	Yeastaway
24.	All other generic and other-branded homeopathic products manufactured by Boiron and sold in the United States, including any variations, formats, dosages, dilution or packages.

EXHIBIT E

Homeopathic Dilutions

What does the "C" listed after the active ingredient stand for?
The most common type of dilutions is "C" dilutions (centesimal dilutions). The 1C is obtained by mixing 1 part of the Mother Tincture with 9 parts of ethanol in a new vial and then vigorously shaking the solution (succussion). The result is a 1/100 dilution of the plant (the Mother Tincture being a 1/10 dilution of the plant itself). The 2C is obtained by mixing 1 part of the 1C with 99 parts of ethanol in a new vial and succussing. Recurrently, the 3C is obtained by mixing 1 part of the 2C with 99 parts of ethanol in a new vial and succussing.

What does the "X" listed after the active ingredient stand for?
X dilutions are decimal dilutions prepared similarly to C dilutions, but the factor of dilution is only 1/10 from one dilution to the next.

What does the "K" listed after the active ingredient stand for?
The K refers to a method of manufacturing known as the Korsakovian method. The Korsakovian method dilutes the homeopathic preparation of the substance at the rate of 1 part of the previous dilution with 99 parts of solvent.

What does the "CK" listed after the active ingredient stand for?
Korsakovian dilutions are manufactured using a device specially designed to ensure that the dilution process is reproducible from one dilution to the next. Only one vial is used for the entire process. Using ultra-purified water as the solvent, the machine removes 99% of the Mother Tincture and replaces it with the same volume of solvent. The vial is succussed for 10.5 seconds. The result is called 1CK. The 2CK is prepared identically from the 1CK. The automatic process using only 1 vial allows higher dilutions to be reached. The most common Korsakovian dilutions are 200CK, 1,000CK (also called 1M), 10,000CK (10M), 50,000 CK (50M) and 100,000CK (100M or CM).

What does "200CK" mean?
200CK means that the substance has been homeopathically diluted 200 times at the rate of 1 to 100. Therefore, the original substance has been diluted to 10^{-200}.

EXHIBIT F

Larkspur Design Group

Gilardi & Co. LLC
3/5/2012

GALUCCI V. BOIRON - NOTICE PLAN

OBJECTIVE:

To provide the best practicable cost-effective notice to the defined Class and ensure compliance with Rule 23.

KEY ASSUMPTIONS:

Class Definition

All persons in the United States who purchased the Boiron Products as defined in Paragraph 1.27 and Exhibit D, of the settlement agreement within the Class Period as defined in Paragraph 1.7 of the settlement agreement. The Class expressly excludes Defendants and their officers, directors, employees and immediate families; and the Court, its officers and their immediate families.

Target Audience

For the purpose of selecting appropriate media to target the defined class, LDG utlized Simmons National Consumer Survey Data to define a target audience inclusive of the defined Class.

TARGET AUDIENCE DEFINITION: U.S. Adults who Trust Homeopathic Remedies (approx. 45 million U.S. adults)

SOURCE: Simmons National Consumer Survey: FALL 2011 ADULT 6 MOS STUDY

Target Audience Profile/Characteristics

The target audience internet behavior profile in Table 1 illustrates the following important characteristics about the class:

1 - Approximately 88% of the target audience has a personal computer in their household
2 - Approximately 88% of the target audience uses an online service provider
3 - Approximately 44% of the target audience has visited Google in the last 7 days
4 - Approximately 43% of the target audience has visited Facebook in the last 7 days
5 - Approximately 50% of the target audience has visited Facebook in the last 30 days

SUGGESTED OPTIONS:

To evaluate the most appropriate media vehicles to reach the Target Audience, LDG analyzed Simmons National Consumer Survey ("NCS") data related to computer usage, internet behavior, and media vehicle preference. As you will see in the attached Table 1, the statistics regarding internet usage as well as the general preference of Internet and Magazines over newspapers and other forms of media (see Quintile survey data in Table 1), suggest an approach that should leverage both forms of media in conjunction with direct mailing to any individual for which there is a direct mail address available.

To provide the foundation of the Plan, LDG suggests utilizing Magazines of general interest to the Target Audience and internet advertising focused on websites that provide information about health, medicine, and homeopathic remedies, as well as general news sites for those that may not be currently researching products at issue in the matter. Based on research through Simmons National Consumer Survey Data, it is LDG's opinion that these media vehicles will be the most effective means by which to reach the Target Audience and by consequence, the class members themselves.

In addition, given that there are some email addresses and possibly postal addresses available for some class members, LDG suggests a direct email blast to all class members that have an email address, followed by a postal mailing of a summary notice postcard to any email bouncebacks for which the defendant may have a postal address.

If implemented, the suggested options, used in conjunction with a direct postal mailing or email blast to available addresses, would comport in all respects with Rule 23(c)(2) of the Federal Rules of Civil Procedure. Based on LDG's experience and the current parameters of the settlement, it is our opinion that the Notice Plan is the best practicable and provides adequate and reasonable notice to the Target Audience and as a result, the Class members. Lastly, the Notice Plan will satisfy due process obligation and ensure that the holdings of the critical Supreme Court decisions related to notice are satisfied, namely: a) that the Notice Plan actually informs the class, and b) that the Notice Plan was reasonably calculated to provide such information and notification.

INTERNET MEDIA VEHICLE OVERVIEW:

1 - Sponsored Links on Major Search Engines
The sponsored links portion of the campaign would target those individuals who may have seen the print publication notice and are specifically looking for information about the case on the major search engines. Keywords related to the case subject matter would be selected and bids placed to position the website link within the top 5 search results.

2 - Targeted Content Advertising
Similar to placing fractional print ads near relevant print content, marketers know that placing website links on pages with content relevant to the case is a highly effective way to generate interest from those individuals who may not be looking for the case website, but who may be potential class members nonetheless. LDG has worked with Google and Pulsepoint to develop a list of appropriate sites to target potential class members.

3 - Display Advertising
Banners and Block ads would be designed to attract the attention of potential class members and placed near relevent content online. Delivery of the impressions would be limited to three per unique IP address to minimize audience duplication (the number of times a potential class member sees the ad).

4 - Social Networking (Facebook)
As an additional component of its online notification, LDG would utilize social networking media, a rapidly growing element used in nearly all advertising campaigns [2]. A Facebook page would be setup to provide basic information with the primary goal being to direct class members to the settlement website. Banners and website link ads would also be placed on Facebook, targeting user profiles and pages that have shown interest in natural remedies and health in general.

[1] In Re Columbia/HCA Healthcare Corp., M.D. Tenn. 2003 (70% reach), Brown v. American Tobacco E.D. LA. 2002 (75% reach), In Re Department of Veteran Affairs (VA) Data Theft Litigation, MDL No 1796 (D. D.C.) (79.6% reach)

[2] In 2009, a survey conducted with 133 Chief Marketing Officers found that nearly two-thirds planned to increase social media budgets in 2010 Mediapost, "Survey: Most CMOs to boost Social Media Budgets in 2010," December 2009

TABLE - 1

Target Audience - Internet Behavior Analysis

SOURCE: Simmons National Consumer Survey: Summer 2011 ADULT FULL YEAR

TARGET AUDIENCE DEFINITION: U.S. Adults who Trust Homeopathic Remedies (approx. 45 million U.S. adults)

Survey Information	Sample	Weighted Sample Size (000)	Vertical	Index
PERSONAL COMPUTERS - GENERAL				
Does your household have a PC? = Yes	2,064	39,944	88%	104
Do you personally own a PC? = Yes	2,064	39,944	88%	104
Do you own a Tablet Computer? = YES	230	4,687	10%	151
Do you use on Online Service Provider? = Yes	2,064	39,944	88%	104
Have you used an Online Service Provider in last 30 days? = Yes	2,064	39,944	88%	104
Do you use your PC more than 2 hrs per week? = Yes	1,534	30,824	68%	110
Do you use Social Media? = Yes	1,351	27,172	60%	110
WEBSITES VISITED IN LAST 30 DAYS				
Visited Facebook in last 7 days? = Yes	898	19,417	43%	111
Visited Google in last 7 days? = Yes	965	19,869	44%	117
Visited Google in last 30 days? = Yes	1,074	21,844	48%	114
Visited Yahoo in last 30 days? = Yes	636	13,577	30%	105
Visited Bing in last 30 days? = Yes	214	4,195	9%	109
MEDIA QUINTILE ANALYSIS				
Internet - Highest Quintile	360	8,689	19%	125
Magazines - Highest Quintile	594	10,525	23%	117
Newspapers - Highest Quintile	547	8,577	19%	95
Radio - Highest Quintile	499	7,679	17%	85
SEARCH ENGINE PREFERENCE				
Do you use Google's Search Engine the most? = Yes	1,324	27,282	60%	110
Do you use Bing's Search Engine the most? = Yes	104	1,616	4%	77
Do you use Yahoo's Search Engine the most? = Yes	304	5,412	12%	89

READ THIS CHART: 88% of the Target Audience ("TA") members live in a hourshold with a personal computer, 68% have used their PC more than 2hrs in the last week, and 48% have visited Google in the last 30 days

KEY:

Sample Size - The number of individuals answering the survey question

Weighted Sample - The extrapolated number of indivuals based on the sample size

Vertical - The percentage of the Target Audience that fits within the survey question profile (ex. 62% of the target audience is male)

Index - measures the relationship between the target audience and the national population as a base. In other words, an index of 100 indicates the target audience is on par with the national population with respect to the question while an index greater than 100 indicates a higher percentage of the target audience answered this question (the same answer), in relation to the national average. For example, with an index of 151, this Target Audience is 50% more likely than the average U.S. adult to own a tablet computer.

* Denotes a low sample size < 61

** Denotes a low sample size < 31

LDG SUGGESTED NOTICE PLAN

TARGET AUDIENCE DEFINITION: U.S. Adults who Trust Homeopathic Remedies (approx. 45 million U.S. adults)

PRINT PUBLICATION	COST	TOTAL COST
Print Publication		
Natural Health Magazine - 1/3 Page B/W (2.25" x 10")	$ 13,013	
Health Magazine - 1/3 page B/W (2.875" x 10.75")	$ 13,636	
INTERNET		
Sponsored Links Google Sponsored Link Advertising *- estimated 2 to 4.5 million impressions with .06% click thru rate*	$ 5,000	
Targeted Content Advertising (Google Display Network) Google Display Network - estimated 7 to 10 million impressions with .01% click thru rate	$ 12,000	
Banner Display Advertising Banner Ads Targeting Health and Wellness Sites *- minimum 23.3 million impressions on sites in the health and general news categories* *- Websites would include; HealthOnline, Medhealth, Healthgrades, Medicine Online, Mayo Clinic, CNN/Health, USA Today Health, Health Answers, Dr Koop, Discover Health, Men's Health, Medicine News Today, and the health pages of 300 of the top internet news sites.*	$ 115,000	
SOCIAL NETWORK		
▪ Develop and maintain Facebook Settlement Page with posted case documenst and links to the case website	$ 750	
NEWSWIRE		
▪ Press Releases through Businesswire and/or PR Newswire	tbd	
TOTAL ESTIMATED COST:		**$ 159,399**

EXHIBIT B

CURRICULUM VITAE

Noel R. Rose

PERSONAL DATA

Johns Hopkins University
School of Medicine (SOM)
Department of Pathology
Ross Building, Room 659
720 Rutland Avenue
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Feinstone Department of Molecular
Microbiology and Immunology
615 North Wolfe Street, Suite E5014
Baltimore, Maryland 21205
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Fax: (410) 955-1505
E-mail: nrrose@jhsph.edu

EDUCATION AND TRAINING

Yale University, New Haven, CT	B.S.	1948	Zoology
University of Pennsylvania, Phila., PA	M.A.	1949	Med. Microbiology
University of Pennsylvania, Phila., PA	Ph.D.	1951	Med. Microbiology
State Univ. of New York, Buffalo, NY	M.D.	1964	Medicine
University of Calgari, Italy	Doctor "Honoris Causa"	1990	Medicine and Surgery
University of Sassari, Italy	Doctor "Honoris Causa"	1992	Biological Science

