

AMENDED SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release is entered into between Named Plaintiffs Luis Lerma, Nick Pearson and Muriel Jayson and Defendants Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc. in order to effect a full and final settlement and dismissal with prejudice of all claims against Schiff as alleged in the cases captioned *Lerma v. Schiff Nutrition International, Inc., et al.*, No. 3:11-cv-01056-CAB-MDD (S.D. Cal. filed May 13, 2011), and *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed Feb. 20, 2013), on the terms set forth below and to the full extent reflected herein, subject to approval of the Court. Capitalized terms shall have the meaning ascribed to them in Section II of this Settlement Agreement.

I. RECITALS

A. Schiff, along with certain affiliated entities, manufactures and sells joint health products, which are sold both under various Schiff brand names as well as under the various brand names of Retailers not affiliated with Schiff.

B. On May 13, 2011, a putative class action complaint relating to the Covered Products was filed against Schiff Nutrition International, Inc. in the United States District Court for the Southern District of California, namely, *Lerma v. Schiff Nutrition International, Inc.* On September 16, 2011, Schiff Nutrition Group, Inc. was added as a Defendant, and on March 12, 2012, Nick Pearson was added as a Plaintiff.

C. Subsequently, on February 20, 2013, another putative class action complaint relating to the Covered Products was filed against Schiff in the United States District Court for the Southern District of Florida, namely, *Jayson v. Schiff Nutrition International, Inc., et al.*

D. In the Litigation, the Named Plaintiffs allege, *inter alia*, that certain claims made on the labeling and packaging of the Covered Products are false, deceptive and/or misleading

and that the labeling and packaging failed to warn that the Covered Products can cause potentially harmful side effects. Based upon these and other allegations, they assert claims under, *inter alia*, various state consumer protection, unfair competition, breach of warranty and personal injury/negligence laws.

E. Schiff denies all material allegations in the Litigation and has asserted a variety of affirmative defenses. Schiff specifically denies that it has engaged in any wrongdoing whatsoever, that it has any liability in connection with the claims asserted or that could have been asserted in the Litigation and further denies that the claims in the Litigation can properly be maintained as a class action, other than for the purposes of settlement.

F. The Named Plaintiffs and Settlement Class Counsel have conducted an extensive examination of the facts and documents relating to the Litigation, including documents produced by Schiff and responses to written discovery requests. The Parties have also exchanged initial and rebuttal written reports of experts related to the potential liability and damages.

G. This Settlement was reached after an early neutral evaluation conference with Magistrate Judge Mitchell Dembin, followed by five separate protracted, arms'-length mediation sessions conducted over a year, before a neutral mediator, the Honorable Howard B. Weiner, Justice of the California Court of Appeals, Retired.

H. The Litigation, if it were to continue, would likely result in expensive and protracted litigation, appeals and continued uncertainty as to outcome.

I. The Named Plaintiffs and Settlement Class Counsel have concluded that this Settlement provides substantial benefits to the Named Plaintiffs and to the Settlement Class and resolves all issues that were or could have been raised in the Litigation without prolonged litigation and the risks and uncertainties inherent in litigation.

J. The Named Plaintiffs and Settlement Class Counsel have concluded that this Settlement is fair, reasonable, adequate and in the best interest of the Settlement Class.

K. Schiff continues to deny each and every allegation of wrongdoing, liability and damages that were or could have been asserted in the Litigation and further continues to deny that the claims in the Litigation would be appropriate for class treatment if the Litigation were to proceed through litigation and trial. Nonetheless, without admitting or conceding any wrongdoing, liability or damages or the appropriateness of the Named Plaintiffs' claims or similar claims for class treatment, Schiff consents to the Settlement solely to