PROFESSIONAL EXPERIENCE

2008-	Interim Director, Division of Immunology, Dept. of Pathology (SOM)
2005-	Director of Graduate Program, Dept of Pathology (SOM)
2003-05	Chair, Autoimmune Diseases Coordinating Committee, National Institutes of Health
1999-	Director, Johns Hopkins Center for Autoimmune Disease Research, SPH and SOM
1995-	Member of Active Staff, Johns Hopkins Hospital
1994-99	Director, Division of Immunology, Dept of Pathol, (SOM)
1994-	Prof of Pathol, SOM
1993-	Prof of Mol Microbiol & Immunology (MMI), SPH
1991-	Prof of Environm Hlth Sci (jt apptmt), SPH
1982-	Prof of Medicine (jt apptmt), JHU Sch of Med (SOM), Baltimore, MD
1982-93	Prof/Chairman, Dept of Immunol & Infect Dis, Johns Hopkins U Sch of Pub Hth (SPH) Baltimore, MD
1973-82	Prof/Chairman, Dept of Immunol and Microbiol, Wayne State U Sch of Med, Detroit, MI
1970-73	Director, Center for Immunol, SUNY/Buffalo Sch of Med
1968-	Director, PAHO/WHO Collaborating Center for Autoimmune Disorders
1966-73	Prof of Microbiol and Director, Diagnostic Labs, SUNY/Buffalo Sch of Med
1964-70	Director, Erie County Lab and Head, Dept of Labs, EJ Meyer Mem Hosp
1964-66	Assoc Prof of Bacteriol & Immunol and Asst Prof of Medicine, SUNY/Buffalo Sch
1954-64	Asst Prof of Bacteriol & Immunol, U of Buffalo Sch of Med, Buffalo, NYof Med
1951-54	Instructor and Associate in Bacteriol and Immunol, U of Buffalo Sch of Med, Buffalo

PROFESSIONAL ACTIVITIES

Society Membership and Leadership

Academy of Clinical Laboratory Physicians and Scientists (Secretary-Treasurer, 1970-73; emeritus member, 1993-)
Alpha Omega Alpha Honorary Medical Society (Elected 1977)
American Academy of Allergy, Asthma and Immunology (Fellow; Emeritus Fellow, 1994-)
American Academy of Microbiology (Fellow; Emeritus Fellow, 1994-)
American Association for the Advancement of Science (Life Member; Council Delegate of the Electorate of the Section on Medical Sciences, (1997-2000 and 2004-2007)
American Association of Immunologists (emeritus member, 1994-)
American Association of University Professors (emeritus member, 1994-)
American Autoimmune Related Diseases Association (chair Natl Sci Adv Bd, 1994-2004) Emeritus Chair, 2005)
American Board of Medical Laboratory Immunology (member, 1982-2000; chair, 2000-2003; emeritus 2001)
American Board of Medical Microbiology/American Board of Medical Laboratory Immunology Professional Recognition Award Nominating Committee (member 2003-2006)
American Public Health Association (Fellow, 1964-; Life Member, 1992-)
American Society for Cell Biology (emeritus member, 1993-)
American Society of Clinical Pathologists (Fellow; emeritus Fellow, 1994)
American Society for Investigative Pathology (emeritus member 1994-)
American Society for Microbiology (Founding Chairman, Diagnostic Immunology Division, 1989; emeritus status 1994)
Association of Medical Laboratory Immunologists (Charter Member; Fellow)
Association of Medical School Microbiology and Immunology Chairs (1973-1993)
Austrian Society for Allergology and Immunology (Honorary Member, 1996-)
British Society of Immunology (Founding member)
Buffalo Collegium of Immunology (International Board 1985-88)
Canadian Society of Immunology (Charter member)
Clinical Immunology Society (Secretary-Treasurer, 1986-90; Counselor, 1990-93; President, 1993; emeritus member, 2005
College of American Pathologists (Fellow; emeritus Fellow, 1994-)
Delta Omega Honorary Public Health Society, Alpha Chapter, 1984
Human Biology Data Interchange/Thyroid Steering Committee (member, 1996-)
Immunological Investigations (Board member, 2003-)
National Health Council-Scientific & Medical Affairs Directors (member, 2002-2004)
Nutrition and Immunology RIS Society (member, 2000-)
Psychoneuroimmunology Research Society (Founding Member, 1993-)
Société Française d'Immunologie (Founding member)
Society for Experimental Biology and Medicine (Counselor, 1985-89)
Society for In Vitro Biology (1954-1993; emeritus member, 1993-)
Society of Sigma Xi, Honorary Scientific Society (President, Buffalo Chapter, 1965; President, Wayne State Chapter, 1978-79; President, JHU Chapter, 1988)
Transplantation Society (emeritus member 1993-)

Participation on National Advisory Panels

1981-02 Scientific Advisory Board, Carter- Wallace
1990-04 Scientific Advisory Board, Mentor Corporation
1994-04 Chairman, National Scientific Advisory Board of AARDA
1995-00 Chairman, Scientific Advisory Board Immunology, Bristol- Myers Squibb
1998-93 Scientific Advisory Board, Zeus
1998-01 Scientific Advisory Board, Dia Sorin
2005-07 Scientific Advisory Board, NMT Medical
2005- Emeritus Chairman, National Scientific Advisory Board of AARDA

2005-09 Advisory Board Member, Canadian Institutes of Health Research, Institute of Infection and Immunity
2005-07 Safety Monitoring Committee, BioSTAR Evaluation Study
2006- International Advisory Board, AESKU-KIPP Institute

Consultations

1953-56 Consultant in Bacteriology, Niagara Sanatorium, Lockport, New York
1968-72 Consultant Pathologist, Veterans Administration Hospital, Buffalo, New York
1974-82 Consultant Physician, Veterans Administration Hospital, Allen Park, Michigan
1974-82 Consultant Physician, Sinai Hospital, Detroit, Michigan
1977-82 Consultant Physician, Children's Hospital of Michigan, Detroit, Michigan
1977-82 Consultant Physician, William Beaumont Hospital, Royal Oak, Michigan
1980-82 Consultant Physician, Harper Hospital, Detroit, Michigan

EDITORIAL BOARDS

American Journal of Epidemiology (Board of Overseers, 1982-present)
American Journal of Hematology (1977-1991)
Archives of Andrology (1978-81)
Archives of Environmental and Occupational Health (1995-present)
Autoimmunity (1987-present)
Cancer Detection and Prevention (2002-2009)
Cellular Immunology (1983-1996)
Cellular and Molecular Pathology (2000-present)
Circulation Research (1998-1999)
Clinical and Diagnostic Laboratory Immunology (Associate Editor 1993-1997; member Editorial Board 1997-2006)
Clinical Immunology and Immunopathology (1983-87; Editor-in-Chief, 1987-1998)
Clinical Immunology Newsletter (1980-86)
Discovery Medicine (Editor-in-Chief 2003-)
Encyclopedia of Autoimmune Disease
Encyclopedia of Immunology
Encyclopedia of Stress (1st and 2nd Chapter)
Experimental and Clinical Immunology (1965-79)
Experimental and Molecular Pathology (1999-present)
FASEB Journal (2002-2008)
Giornale Italiano di Allergologia e Immunologia Clinica (member, International Editorial Board, 1992-2005)
Immunobiology (2009-present)
Immunological Communications, Editor-in-Chief (1970-1973) now called Immunological Investigations (Founding editor, 1970-81; editorial board 1973-present)
Immunology (2009-)
Immunology Series, Marcel Dekker, Editor-in-Chief (1970-2004)
Infection and Immunity (1968-74)
International Reviews of Immunology (1984-present)
Journal of Autoimmunity (1987-present)
Journal of Experimental Pathology (1986-1994)
Journal of Experimental and Molecular Pathology (1999-2005)
Journal of Immunology (Associate Editor 2003-2009)
Journal of Laboratory and Clinical Immunology (1976-81)
Journal of Theoretical Biology (1971-81)
Manual of Clinical Immunology, Editor-in-Chief 1st, 2nd, 3rd, 4th, 5th, 6th editions
Pathobiology (1988-1998)
The Prostate (1980-2000)
Recent Reviews in Autoimmunity (2001-present)
The Year in Immunology (Editor-in-Chief) (2008-)
Treatise of the Reticuloendothelial System (Co-Editor/Volume VIII, 1983)

Vox Sanguinis (Editor-in-Chief/North America, 1974-80;Editor/Immunopathology Section, 1980-82)
Archives of Environmental and Occupational Health- An International Journal (2006)

ACADEMIC SERVICE

Advisory Board, Johns Hopkins, School of Hygiene and Public Health (1982-93)
Committee of the Whole, JHU-SHPH (1982-93)
Steering Committee, JHU-SHPH (1982-90)
Committee on Human Volunteers, Chairman, JHU-SHPH (1984-87)
Search Committee, Chief of Rheumatology, JHU, School of Medicine (1985-87)
Search Committee, Chairman of Pathology, JHU-SM (1985-88)
Tenure and Retirement Policy Committee, JHU-SHPH (1987-91)
Committee on Technology Transfer, JHU-SHPH (1988-92)
Search Committee, Director of Toxicological Sciences, JHU-SHPH (1988)
Search Committee, Biochemistry Chairman, JHU-SHPH (1989)
Advisory Committee, Center for Alternatives for Animal Testing (1989-)
Committee on Finance, JHU-SHPH (1989-92)
Advisory Board of the JHU John K. Frost Center for Imaging of Cells and Molecular Markers (1991-1993)
Immunology Council Executive Committee, (1982-) Chairman (1991-92)
Johns Hopkins School of Nursing Infection Prevention Program Scientific Advisory Board, (1990-92)
Committee to Review the Department of Environmental Health Sciences, JHU-SHPH (1990-91)
Search Committee Environmental Health Sciences Chairman, JHU-SHPH (1991)
Committee to Review the Center for Alternatives to Animal Testing, JHU-SHPH, (1991-92)
Committee on Henry G. Kunkel Lectureship, JHU-SM (1992;1996-97;1997-98;1998-99;99-00)
Appointments and Promotions Committee, JHU-SHPH (chair, 1993-03)
Advisory Committee of STD Program (K.V. Shah, p.i.), JHU-SHPH (1994-)
Stanley Laboratory Advisory Committee/Department of Pediatrics, JHU-SM (1994-2000)
Search Committee, Director of Microbiology/Department of Pathology, JHU-SM (Chair, 1994)
Search Committee in Division of Immunology/Department of Pathology, JHU-SM (1995)
Clinical Advisory Committee/Department of Pathology, JHU-SM (1995-)
Fellowship Training Program Committee/Department of Pathology, JHU-SM (1995-99)
Financial/Operational Issues Committee/Department of Pathology, JHU-SM (1995-99)
Graduate Student Education Committee/Department of Pathology, JHU-SM (1995-99)
Performance Improvement Committee/Department of Pathology, JHU-SM (1995-98)
Quality Assurance Committee-Diagnostic Immunology/Department of Pathology, JHU-SM (1995-2000)
Committee on Professional Conduct, JHU-SHPH (1995-2004)
Continuing Medical Education Committee/Department of Pathology, JHU-SM (1995-97)
Credentials Committee/Department of Pathology, JHU-SM (1997-03)
JHU-SHPH Representative to the JHU Society of Scholars Committee (1997-00; chair 1997-98)
Executive Committee, Grad Prog in Pathobiology/Department of Pathology, JHU-SM (1998-)
Admissions Committee, Grad Prog in Pathobiology/Department of Pathology, JHU-SM (chair, 1998-)
Advisory Committee for the JHML Immunology Laboratory, JHU-SM (1999-2000)
Year 2000 Strategic Plan Committee/JHU-SHPH (1999-2000)
Research & Practice Subcommittee of Year 2000 Strategic Plan Committee/JHU-SHPH (chair, 1999-01)
Member, Cellular and Molecular Medicine Training Program (1999-)
President-Elect, JHSPH Faculty Senate (2000-01) President, (2001-02) Past President (2002-03),
Advisory Committee – Rheumatology Training Program (2004-)
Member, JHU Faculty Budget Advisory Committee (2000-)
Member, JHSPH MPH Oversight and Steering Committee (2000-)
Member, JHSPH Committee of the Whole (2000-)
Member, JHSPH Committee on Finance (2000-)
Member, JHSPH Steering Committee (2000-)
Chair, BSPH Review Committee Department of Mental Hygiene (2003-04)
Member, BSPH Faculty Titles Task Force (2003-)
Member, University Honorary Degree Committee (2005-2009)
Chair CAAT Search Committee (2007-2009)
Member Stebbins Award Committee (2004-2010)

Review Committee, Department of Environmental Health Sciences (2010-2011)

HONORS AND AWARDS

Recent Honors

1992 Honorary life-time Member of the Ernest Witebsky Center Committee, State University of New York at Buffalo
1994 Honorary Membership in the Oesterreichische Gesellschaft für Allergologie und Immunologie
1997 Universidad Central de Venezuela Honorary Medal, Instituto de Inmunologia, Facultad de Medicina, Universidad Central de Venezuela, Caracas, Venezuela
1999 Elected Honorary Member, American Society for Microbiology

Recent Awards

1993 Abbot Award, The American Society for Microbiology
1994 Distinguished Medical Alumnus Award, Medical Alumni Association, University at Buffalo School of Medicine
1999 Elected Fellow, American Association for the Advancement of Sciences
2000 Abbott Erwin Neter Memorial Lecturer, Association of Medical Laboratory Immunologists
2003 ASM Professional Recognition Award
2004 AESKU Lifetime Achievement Award
2005 ASM Founder's Distinguished Service Award
2005 Ernest Lyman Stebbins Medal, Johns Hopkins University
2006 Keystone Lifetime Achievement Award
2009 Nikolaus Copernicus Medal Polish Academy of Sciences
2010 Teacher of the Year, Pathobiology Graduate Program
2011 Presidential Award, Clinical Immunology Society

RECENT PUBLICATIONS

760+ articles and chapters in the areas of immunology, immunopathology, autoimmunity and autoimmune diseases. Editor and/or co-editor of 23 books on similar topics.

2002

627. Afanasyeva M, ROSE NR. Cardiomyopathy is linked to complement activation. Am J Pathol 2002; 161:351-357.

628. Fairweather D, ROSE NR. Type 1 diabetes: virus infection or autoimmune disease? Nature Immunol 2002; 3:338-340.

629. Hill SL, Afanasyeva M, ROSE NR. Autoimmune Myocarditis. *In*: The Molecular Pathology of Autoimmune Diseases, 2nd ed. Eds: AN Theofilopoulos, CA Bona. Taylor & Francis, 2002. Pp 951-964.

630. Kaya Z, Dohmen KM, Wang Y, Schlichting J, Afanasyeva M, Leuschner, ROSE,NR. Cutting edge: a critical role for IL-10 in induction of nasal tolerance in experimental autoimmune myocarditis. J Immunol 2002; 168:1552-1556.

631. ROSE NR. Introduction—Autoimmunity at the turning point: from investigation to intervention. Autoimmunity Reviews 2002; 1:3-4.

632. ROSE NR, Bonita R, Burek CL. Iodine: an environmental trigger of thyroiditis. Autoimmunity Reviews 2002; 1:97-103.

633. ROSE NR. Preface. *In*: Manual of Clinical Laboratory Immunology, 6th ed. Eds: NR Rose, RG Hamilton, BD Detrick. American Society for Microbiology, Washington, DC, 2002. P xxv.

634. Burek CL, Bigazzi PE, ROSE NR, Zakarije M, McKenzie JM, Marker JD, Maclaren NK. Endocrinopathies. *In*: Manual of Clinical Laboratory Immunology, 6th ed. Eds: NR Rose, RG Hamilton, B Detrick. American Society for Microbiology, Washington, DC, 2002. Pp 990-1004.

635. Sundstrom JB, Burek CL, ROSE NR, Ansari AA. Cardiovascular Diseases. *In*: Manual of Clinical Laboratory Immunology, 6th ed. Eds: NR ROSE, RG Hamilton, B Detrick. American Society for Microbiology, Washington, DC, 2002. Pp 1043-1048.

636. Benvenga S, Burek CL, Talor M, ROSE NR, Trimarchi F. Heterogeneity of TG epitopes associated with circulating TH autoantibodies in Hashimoto's thyroiditis and non-autoimmune thyroid diseases. J Endocrinol Invest 2002; 25:977-982.

637. Bonita RE, ROSE NR, Rasooly L, Caturegli P, Burek CL. Adhesion molecules as susceptibility factors in spontaneous autoimmune thyroiditis in the NODH2^{hr} mouse. Exp Mol Pathol 2002; 73:155-163.

638. ROSE NR. Mechanisms of autoimmunity. Seminars Liver Dis 2002; 22:387-394.

639. Afanasyeva M, ROSE NR. Immune mediators in inflammatory heart disease: insights from a mouse model. Eur Heart J 2002; 4 (Suppl 1):131-136.

2003

640. Barin JG Afanasyeva M, Talor MV, ROSE NR, Burek CL, Caturegli P. Thyroid-specific expression of IFN-(limits experimental autoimmune thyroiditis by suppressing lymphocytes activation in cervical lymph nodes. J Immunol 2003; 170:5523-5529.

641. Bonita RE, ROSE NR, Rasooly L, Caturegli P, Burek CL. Kinetics of mononuclear cell infiltration and cytokine expression in iodine-induced thyroiditis in the NOD-H2^{h4} mouse. Exp Mol Pathol 2003; 74:1-12.

642. Burek C, Sharma RB, ROSE NR. NKT cell regulation of autoimmune thyroiditis. Autoimmunity 2003; 36:405-408.

643. Caturegli P, ROSE NR, Kimura M, Kimura H, Tzou S-C. Studies on murine thyroiditis: new insights from organ flow cytometry. Thyroid 2003; 13:419-426.

644. Fairweather D, Yusung S, Frisancho S, Barrett M, Gatewood S, Steele R, ROSE NR. IL-12 Receptor beta 1 and Toll-Like Receptor 4 Increase IL-1 beta-and IL-80- Associated Myocarditis and Coxsackievirus Replication. J Immunol 2003; 170:4731-4737.

645. Gor DE, ROSE NR, Greenspan NS. Commentary: T_H1-T_H2: a Procrustean paradigm. Nature Immunology 2003; 4:503-505.

646. Halsey N, ROSE NR. Questions and answers about autoimmunity and the smallpox vaccine. Israel Med Assoc J 2003; 5:40-41.

647. Hoover DR, Donnay A, Mitchell CS, Ziem G, ROSE NR, Sabath DE, Yurkow EJ, Nakamura R, Vogt RF, Waxdal M, Margolick JB. Reproducibility of immunological tests used to assess multiple chemical sensitivity syndrome. Clin Diagn Lab Immunol 2003; 10:1029-1036.

648. Matalon ST, Blank M, Levy Y, Carp HJA, Arad A, Burek L, Grunebaum E, Sherer Y, Ornoy A, Refetoff S, Weiss RE, ROSE, NR, Shoenfeld Y. The pathogenic role of anti-thyroglobulin antibody on pregnancy: evidence from an active immunization model in mice. Human Reproduction 2003; 18:1094-1099.

649. Nyland JF, ROSE NR.. Environmental triggers of autoimmune disease. Recent progress and Recommendations. Report AARDA and PAHO/WHO Collaborating Ctr Autoimmune Disorders, 2003. pp.1-5.

650. ROSE NR. Updated: Overview of Autoimmunity. On WorldWideWeb. In: *UpToDate* 11.1:1-6, 2003. (http://www.utdol.com/application/topic/print.asp?file=bas_imm/2406&type=A&selectedTitle=6~10).

651. ROSE NR, Caturegli P. Chronic Lymphocytic Thyroiditis. *In*: The Nord Guide to Rare Disorders. Ed: E Gruson. Lippincott Williams & Wilkens, Philadelphia, 2003. P 329.

652. ROSE NR, Afanasyeva M. From infection to autoimmunity: the adjuvant effect. ASM News 2003; 69:132-137.

653. ROSE NR, Afanasyeva M. Autoimmunity: busting the atherosclerotic plaque. Nature/Medicine 2003; 9:641-642.

654. ROSE NR. Introduction - A New View of Autoimmunity. *In*: The Autoimmune Connection. Eds: R Baron-Faust, JP Buyon. McGraw-Hill, New York, 2003. Pp xiii-xiv.

655. ROSE NR, Afanasyeva M. The inflammatory process in experimental myocarditis. *In*: Inflammation and Heart Disease. Eds: GZ Feuerstein, P Libby, DL Mann. Birkhäuser Verlag, Basel. 2003. Pp 325-333.

656. Silverstein AM ROSE NR. On the implications of polyclonal B cell activation.Nature Immunol 2003; 4(10):931-932; reply 932 .

657. Stone JH, *et al*., ROSE NR. Limited versus severe Wegener's granulomatosis; Baseline data on patients in the Wegener's granulomatosis Etanercept Trial Research Grou.p. Arthritis & Rheum 2003; 48:2299-2309.

658. ROSE NR. Erwin Neter: personal reminiscences. Clin Appl Immunol Rev 2003; 4:143-145.

2004

659. ROSE NR. Immunodiagnosis. *In*:: Infectious Diseases 3rd ed. Eds: SL Gorbach, JG Bartlett, NR Blacklow. Lippincott & Williams & Wilkins, Philadelphia. 2004. Pp 145-151.

660. ROSE NR. Autoimmune disease 2002: An overview. J Invest Dermatol Symp Proc 2004; 9:1-4.

661. Fairweather D,Frisancho-Kiss S,Gatewood S,Njoku D, Steele R, Barrett M,ROSE NR. Mast cells and innate cytokines areassociated with susceptibility to autoimmune heart disease following Coxsackievirus B3 infection. Autoimmunity 2004; 37:131-145.

662. Fairweather D, Afanasyeva M, ROSE NR. Cellular Immunity: A Role for Cytokines. *In*:: Handbook of Systemic Autoimmune Diseases. Vol 1: The Heart in Systemic Autoimmune Diseases. Eds : A. Doria, P. Pauletto. Elsevier B.V., Amsterdam. 2004. Pp 3-17.

663. Shoenfeld Y, ROSE NR. Inroduction: Infection and Autoimmunity. *In:* Infection and Autoimmunity. Eds: Y. Shoenfeld, N. R. Rose. Elsevier, Amsterdam. 2004. Pp.1-4.

664. Afanasyeva M, Georgakopoulos D, Belardi DF, Ramsundar AC, Barin JG, Kass DA, ROSE NR. Quantitative analysis of myocardial inflammation by flow cytometry in murine autoimmune myocarditis. in Am J Pathol 2004; 164:807-815.

665. ROSE NR, Cihakova D. Cardiomyopathies. Autoimunity 2004; 37:347-350.

666. Afanasyeva M, ROSE NR. Viral Infection and Heart Disease: Autoimmune Mechanisms. *In*: Infection and Autoimmunity. Eds: Y. Shoenfeld, N.R. Rose. Elsevier, Amsterdam. 2004. Pp 299-318.

667. Cihakova D, Sharma RB, Fairweather D, Afanasyeva M, ROSE NR. Animal Models for Autoimmune Myocarditis and Autoimmune Thyroiditis. *In*: Methods in Molecular Medicine-Vol. 102: Methods and Protocols. Ed: A Perl. Humana Press, Inc., Totowa, NJ. 2004. Pp 175-193.

668. Silva IA, Nyland JF, Gorman A, Perisse A, Ventura AM, Santos ECO, de Souza JM, Burek CL, ROSE NR, Silbergeld EK. Mercury exposure, malaria, and serum antinuclear/antinucleolar antibodies in Amazon populations in Brazil: a cross-sectional study. Environ Health: A Global Access Science Source 2004; 3:1-33.

669. Kimura H, Kimura M, ROSE NR, Caturegli P. Early chemokine expression induced by interferon-gamma in a murine model of Hashimoto's thyroiditis. Exp Mol Pathol 2004; 77:161-167.

670. Fairweather D, ROSE NR. Women and autoimmune diseases. Emerging Infect Dis 2004; 10:2005-2011.

671. Fairweather D, Frisancho-Kiss S, Yusung SA, Barrett MA, Davis SE, Gatewood SJL, Njoku DB, ROSE NR. Interferon-(protects against chronic viral myocarditis by reducing mast cell degranulation, fibrosis, and the profibrotic cytokines transforming growth factor $1, interleukin-1$, and interleukin-4 in the heart. Am J Pathol 2004; 165:1883-1894.

672a. Afanasyeva M, Georgakopoulos D, ROSE NR. Autoimmune myocarditis: cellular mediators of cardiac dysfunction. Autoimmunity Reviews 2004; 3:476-486.

672b. Afanasyeva M, Georgakopoulos D, Fairweather D, Caturegli P, Kass DA, ROSE NR. Novel Model of Constrictive Pericarditis Associated with Autoimmune Heart Disease in Interferon-γ-Knockout Mice. Circulation 2004; 110:2910-2917.

673. Fairweather D, ROSE NR. Models of Coxsackievirus-B3-induced myocarditis: recent advances. Drug Discovery Today: Disease Models 2004; 1:381-386.

2005

674. Fairweather D, Frisancho-Kiss S, Yusung SA, Barrett MA, Davis SE, Steele RA, Gatewood SJL, ROSE NR. IL-12 protects against Coxsackievirus B3-induced myocarditis by increasing IFN-γ(and macrophage and neutrophil populations in the heart. J Immunol 2005; 174:261-269.

675. Fairweather D, Frisancho-Kiss S, ROSE NR. Viruses as adjuvants for autoimmunity: evidence from Coxsackievirus-induced myocarditis. Rev Med Virol 2005; 15:17-27.

676. Stone JH, The Wegener's Granulomatosis Etanercept Trial Research Group, ROSE NR. N Engl J Med 2005; 4:351-361.

677. Afanasyeva M, Georgakopoulos D, Belardi DF, Bedja D, Fairweather D, Wang Y, Kaya Z, Gabrielson KL, Rodriguez ER, Caturegli P, Kass DA, ROSE NR. Impaired up-regulation of CD25 on CD4+ T cells in IFN-(knockout mice is associated with progression of myocarditis to heart failure. Proceedings Nat'l Academy Sciences, U.S.A. 2005; 102:180-185.

678. Nojoku DB, Talor MV, Fairweather D, Frisancho-Kiss S, Odumade OA, ROSE NR. A novel model of drug hapten-induced hepatitis with increased mast cells in the BALB/c mouse. Exp Mol Pathol 2005; 78:87-100.

679. Kaya Z, Tretter T, Schlichting J, Leuschner F, Afanasyeva M, Katus HA, ROSE NR. Complement receptors regulate lipopolysaccharide-induced T-cell stimulation. Immunol 2005; 114:493-497.

680. Guler ML, Ligons DL, Wang Y, Bianco M, Broman KW, ROSE NR. Two autoimmune diabetes loci influencing T cell apoptosis control susceptibility to experimental autoimmune myocarditis. J Immunol 2005; 174:2167-2173.

681. Sharma RB, Alegria JD, Talor MV, ROSE NR, Caturegli P,Burek CL. Iodine and IFN-γ synergistically enhance intercellular adhesion molecule 1 expression on NOD.H2h4 mouse thyrocytes. J Immunol 2005; 174:7740-7745.

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TEACHING

Advisees

Jobert Barin, Ph.D. Postdoctoral Fellow

Sufey Ong, Ph.D. Candidate

Jillian Legault, Ph.D. Candidate

Lei Wu, Ph.D. Candidate

Classroom Instruction

BLOOMBERG SCHOOL OF PUBLIC HEALTH

Department of Molecular Microbiology and Immunology

- Introduction to Biomedical Sciences
  (Course director)
  (I Lecture) - Immunohematology
- Graduate Immunology: The Immune Response
  (Course director) –Intro to the Course
  1 Lecture - Autoimmune Disease
- Introduction to Immunology
  (I lecture)

SCHOOL OF MEDICINE

Department of Pathology

- Pathophysiology- Medical students Immunology Unit - 2 lectures
  (Lecture – Autoimmune Disease: The Big Picture)
  (Lecture – Autoimmune Disease: Models and Mechanisms)
- Residents
  Molecular Basis of Disease – 2 hrs.
  (Lecture – Autoimmunity)
- Immunology Didactic - 6 lectures
- Pathology of Infection and Immunity – 3 hrs.

RESEARCH GRANT PARTICIPATION

07/01/2004 – 08/31/2011	Genetic mechanisms of autoimmune myocarditis, NIH/NHLBI (NR Rose, PI)
07/01/2010 – 06/30/2012	Natural killer cells as a potential cell-based immunotherapy for myocarditis, American Heart Association (NR Rose, PI)
08/02/2010 – 07/31/2015	Training: Molecular & cellular bases of infectious diseases, NIH/NIAID (Griffin, PI)
04/01/2000 – 08/31/2011	Thyroidal macrophages in autoimmune hypothyroidism and hurthle cells, NIH/NIDDK (NR Rose, Co-Investigator)

ACADEMIC SERVICE

Advisory Board, Center for Alternatives for Animal Testing (1989-)
Clinical Advisory Committee/Department of Pathology, JHU-SM (1995-)
MA/Ph. D. Committee (SOM) (2005-)
Executive Committee, Pathobiology Graduate Program (2005-)
Committee to Review the Department of Environmental Health Sciences (Chairman, 2009-2010)
Member, Maryland Commission for Stem Cell Research

ADDITIONAL INFORMATION

Autoimmune Disease – a major health problem

Autoimmunity is a major cause of human disease. In the United States, at least 15 to 22 million people suffer from an autoimmune disease. About two thirds of them are women. In its modern context, the concept of autoimmunity as a cause of disease was introduced in 1956 by Rose and Witebsky when they discovered that the human disease chronic (Hashimoto's) thyroiditis could be reproduced in experimental animals by immunization with thyroglobulin, a major protein constituent of the thyroid gland. We now know that upwards of 80 human diseases affecting every organ in the body are related to the autoimmunity. The primary goal of our laboratory had been to understand the etiology and pathology of autoimmune disease by studying both human patients and experimental animals. From our own studies and those of others we have learned that autoimmune diseases are caused by the interaction of genetic traits and environmental factors. Currently we are investigating two models of autoimmune disease, thyroiditis and myocarditis.

Role of Cytokines in Thyroiditis

We are currently interested in the role of cytokines in the induction and development of autoimmune thyroiditis and are exploring the role of cytokine production in the initiation and progression of disease in genetically susceptible and non-susceptible strains of mice in an adjuvant-induced disease model. We have shown that the endogenous production of key cytokines, such as IFN-gamma and IL-12, may play a dramatic role in autoimmune pathogenesis. In a strain of mice genetically susceptible to autoimmune thyroiditis, we have found that dietary iodine markedly increases the severity of disease by enhancing to antigenic potency of thyroglobulin.

Cardiac Myosin-Induced Autoimmune Myocarditis

Myocarditis and it sequela, dilated cardiomyopathy, are a major cause of heart failure in young adults. In humans, these diseases usually follow a viral infection.
Cardiac myosin is believed to be a major autoantigen in both human and murine virus-induced myocarditis. In our laboratory, we induce autoimmune myocarditis in genetically predisposed A/J and BALB/c mice by immunization with cardiac myosin. Following the cardiac myosin immunization, mice develop cardiac lesions which, in addition to other infiltrating cells, are composed of abundant eosinophils and scattered giant cells, producing a picture similar to fulminant human myocarditis.
At present, we are investigating the role of these cells as well as the role of antibodies and cytokines, IL-B and IFN-gamma in particular, in regulating the disease process.

KEYWORDS
AUTOIMMUNE DISEASE, Autoimmunity; Cytokines; Thyroiditis; Myocarditis; Coxsackievirus; Myosin; Thyroglobulin

EXHIBIT C

CASE NUMBER:	BC 357194
CASE NAME:	JEANETTE M. PETERMAN
	VS.
	NORTH AMERICAN COMPANY FOR LIFE
LOS ANGELES, CA	MONDAY, DECEMBER 21, 2009
DEPT. NO. 323-CCW	HON. CAROLYN B. KUHL, JUDGE
REPORTER:	VIRGINIA R. ISHIDA, CSR 3784
TIME:	10:18 A.M.
APPEARANCES:	(AS NOTED ON TITLE PAGE.)

THE COURT: SO WE'RE HERE FOR A PRELIMINARY APPROVAL OF THE SETTLEMENT, AND I THINK THE EXCELLENT WORK THAT THE PLAINTIFFS' SIDE HAS DONE IN THIS CASE HAS ABSOLUTELY FOLLOWED THROUGH TO THE SETTLEMENT. WE SEE A LOT OF CYNICAL SETTLEMENTS AROUND HERE, I'M SORRY TO SAY. THIS IS NOT ONE OF THEM. THE THOUGHT AND DETAIL THAT WENT INTO THE PREPARATION OF EVERY ASPECT WAS VERY IMPRESSIVE TO ME.

FOR A MOMENT I WAS WORRIED THAT I WOULDN'T HAVE ANYTHING TO ASK ABOUT OR SAY BUT --

MR. MATTISON: NOW COMES THE BAD NEWS.

THE COURT: -- I OVERCAME THAT.

THERE'S ONLY ONE THING THAT I WANTED CLARIFICATION OF THAT I DIDN'T QUITE UNDERSTAND, AND I THINK IT'S PROBABLY MY FAULT. PAGE 11 OF THE SETTLEMENT, THE ANNUITIZED POLICIES. I READ THE LAST SENTENCE OF THAT SEVERAL TIMES AND IT COMES UP IN THE NOTICE AGAIN. THE "NO ADJUSTMENT" LANGUAGE. COULD YOU EXPLAIN THAT TO ME?

MR. GIANELLI: ARE WE UNDER THE VERY BOTTOM OF PAGE 11,

EXHIBIT D

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY J. IORIO, MAX FREIFIELD, and RUTH SCHEFFER, on behalf of themselves and all others, similarly situated,

Plaintiffs,

v.

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, INC.,

Defendant.

CASE NO. 05-CV-0633-JLS (CAB)

[CLASS ACTION]

FINAL ORDER: (1) APPROVING CLASS ACTION SETTLEMENT, (2) AWARDING CLASS COUNSEL FEES AND EXPENSES, (3) AWARDING CLASS REPRESENTATIVES INCENTIVES, (4) PERMANENTLY ENJOINING PARALLEL PROCEEDINGS, AND (5) DISMISSING ACTION WITH PREJUDICE

Fairness Hearing
Date: March 3, 2011
Time: 1:30 p.m.
Court: Courtroom 6
Hon. Janis L. Sammartino

Following a hearing on July 1, 2010, ("Preliminary Approval Hearing"), this Court entered its Order (1) Preliminarily Approving Class Action Settlement, (2) Directing Distribution of the Class Action Settlement Notice, (3) Setting a Final Approval Hearing, and (4) Preliminarily Enjoining Parallel Proceedings, (Doc. No. 437) ("Preliminary Approval Order"), preliminarily approving the Settlement entered into by the parties in the above-captioned Action, and scheduling a hearing to determine whether the Settlement is fair, reasonable, adequate, in the best interests of the Class, and free from collusion, whether the Settlement should be finally approved by the Court, and to consider a motion by Class Counsel for an award of attorneys' fees, costs and litigation expenses, and incentives for the Class Representatives ("Fairness Hearing").

The Court has considered: (i) the points and authorities submitted in support of the motion for final approval of the Settlement ("Final Approval Motion"); (ii) the points and authorities submitted in support of the motion for an award of attorneys' fees and costs and litigation expenses, and approval of incentive awards for the Class Representatives ("Fee Motion"); (iii) the declarations and exhibits submitted in support of said motions; (iv) Allianz's separate request for final approval of the Settlement and entry of judgment herein, on the terms and conditions set forth in the Settlement; (v) the *Settlement Stipulation* and *Amendment to Settlement Stipulation*; (vi) 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 June 3, 2010 (Doc. Nos. 424-435); (vii) the full and fair notices provided to the Class of the pendency of this class action, the Settlement, the Fairness Hearing, and Class members' rights with respect to this class action lawsuit and Settlement; (viii) the relatively few members of the class certified by the Court who requested exclusion pursuant to their right to do so at the time of the notices of the pendency of this class action; (ix) the existence of only six objections to the Settlement, out of more than 12,000 Class Members, three of which have been withdrawn by the objector; (x) 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; (xi) the oral presentations of Class Counsel and Counsel for Allianz at the Preliminary Approval Hearing and

Fairness Hearing; (xii) this Court's experiences and observations while presiding over this matter, and the Court's file herein; and (xiii) the relevant law.

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

IT IS HEREBY ORDERED AND DECREED, as follows:

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

2. Incorporation of Documents. This Final Approval Order incorporates and makes a part hereof:

A. the Parties' *Settlement Stipulation*, filed as Exhibit 1 to the Declaration of Robert S. Gianelli in support of final settlement approval, on February 10, 2011, ("Gianelli Declaration"), including all exhibits thereto and the Parties' *Amendment to Settlement Stipulation* filed as Exhibit 2 to the Gianelli Declaration including all exhibits thereto, (collectively, "Settlement Stipulation"), which sets forth the terms and provisions of the proposed settlement ("Settlement");

B. the Court's findings and conclusions contained in its Preliminary Approval Order dated July 1, 2010, 2010, (Doc. No. 437), ("Preliminary Approval Order").

3. Jurisdiction. The Court has personal jurisdiction over the Parties, the Class Members (as defined below at paragraph 4 below), including objectors. The Court has subject matter jurisdiction over this action, including, without limitation, jurisdiction to approve the Settlement, to settle and release all claims alleged in the action and all claims released by the Settlement,

including the Released Transactions (as defined in the Settlement Stipulation), to adjudicate any objections submitted to the proposed Settlement (including objections by Class Members or CAFA officials), and to dismiss this Action with prejudice. All Class Members, by failing to exclude themselves according to the Court's prior orders and the terms of the prior notices of the pendency of the Action, have consented to the jurisdiction of this Court for purposes of this Action and the Settlement of this Action.

4. Definition of the Class and Class Members. The "Class," which is comprised of the "Class Members," is defined by the Court's Order Granting Plaintiffs' Motion for Class Certification, dated July 25, 2006 (the "Class Certification Order"), (Doc. No. 113), and is as follows: All persons who purchased one of the following annuities from Allianz Life Insurance Company of North America or LifeUSA Insurance Company while they were California residents, age 65 years or older, and prior to July 26, 2006: Bonus Maxxx (including Accumulator Bonus Maxxx, Bonus Maxxx 12% and Bonus Maxxx 14%), BonusDex, Bonus Maxxx Elite, BonusDex Elite, 10% Bonus PowerDex Elite and MasterDex 10; subject to the following categories of persons which are specifically excluded from the Class:

A. Officers, directors or employees of Allianz; any entity in which Allianz has a controlling interest; the affiliates, legal representatives, attorneys or assigns of Allianz; any federal, state or local governmental entity; and any judge, justice or judicial official presiding over this matter, and the staff and immediate family of any such judge, justice or judicial officer.

B. Any person who acted as an independent insurance Agent licensed by the State of California and appointed by Allianz in the sale of Annuities that are in the Class.

C. Any person who, under the terms of the previous orders and notices to class members in this Action, timely and properly submitted a written request to be excluded from the Class.

All Class Members are subject to this Final Approval Order and the Final Judgment to be entered by the Clerk of Court in accordance herewith.

5. **Findings and Conclusions.** The Court finds that the Settlement was not the product of collusion or any other indicia of unfairness, is fair, reasonable, and adequate to the Class in light of the complexity, expense, and likely duration of the litigation (including appellate proceedings), and the risks involved in establishing liability, damages, and in maintaining the Action as a class action, through trial and appeal. The Court finds that the Settlement represents a fair and complete resolution of all claims asserted in a representative capacity on behalf of the Class and should fully and finally resolve all such claims. In support of these findings and conclusions, the Court further finds:

A. There is no evidence of collusion. The proposed settlement, as set forth in the Settlement Stipulation, resulted from extensive arms-length negotiation. The Action was extensively and vigorously litigated, up to the commencement of trial (as further described below), prior to any settlement. Plaintiffs and Allianz engaged in intensive arms-length negotiations, over the course of multiple mediation sessions before a capable and well-respected mediator, Robert J. Kaplan of Judicate West, with extensive experience in mediating complex consumer and insurance cases. Extensive negotiations thereafter resulted in the proposed settlement reflected by the Settlement Stipulation.

B. The Settlement provides for substantial cash payments and/or other monetary benefits to every Class Member, without requiring any Class Member to affirmatively participate in a claims process (although some of the categories of Settlement Relief, by their nature, are dependent upon the Class Member's future policy choices, and require an affirmative election to annuitize, convert an existing annuitization option to a different annuitization option, and/or request partial withdrawal). No portion of the substantial Settlement Relief would be consumed by attorneys' fees, litigation expenses, notice expenses, settlement administration expenses, or the requested incentive awards for the Named Plaintiffs, since such amounts are all separately provided for. The Court has considered the realistic range of outcomes in this matter, including

the amount Plaintiffs might receive if they prevailed at trial, the strength and weaknesses of the case, the novelty and number of the complex legal issues involved, and the risk that Plaintiffs would receive less than the Settlement Relief or take nothing at trial. The amount offered by the Settlement is fair, reasonable, and adequate in view of these factors.

C. Before reaching the proposed settlement, Plaintiffs and Allianz fully and vigorously litigated their claims and defenses in extensive proceedings before this Court and in the appellate courts. A detailed procedural history of this action is set forth in the Court's docket, and is described in the declaration of Robert S. Gianelli and in Plaintiffs' points and authorities submitted in support of preliminary approval. *Inter alia*, Allianz's challenges to the pleadings, class certification, class decertification, summary judgment, motion to "clarify" the Court's orders regarding class certification, 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, and the Parties' motions *in limine* and other trial motions, were all heard and decided prior to Settlement. Class certification issues were repeatedly submitted to the Ninth Circuit, through three separate Rule 23(f) petitions filed by Allianz. Trial briefs, witness lists, jury instructions and verdict forms, and deposition testimony designations were all filed and exchanged. All final pre-trial conferences were completed. The Parties reported ready for trial on March 29, 2010, while settlement negotiations involving a mediator were ongoing. Based on the Parties' reported progress made in mediation, a brief continuance to April 1, 2010 was granted. On that morning, with jury selection scheduled to commence, the Parties reported their proposed settlement to the Court.

D. Before reaching the proposed settlement, Plaintiffs and Allianz also conducted extensive discovery, fully completing all fact and expert discovery. More than 40 lay and expert depositions, cumulatively hundreds of hours of testimony, were completed. Plaintiffs took the depositions of 16 key Allianz managerial employees. Plaintiffs defended the depositions of the class representatives (each was deposed twice) and the depositions of 10 absent class members. All seven expert depositions were completed by the parties. Written discovery was no less comprehensive. In addition to extensive requests for production of documents at deposition,

Plaintiffs propounded three sets of inspection demands (cumulatively 56 requests), plus pre-trial interrogatories and requests for admission. Plaintiffs also subpoenaed additional documents from selling agents. Properly authenticated and verified policy data and mailing data was produced for every single individual class member and annuity. Voluminous documentary evidence (including 22 separate batches of records produced by Allianz) was produced, reviewed and analyzed. The class representatives submitted to extensive written discovery from Allianz as well. Plaintiffs responded to three rounds of written discovery, including interrogatories, inspection demands, and requests for admission.

E. Based upon this full litigation of relevant legal issues affecting this litigation, extensive investigation of the underlying facts in discovery, and full preparation by the Parties for the trial in the action, Plaintiffs and Allianz were fully informed of the legal bases for the claims and defenses herein, and capable of balancing the risks of continued litigation (both before this Court and on appeal) and the benefits of the proposed settlement.

F. The Class is and was at all times adequately represented by Named Plaintiffs and Class Counsel, including in entering into and implementing the Settlement, and has satisfied the requirements of *Federal Rules of Civil Procedure,* Rule 23, and applicable law. Class Counsel submit that they have fully and competently prosecuted all causes of action, claims, theories of liability, and remedies reasonably available to the Class Members. Further, both Class Counsel and Allianz's Counsel are highly experienced trial lawyers with specialized knowledge in insurance and annuity litigation, and complex class action litigation generally. Class Counsel and Allianz's Counsel are capable of properly assessing the risks, expenses, and duration of continued litigation, including at trial and on appeal. Class Counsel submit that the Settlement is fair, reasonable and adequate for the Class Members. Allianz denies all allegations of wrongdoing and disclaims any liability with respect to any and all claims alleged by Plaintiffs and the Class, including their claims regarding the propriety of class certification, but agrees that the proposed settlement will provide substantial benefits to Class Members. Allianz considers it desirable to resolve the Action to finally put Plaintiffs' and the Class' claims to rest and avoid, among other

things, the risks of continued litigation, the expenditure of time and resources necessary to proceed through trial and any subsequent appeals, and interference with ongoing business operations.

G. The selection and retention of the Settlement Administrator was reasonable and appropriate.

H. As further addressed below, through the mailing of the Notice of Pendency of Class Action and the Settlement Notice, each in the forms and manners ordered by this Court, the Class has received the best practicable notice of the pendency of this class action, of the Settlement, the Fairness Hearing, and of Class Members' rights and options, including their rights to opt out (at the time of the notices of pendency), to object to the settlement, and/or to appear at the Fairness Hearing in support of a properly submitted objection, and of the binding effect of the Orders and Judgment in this Action, whether favorable or unfavorable, on all Class Members. Said notices have fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure and all due process rights under the U.S. Constitution and California Constitution.

I. The response of the Class to this Action, the certification of a class in the Action, and to the Settlement, including Class Counsel's application for an award of attorneys' fees, litigation expenses, and the class representatives' incentives, after full, fair, and effective notice thereof, strongly favors final approval of the Settlement. Out of the 15,626 notices of the pendency of this class action mailed to the members of the class certified by the Court, only 196 valid requests for exclusion (affecting 239 Class Annuities) were received. In response to the more than 16,000 Settlement Notices mailed to the Class, as of February 10, 2011 (five months after the deadline for objecting to the Settlement), just six objections have been received, four of which have been withdrawn by the objectors. These objections have been filed in the Action, considered by the Court, and are fully addressed below.

J. As set forth in the Settlement, Allianz has denied, and continues to deny, any wrongdoing or liability relating to the Action. Allianz does not join in Plaintiffs' Final Approval Motion or Fee Motion or the points and authorities and supporting papers filed in support of said

motions. Notwithstanding, Allianz has separately requested final approval of the Settlement, dismissal of the Action with prejudice, and entry of judgment in the Action, on the terms and conditions set forth in the Settlement.

6. **Prior Notices of Pendency of Class Action and of Right to Opt Out.** The Court hereby finds that the "Notice of Pendency of Class Action" in the Action was mailed to the Class Members, in three stages, on November 13, 2006, December 26, 2006, and October 2, 2007, in the form and manner approved by the Court in its orders of October 11, 2006 (Doc. No.126), December 12, 2006 (Doc. No. 136), and September 21, 2007 (Doc. No. 190). The Court finds that said notices were the best notice practicable, and were reasonably calculated, under the circumstances, to apprise the Class Members of their rights, including their right to opt out of the Class at that juncture, as set forth in the notices, and fully satisfied the requirements of due process and all other applicable provisions of law.

7. **Special Notice of Right to Remain a Class Member or Request Exclusion:** For a small segment of the Class (318 individuals with 353 Class Annuities), identified as potential Class Members only at the settlement stage (and after the foregoing notices of pendency had been mailed), a supplemental notice of their right to opt out was mailed on August 5, 2010. These Class Members were omitted from prior notices due to an administrative error. Said supplemental notice advised these previously omitted Class Members of their right to remain Class Members or to request exclusion from the Class, and the procedures for doing so. Notice was mailed to these previously-omitted Class Members on August 5, 2010, in accordance with the Court's Order dated July 1, 2010, (Doc. No. 438). The Court finds that said notices were the best notice practicable, and were reasonably calculated, under the circumstances, to apprise these previously-omitted Class Members of their right to opt out of the Class at that juncture, as set forth in the notices, and fully satisfied the requirements of due process and all other applicable provisions of law.

8. Requests for Exclusion. After the mailing of the 15,626 notices of the pendency of this class action, and 318 supplemental notices, including specific notice of the Class Members' right (at said times) to exclude themselves from the certified class, timely and valid requests request for exclusion have been received for only 250 Class Annuities (out of more than 16,000). In addition, nine untimely and/or invalid requests for exclusion were received, (six untimely requests and three requests by non-Class Members). A list of those persons and entities who have timely and validly requested exclusion from the Class, according to the terms of the prior notices of the pendency of the class action and the Court's orders regarding said notices, was filed with the Court in support of final settlement approval as Exhibit C to the Settlement Administrator's declaration (**Pl. Ex. 5**, attached to the Gianelli Declaration), and is incorporated herein and made a part hereof. The persons and Annuities on that list are excluded from the class previously-certified by the Court and are therefore not Class Members, shall not be bound by the Settlement or Judgment in the Action, and shall not receive any Settlement Relief.

9. Notice of Settlement. Based upon the declarations of counsel and the Settlement Administrator, the Court finds that the Settlement Notice was mailed on August 5, 2010, in the form and manner agreed to under the Settlement and approved by the Court in the Preliminary Approval Order, (Doc. No. 437). The Settlement Notice provided fair and effective notice to the Class of the Settlement and the terms thereof, including but not limited to those terms related to the Class recovery and the Settlement Relief, the claims and parties released, the binding effect of the Settlement (if approved) on all Class Members, the provisions for attorneys' fees, litigation expenses, administrative expenses, and Named Plaintiffs' incentives, Class Counsel's intention to petition for an award of such fees, expenses, and incentives in the maximum amounts permitted under the Settlement, the date, time, and place of the Final Approval Hearing, and Class members' rights to object to the Settlement and to appear at the Fairness Hearing (on their own or through counsel of their own selection, at their own expense) in support of any timely and validly submitted objection, all as set forth in the Settlement Notice. The Court finds that said form and manner of giving notice, including the steps taken for updating the Class notice mailing database,

researching alternate mailing data, re-mailing any returned notices, and receiving and responding to Class Member inquiries (including the support services to be provided by the Settlement Administrator and Class Counsel), constitute the best notice practicable, and were reasonably calculated, under the circumstances, to apprise the Class Members of the Settlement and Class Members' rights thereunder. The Court further finds that the Class members were afforded a reasonable period of time to exercise such rights.

Based on the foregoing, the prior notices of pendency and the Settlement Notice, in the forms and manners approved by the Court, collectively fully satisfy the requirements of due process, the United States and California Constitutions, the *Federal Rules of Civil Procedure*, and all other applicable provisions of law.

10. Notices Pursuant to 28 U.S.C. § 1715. Based on the requirements of the Settlement Stipulation and the declarations submitted in support of settlement approval, the Court finds that all notices and requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, have been satisfied. Allianz' provision of CAFA Notices is attested to by the Declaration of Roland C. Goss, (Doc. Nos. 471-1 and 471-2). The proposed settlement was filed on June 3, 2010 (Doc. Nos. 425-1, 425-2). On June 11, 2010, Allianz served the notices required by 28 U.S.C. § 1715(b), (*see* Doc. No. 432), which included a copy of the Stipulation of Settlement and other documents required by CAFA. This Court entered an Order granting the motion for preliminary approval of the proposed settlement on July 1, 2010 (Doc. No. 437). On July 6, 2010, Allianz served a supplemental CAFA Notice of the entry of the Preliminary Approval Order, *see* Declaration of Roland C. Goss, (Doc. Nos. 471-1 and 471-2), including notice of the date, time, and place of the Fairness Hearing set forth therein. Supplemental CAFA Notices were served by Allianz when this Court re-noticed the Fairness Hearing. The final supplemental CAFA Notice was served by Allianz on January 18, 2011, providing a copy of the Amendment to the Stipulation of Settlement and the date, time and place of the Fairness Hearing set for March 3, 2011. More than ninety (90) days have passed since the service of the foregoing June 11, 2010 and July 6, 2010 notices. No objection or response to the Settlement has been filed by any federal or state

official, including any recipient of the foregoing notices. No federal or state official, including any recipient of the foregoing notices, has appeared or requested to appear at the Fairness Hearing.

11. Class Member Objections. As set forth in detail *supra*, full and fair notice of Class Members' right to object to the proposed settlement and to appear at the Fairness Hearing in support of such an objection has been provided in the form and manner required by the Settlement Stipulation, the Court's Preliminary Approval Order, the requirements of due process, and any other applicable law. The deadline for objection expired on September 9, 2010. Six objections have been submitted by the Class Members (all of which have been filed with the Court, (directly by the objector (Doc. Nos. 441, 442, 444-446) and/or by class counsel in support of final settlement approval). Four of these objections (Doc. Nos. 442, 444, 445, 446) have been withdrawn by the objector. The remaining two pending objections are hereby overruled, for the reasons set forth in Plaintiffs' motion for final settlement approval and Allianz' response thereto (Doc. No. 471). No person has requested leave to appear at the Fairness Hearing to object to the Settlement.

12. Final Settlement Approval and Binding Affect. The terms and provisions of the Settlement have been entered into in good faith, and are fair, reasonable and adequate as to, and in the best interests of, the Parties and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the California Constitution, and any other applicable law. Therefore, the Settlement is approved. The Settlement, this Final Order and Judgment shall be forever binding on the Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the fullest extent allowed by law.

13. Implementation of Settlement. The parties are directed to implement the Settlement according to its terms and conditions. Allianz is authorized, at its sole option and in its sole discretion, in accordance with the terms of the Settlement Stipulation, and without requiring further approval of the Court, to implement the Settlement before the Final Settlement Date (as defined in the Settlement Stipulation).

14. Appeal after Early Implementation. Any Class Member who failed to timely and validly submit his or her objection to the Settlement, in the manner required by the Settlement, the Settlement Notice, and this Court's Preliminary Approval Order, has waived any objection. Any Class Member seeking to appeal from the Court's rulings must first: (a) move to intervene upon a representation of inadequacy of counsel (if they did not object to the proposed settlement under the terms of the Settlement Stipulation); (b) request a stay of implementation of the Settlement; and (c) post an appropriate bond. Absent satisfaction of all three of these requirements, Allianz is authorized, at its sole option and in its sole discretion, to proceed with the implementation of the Settlement, including before the Final Settlement Date, even if such implementation would moot any appeal.

15. Release. The Release set forth in Section VII of the Settlement Stipulation is expressly incorporated herein in all respects, is effective as of the date of the entry of this Final Order, and forever discharges the Releasees from any claims or liabilities released by the Settlement, including the Released Transactions (as those terms are defined in the Settlement Stipulation). This Release covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or other counsel representing Plaintiffs or Class Members in this Action, the settlement of this Action, the administration of such Settlement, and the Released Transactions, except to the extent otherwise specified in this Order and the Settlement Stipulation.

16. Permanent Injunction. All Class Members are hereby permanently enjoined from filing, commencing, prosecuting, intervening in, maintaining, participating (as class members or otherwise) in, or receiving any 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 Agreement; and from organizing Class Members into a separate class for purposes of pursuing 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 Agreement. Nothing in this paragraph, however, shall require any Class Member to take any affirmative action with regard to other pending class action litigation in which they may be absent class members. Allianz has reserved the right to file motions or to take other actions to enforce the release provisions of the Settlement Stipulation and of this injunction, as it 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.

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

18. Communications with Class Members. Allianz may not be privy to or respond to inquiries from Class Members to Class Counsel regarding the Settlement. However, Allianz has the right to communicate with, and to respond to inquiries directed to it, from Class Members, Annuity Owners, and Annuity Beneficiaries, orally and/or in writing, regarding matters in the normal course of administering the Annuities, including responding to any Complaints received through state agencies, state officials or otherwise, and may do so through any appropriate agents or agencies. If Allianz receives any inquiry relating to the merits of the Settlement or a Class Member's rights or options under the Settlement, from a Class Member or other Person entitled or potentially entitled to Settlement Relief, Allianz shall not respond to the inquiry but shall forward

it to or refer the inquiring party to Class Counsel. However, Allianz may respond to questions from Class Members, Owners and Beneficiaries in the ordinary course of business if such Persons initiate contact with Allianz and ask for information about annuitizations, withdrawals, loans and other Annuity contract terms and benefits.

19. Attorneys' Fees and Litigation Expenses. The Court orders that Class Counsel shall be entitled to an award of reasonable attorneys' fees and litigation expenses incurred in connection with the Action and in reaching this Settlement, to be paid by Allianz at the time and in the manner provided in the Settlement. The Court finds that an award of reasonable attorneys' fees and litigation expenses, as provided for herein, is appropriate based on the contractual agreement to pay such fees and expenses set forth in the Settlement, the private attorney general doctrine and *Code of Civil Procedure* §1021.5, and the Court's equitable powers under California law.

The Court finds to be reasonable, and awards to Class Counsel, attorneys' fees, to be paid as provided in the Settlement, in the total amount of eighteen million dollars and no cents ($18,000,000.00). The Court finds to be reasonable, and awards to Class Counsel, litigation expenses, to be paid as provided in the Settlement, in the total amount of one million three hundred thousand and no cents ($1,300,000.00), subject to any reduction therefrom pursuant to the terms of the *Amendment to Settlement Stipulation*. The Court further orders that in accordance with the Settlement, in addition to the foregoing award of litigation expenses, Allianz shall pay to the Settlement Administrator (and the former administrator, if applicable) all reasonable settlement notice and administration expenses billed thereby in connection with the Settlement, consistent with the contracts that such administrators entered into for the performance of such work and any additional work requested by the Parties jointly.

The award of attorneys' fees and litigation expenses to Class Counsel in this Final Approval Order shall be the sole reimbursement to which Class Counsel is entitled from Allianz or Releasees with respect to the Action, the Settlement, or the administration of the Settlement. Allianz and Releasees shall have no obligation to pay attorneys' fees or costs or litigation expenses

with respect to the Action, the Settlement, or the administration of the Settlement, to any other person, firm, or entity other than as provided in this Final Order. No Named Plaintiff, or any other Class Member, shall have any obligation to pay Class Counsel any further amounts for attorneys' fees, costs, or litigation expenses in the Action. No Named Plaintiff, or any other Class Member, shall be entitled to seek or receive any further payment of attorneys' fees or litigation expenses in connection with the Action from Allianz or any Releasee.

Allianz does not join in Class Counsel's motion for an award of attorneys' fees and litigation expenses. Allianz does not join in requesting and does not necessarily agree with any of the related findings requested by Class Counsel and made by the Court in connection with Class Counsel's motion for an award of attorneys' fees and litigation expenses, including the findings set forth in this paragraph 19 of the Final Order. Notwithstanding, pursuant to the Settlement, Allianz does not oppose an award of attorneys' fees and litigation expenses as provided for by Section VIII of the Settlement.

In support of the foregoing attorneys' fee and litigation expense award, the Court finds as follows:

A. The following hourly billing rates are reasonable in light of the complexity of this litigation, the work performed, Class Counsels' reputation, experience, and competence, and the prevailing billing rates for comparably complex work by comparably qualified counsel in the relevant market:

1. For Robert S. Gianelli, $750 per hour;
2. For Raymond E. Mattison, $750 per hour;
3. For Don A. Ernst, $750 per hour;
4. For Ronald A. Marron, $595 per hour;
5. For Dean Goetz, $595 per hour;
6. For Sherril Nell Babcock, $575 per hour;
7. For Christopher D. Edgington, $575 per hour;
8. For Jully C. Pae, $500 per hour;
9. For Richard R. Fruto, $450 per hour;

10. For Joanne Victor, $450 per hour;

11. For Scott Juretic, $410 per hour;

12. For future attorney time in connection with settlement administration, $410 per hour, as further described below.

The reasonableness of these billing rates is supported by the declarations of these attorneys, the Declaration of Gary Greenfield, by Class Counsel's prior attorneys' fee awards in comparably complex class action insurance litigation in the relevant legal market, by prior attorneys' fee awards in this and other judicial districts for comparably qualified counsel in comparably complex work, and by published industry billing rates, all as set forth in Class Counsel's motion for an award of attorneys' fees, and the supporting declarations and exhibits.

With respect to future attorney time in connection with settlement administration, Class Counsel have provided an estimate in their submitted declarations, based upon administration of past, comparable class action settlements, of the attorney time which will be incurred for this purpose. The Court approves the requested $410 per hour billing rate for such attorney settlement administration work.

B. The $195 hourly billing rate for work performed by certified paralegals is reasonable in light of the experience and qualifications of these non-attorney billers. The reasonableness of this billing rate is supported by a recent fee awards for work performed by these paralegals in the relevant market, in comparable litigation, and the submitted declarations of counsel. Paralegal time, which is normally billed to fee-paying clients, is properly included and reimbursable under a lodestar analysis. *See, e.g., United Steelworkers v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F. 2d 403, 407-08.

C. The time declared to have been expended by Class Counsel and Class Counsel's paralegals, as set forth in Class Counsel's motion for an award of attorneys' fees and supporting declarations, is reasonable in amount in view of the complexity and subject matter of this litigation, and the skill and diligence with which it has been prosecuted and defended, and the quality of the result obtained for the Class.

D. The reasonableness of the fee awarded by this Final Approval Order is supported by a "multiplier" analysis, the second requisite step in a lodestar analysis. A fee multiplier is properly applied if supported by appropriate factors, including the extent of the risks of the litigation and the purely contingent nature of the fee award (factors which are not subsumed in Class Counsel's lodestar amount). Here, Class Counsel consisted of two small firms, Gianelli & Morris and Ernst and Mattison (now Ernst Law Group and Mattison Law Firm), and a sole practitioner, the Law Offices of Ronald A. Marron. Cumulatively, the eleven lawyers working on the file expended in excess of 15,200 hours over a five and one-half year period, plus more than 1,800 paralegal/law clerk hours, and more than $1.49 million in out-of-pocket litigation expenses, a very substantial commitment given the small size of these offices. Class Counsel's ability to recover fees and expenses in this action was purely contingent upon a successful outcome or settlement. The contingency risks presented by this litigation were significant, as analyzed in the preliminary and final approval motions and supporting declarations. *Inter alia*, it is significant that a related nationwide class action (from which the Class here was carved out), asserting certain similar claims and theories, was defeated by Allianz in a jury trial. *Mooney v. Allianz Life Insurance Company of North America*, D. Minn. Case No. 06-545 ADM/FLN. The *Mooney* jury verdict has been reduced to judgment, that judgment has become final, and the *Mooney* class recovered nothing. Risks relating to Class certification are also significant. In various procedural postures, Allianz vigorously challenged class certification throughout this lawsuit, both before this Court (opposing certification, seeking decertification, seeking "clarification" regarding the certified claims, seeking to modify the class definition, and seeking to decertify plaintiffs' punitive damages claims) and in three separate Rule 23(f) petitions for permission to appeal in the Ninth Circuit. Although this Court rejected these challenges to class certification, the Ninth Circuit has not considered any of Allianz' challenges on their merits to date. Despite this risk, plaintiffs litigated this action up to only hours before the commencement of jury selection, when the Settlement was reached.

In view of the foregoing contingency/litigation risk, factors which are not subsumed in Class Counsel's lodestar, the Court finds that application of the requested fee multiplier of 1.70

(which supports an award of attorneys' fees in the full unopposed amount of $18.0 million dollars) is appropriate. Multipliers ranging from 2-4 (and higher) have been approved in comparably complex litigation, under such circumstances. *See, e.g., Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988); *Declaration of Geoffrey P. Miller*, 30-35, (*Gianelli Declaration*, **Pl. Ex. 17**). The requested fee multiplier falls on the low end of the reasonable range, based on typical multipliers approved in comparable litigation, as reflected in the foregoing cases and in the *Declaration of Geoffrey P. Miller*, ¶¶30-35, (*Gianelli Declaration*, **Pl. Ex. 17**). The Court approves the requested fee multiplier of 1.70, (thereby limiting the awarded fee to the unopposed amount of $18.0 million).

E. Based upon the valuation of settlement benefits set forth in the *Declaration of Vincent P. Gallagher, Ph.D.*, (*Gianelli Declaration*, **Pl. Ex. 15**), the amount of attorneys' fees approved here by the Court (based on the foregoing lodestar/multiplier), in the amount of $18.0 million, represents 16.48% of the Settlement's "full utilization value" (*i.e.*, the value of the benefits made available to the Class) and 29.95% of the Settlement's "projected utilization value" midpoint, (*i.e.*, the midpoint of the range of the projected value of the benefits which will be received by the Class). The Ninth Circuit has determined that 25% of the recovery is a "benchmark" award for class action cases, and recognized that percentage fees in the range of 20-30% are generally appropriate. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1029 (9th Cir. 1998); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990). The fee award sought in the present case is reasonable when judged by this standard. The projected utilization value midpoint (29.95%) falls within this generally appropriate range, and the full utilization value (16.48%) falls well below the *Hanlon* benchmark. A fee award at the higher end of the accepted range, under *Hanlon*, is justified here, in part, by the same contingency/litigation risk discussed above. The percentage of recovery here, both with respect to full utilization value and the projected utilization value midpoint, is reasonable in light of prior fee awards (measured as a percentage of recovery) in comparable class action litigation, as set forth in the *Declaration of Geoffrey P. Miller*, ¶¶36-57, (*Gianelli Declaration*, **Pl. Ex. 17**).

F. Out of approximately 12,000 Class members and more than 16,000 Settlement Notices mailed, including explicit notice of the fees and expenses requested here, there is only a single complaint regarding attorneys' fees, (Doc. No. 441). The stated objection ("[a]s usual, the only party benefiting from a class action lawsuit is the attorneys") is refuted by the foregoing percentage of recovery analysis, and the valuation of the direct class relief performed by Dr. Gallagher. Plaintiffs' contend that this complaint is not a valid objection, since there is no stated basis for the objection. Notwithstanding, this isolated objection to the attorneys' fee award is overruled.

G. Based on the declarations of Class Counsel submitted in support of the Fee Motion, the Court finds that Class Counsel have incurred out-of-pocket litigation expenses (paid and un-reimbursed, or currently due) in an amount more than $1.49 million, that said expenses were of a nature typically billed to fee-paying clients, and that said expenses were reasonable and necessary to the prosecution of this action in light of the extent of proceedings both on and off the Court's docket, the complexity of the legal and factual issues in the case, the amount at stake in this litigation, and the vigorous efforts of counsel for all parties herein. The Court finds these expenses are reasonable in this case.

H. The proposed division of awarded attorneys' fees among Class Counsel, as set forth in the *Client Consent for Amendment to Co-Counsel Association and Fee Distribution Agreement*, filed by Class Counsel in support of preliminary settlement approval as Exhibit 12 to the Declaration of Christopher D. Edgington, and as set forth by the declarations of Mr. Mattison and Mr. Ernst in support of final approval, is reasonable and is hereby approved. The attorneys' fees awarded by this Final Approval Order shall be divided among Class Counsel according to said approved division.

20. Named Plaintiffs' Incentives. The hereby Court approves incentives for each of the Named Plaintiffs, Anthony J. Iorio, Ruth Scheffer, and Max Freifield, to be paid by Allianz at the time and in the manner provided in the Settlement. The amount of said incentive shall be the full unopposed amount provided for by the Settlement, *to wit*: twenty-five thousand dollars and no

cents ($25,000.00), for each Named Plaintiff. To the extent that any Named Plaintiff may become deceased prior to payment of these incentives, the Parties shall cooperate to ensure that any sums so awarded are distributed to his or her heirs.

Based on the declarations of Class Counsel and the Named Plaintiffs submitted in support of final settlement approval, Named Plaintiffs have actively participated and assisted Class Counsel in this litigation for the substantial benefit of the Class despite facing significant personal limitations. Each has waived their right to pursue potential individual claims or relief in the Action. Apart from these incentives, the Named Plaintiffs will receive no settlement payments or benefits of any nature other than their share of the Settlement Relief available to the Class generally. These incentives are approved to compensate the Named Plaintiffs for the burdens of their active involvement in this litigation and their commitment and effort on behalf of the Class.

The amount of these incentives shall not affect or reduce the Settlement Relief generally payable to any Class Member, including to Named Plaintiffs, under the Settlement, and shall not affect or reduce the amount of attorneys' fees and litigation expenses payable to Class Counsel under the Settlement and this Final Approval Order.

21. Modification of Settlement Stipulation. The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Stipulation, if such changes are consistent with this Order and do not limit the rights of Class Members or any other Person entitled to Settlement Relief under this Agreement.

22. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order. Without in any way affecting the finality of this Final Order or the Final Judgment, for the benefit of the Class and Allianz, and to protect this Court's jurisdiction, the Court expressly retains continuing jurisdiction as to all matters relating to the Settlement, and the administration, consummation, enforcement, and interpretation of the Settlement Stipulation and of this Final Order, and for any other necessary and appropriate purpose.

Without limiting the foregoing, the Court will retain continuing jurisdiction over all aspects of this case including but not limited to any modification, interpretation, administration, implementation, effectuation, and enforcement of the Settlement, the administration of the Settlement and Settlement Relief, including notices, payments, and benefits thereunder, the Settlement Notice and sufficiency thereof, any objection to the Settlement, any request for exclusion from the certified class, the adequacy of representation by Class Counsel and/or the Class Representatives, the amount of attorneys' fees and litigation expenses to be awarded Class Counsel, the amount of any incentives to be paid to the Class Representatives, any claim by any person or entity relating to the representation of the Class by Class Counsel, to enforce the release and injunction provisions of the Settlement and of this Order, any remand after appeal or denial of any appellate challenge, any collateral challenge made regarding any matter related to this litigation or this Settlement or the conduct of any party or counsel relating to this litigation or this Settlement, and all other issues related to this Action and Settlement.

Further, without limiting the foregoing, the Court retains continuing jurisdiction to:

A. enforce the terms and conditions of the Settlement Stipulation and resolve any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Stipulation, this Final Order and Judgment (including, without limitation, determining whether a person is or is not a Class Member, and enforcing the permanent injunction that is a part of this Final Order and Judgment), and determining whether claims or causes of action allegedly related to this case are barred by this Final Order and Judgment;

B. enter such additional orders as may be necessary or appropriate to protect or effectuate this Final Order and Judgment, or to ensure the fair and orderly administration of the Settlement; and

C. enter any other necessary or appropriate orders to protect and effectuate the Court's retention of continuing jurisdiction; provided however, nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under the Settlement Stipulation.

23. No Admissions. This Final Order and the Settlement Stipulation, all provisions herein or therein, all other documents referred to herein or therein, any actions taken to carry out this Final

Order and Judgment and the Settlement, and any negotiations, statements, or proceedings relating to them in any shall not be construed as, offered as, received as, used as, or deemed to be evidence of any kind, including in this Action, any other action, or in any other judicial, administrative, regulatory, or other proceeding, except for purposes of obtaining approval of the Settlement and the entry of judgment in the Action, enforcement or implementation of the Settlement, or to support any defense by Allianz based on principles of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, setoff, or any other theory of claim preclusion, issue preclusion, release, injunction, or similar defense or counterclaim to the extent allowed by law. Without limiting the foregoing, neither the Settlement Stipulation nor any related negotiations, statements, mediation positions, notes, drafts, outlines, memoranda of understanding, or Court filings or proceedings relating to the Settlement or Settlement approval, shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession by any person, including but not limited to, of any liability or wrongdoing whatsoever on the part of Allianz, to Plaintiffs, or the Class, or as a waiver by Allianz, of any applicable defense, including without limitation any applicable statute of limitation.

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

25. Mattison Law Firm Appointed as Co-Class Counsel. The law firm of Ernst and Mattison, previously appointed by this Court as co-Class Counsel in the Action, has changed names to Ernst Law Group, and one of the class attorneys of record, Mr. Mattison, has formed a new firm, Mattison Law Group. Notice of the prior firm's name change, and association of the Mattison Law Firm in the Action, have been filed with the Court. Based on the Court's prior findings at the time of the certification of the Class, in support of the appointment of Mr. Mattison

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and Ernst and Mattison as co-class counsel, the Court now hereby appoints the Mattison Law Firm as co-class counsel. Allianz has not objected to the appointment of the Mattison Law Firm as co-class counsel.

26. Pursuant to the Settlement, the proposed *Fourth Amended Complaint*, Exhibit A to the Settlement, previously served and filed as Plaintiffs' Exhibit 1 in support of final settlement approval, (Doc. No. 468-2, pp. 106-114), is deemed to be signed by Class Counsel and filed as of the date of this order, superseding any previous complaint in the Action.

IT IS SO ORDERED.

Dated: March 3, 2011

Janis L. Sammartino
Honorable Janis L. Sammartino
United States District Judge

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Attorneys for Defendants
BOIRON, INC. and BOIRON USA, INC.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, on behalf of themselves, all others similarly situated, and the general public, Plaintiff, v. BOIRON, INC. and BOIRON USA, INC., Defendants. AND ALL RELATED ACTIONS	Case No. 3:11-cv-2039-JAH-NLS **DECLARATION OF CHRISTINA G. SARCHIO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT** Date: April 30, 2012 Time: 2:30 p.m. Judge: Hon. John A. Houston Courtroom: [xx]

I, Christina G. Sarchio, under 28 U.S.C. § 1746, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia, New York, and New Jersey, and am admitted *pro hac vice* before this Court. I am counsel for Defendants Boiron, Inc. and Boiron USA, Inc. (collectively "Boiron") in the above-captioned action. I have

personal knowledge of the facts stated herein. I affirm that the facts stated herein are true and correct and, if called as a witness, I could and would testify competently thereto.

2. In September 2011, the parties commenced settlement negotiations through Judicate West mediator, retired Judge Leo S. Papas. After seven sessions with Judge Papas and numerous discussions, on November 16, 2011, the parties reached a tentative agreement generally outlining the terms of the Settlement.

3. Negotiations, however, continued on the more precise terms of settlement. To date, the parties have participated in six joint conferences and seven separate mediation caucuses with Judge Papas. Negotiations between the parties, both with and without Judge Papas, extended over five months.

4. On January 23, 2012, Plaintiffs and Boiron entered a Stipulation of Settlement, although continued to negotiate certain terms of the settlement, such as the disclaimer language.

5. On February 27, 2012, Plaintiffs and Boiron finalized the terms of settlement and entered into the Settlement Agreement. The Settlement Agreement is the product of vigorous and competent representation of the parties in this matter; early contact between counsel for the parties to commence a dialog about the merits and risks of the claims and defenses; substantive negotiations throughout the pendency of the litigation; and the assistance and expertise of an independent, impartial mediator, the Honorable Leo S. Papas (Ret.).

6. I have more than 16 years experience as an attorney, and have defended multiple consumer class actions cases for a number of national and multinational companies. As a result, through the course of this litigation and the extensive settlement negotiations between the parties, I have gained a clear view of the complex nature of this action and the likely risks and costs associated with litigating this matter through trial and inevitable appeals.

7. In my experienced judgment, the proposed settlement is fair, adequate, and reasonable to Boiron. Indeed, despite the costs to Boiron of the monetary and injunctive relief set forth in the proposed settlement, and Boiron's unwavering belief that it would ultimately be victorious in this action at or before trial, the Settlement Agreement substantially reduces the

uncertainty, expenditure of resources, costs and risks Boiron would face if this litigation were to continue, including, without limitation, those that would result from summary judgment briefing, possible trial, and appeals.

8. Concessions negotiated by Plaintiffs' counsel, including the extensive monetary relief to an unlimited number of purchasers and the injunctive changes to the Products' packaging and website, also militate in favor of approval of the settlement. Indeed, in my opinion, the Settlement Agreement is fair, reasonable and adequate with respect to Plaintiffs and any putative class because, without the agreement, I believe that Boiron would ultimately be wholly successful in this action at or before trial resulting in Plaintiffs not obtaining any relief.

9. In sum, based on the above considerations, in my experienced judgment, the proposed settlement is fair, reasonable and adequate to all parties.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. This declaration was executed on March 6, 2012, in Washington, District of Columbia.

Christina G. Sarchio

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, on behalf of themselves, all others similarly situated, and the general public,

Plaintiffs,

vs.

BOIRON, INC. and BOIRON USA, INC.,

Defendants.

AND ALL RELATED ACTIONS

Case No. 3:11-cv-2039-JAH-NLS

Honorable John A. Houston

DECLARATION OF MARK LAND IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER (1) GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, (2) CERTIFYING SETTLEMENT CLASS, (3) APPOINTING CLASS REPRESENTATIVE AND LEAD CLASS COUNSEL, (4) APPROVING NOTICE PLAN, AND (5) SETTING FINAL APPROVAL HEARING

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DECLARATION OF MARK LAND

I, Mark Land, under 28 U.S.C. § 1746, declare as follows:

1. I am over the age of eighteen and am competent to make this declaration. I have personal knowledge of the facts stated herein, as a result of my employment with Boiron, Inc. and Boiron USA, Inc. (collectively "Boiron"). I affirm that the facts stated are true and correct and, if called as a witness, I could and would testify competently thereto.

2. Boiron is a homeopathic company that offers more than 800 homeopathic medicines that are approved by the Homeopathic Pharmacopoeia of the United States (HPUS). Boiron has sold its Products, including over twenty of its top selling products such as Oscillococcinum, Arnicare, Quietude, Coldcalm, Camilia and Chestal to specialty natural food stores, practicing homeopaths and mass market retailers throughout the United States for more than thirty years.

3. I currently serve as Vice President of Operations and Regulatory Affairs of Boiron. I have been employed by Boiron (or one of its predecessors-in-interest) since 1980. My duties include planning and management of daily operations, including supply chain, facilities, distribution, product quality, and regulatory compliance.

4. All of the statements in this declaration are based upon my personal knowledge, review of corporate and business records, and facts supplied by colleagues.

5. Boiron does not sell its products directly to American consumers but only to retailers, including traditional "brick and mortar" stores and online sellers. As such, Boiron does not maintain a list of retail consumers of Boiron's products.

6. From January 1, 2007 to September 30, 2011, Boiron sold approximately 12,000,654 units of its products to mass market retailers

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generating approximately $65,575,194 in revenues. Boiron's average annual sales to mass market retailers from January 1, 2007 to September 30, 2011, approximated $13,114,039.

7. As to each of the products manufactured by Boiron, Boiron makes uniform representations on the label and/or in advertising throughout the United States and does not differentiate for any specific market or region.

8. To modify the labels and/or packaging on Boiron products pursuant to the Settlement Agreement, Boiron could incur costs of up to $7 million.

9. I declare under the penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. This declaration was executed on March 5, 2012 in Philadelphia, Pennsylvania.

Respectfully submitted,

Mark Land

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Attorneys for Plaintiff Salvatore Gallucci and the Proposed Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BOIRON, INC.; and BOIRON USA, INC.,

Defendants.

CASE NO. 11-CV-2039 JAH NLS
CLASS ACTION

CERTIFICATE OF SERVICE

Judge: Hon. John A. Houston

AND ALL RELATED ACTIONS

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3636 Fourth Avenue, Ste. 202, San Diego, CA 92103.

On March 6, 2012, I served the following document(s):

1. **Notice of Motion and Motion for Preliminary Approval of Settlement**
2. **Memorandum of Points and Authorities in Support of Motion for Preliminary Approval**
3. **Declaration of Ronald A. Marron in Support of Motion for Preliminary Approval**
4. **Declaration of Mark Land in Support of Motion for Preliminary Approval**
5. **Declaration of Christina Sarchio in Support of Motion for Preliminary Approval**

by notice of Electronic Filing, which is a notice automatically generated by the CM/ECF system at the time the documents listed above were filed with this Court, to lead counsel listed by CM/ECF as "ATTORNEY TO BE NOTICED."

I declare under penalty of perjury under the laws of the United States of America that I am a member of the Bar of this Court and that the foregoing is true and correct.

Executed on March 6, 2012, in San Diego, California.

/s/ Ronald A. Marron

Ronald A. Marron

RONALD A. MARRON, ESQ. [SBN 175650]
MAGGIE K. REALIN, ESQ. [SBN 263639]
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALVATORE GALLUCCI, AMY ARONICA, KIM JONES, DORIS PETTY, and JEANNE PRINZIVALLI, individually and on behalf of all others similarly situated, Plaintiffs, v. BOIRON, INC.; and BOIRON USA, INC., Defendants. AND ALL RELATED ACTIONS	Case No.: 11-CV-02039-JAH-NLS **CERTIFICATE OF SERVICE**

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3636 Fourth Avenue, Ste. 202, San Diego, CA 92103.

On March 6, 2012, I served the following documents:

ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS, PROVIDING FOR NOTICE AND SCHEDULING ORDER

By e-mail on the following parties:

J. Thomas Gilbert (State Bar No. 183362) **Patton Boggs LLP** 2000 McKinney Avenue Suite 1700 Dallas, Texas 75201 214.758.1500- Telephone 214.758.1550- Facsimile tgilbert@pattonboggs.com Christina Guerola Sarchio **Patton Boggs, LLP** 2550 M Street, NW Washington, DC 20037-1350 Direct: (202) 457-7527 Fax: (202) 457-6315 Main: (202) 457-6000 WILSON TURNER KOSMO LLP Vickie E. Turner Sotera L. Anderson 550 West C Street, Suite 1050 San Diego, California 92101 Telephone: (619) 236-9600 E-mail: vturner@wilsonturnerkosmo.com E-mail: sanderson@wilsonturnerkosmo.com	Attorneys for Defendants, Boiron, Inc. and Boiron, USA, Inc.
Scott Ferrell **Newport Trial Group** 895 Dove Street, Suite 425 Newport Beach, CA 92660 Phone: 949-706-6464	Attorneys for Plaintiff Henry Gonzales related case *Gonzales v. Boiron*, No. 11cv2066-JAH-NLS

Fax: 949-706-6469 Daniel L. Warshaw **Pearson, Simon, Warshaw & Penny LLP** 15165 Ventura Blvd., Suite 400 Sherman Oaks, CA 91403 Phone: (818) 788-8300 Fax: (818) 788-8104	
THE WESTON FIRM Greg Weston, Esq. Jack Fitzgerald, Esq. Courtland Creekmore, Esq. 1405 Morena Blvd., Suite 201 San Diego, CA 92110 greg@westonfirm.com jack@westonfirm.com courtland@westonfirm.com **Co-Counsel for Plaintiffs and the Proposed Class**	

[X] I declare under penalty of perjury under the laws of the United States of America that I am employed in the office of a member of the bar of this Court, at whose direction the service was made, and that the foregoing is true and correct.

Executed on March 6, 2012, at San Diego, CA.

Kristen Capella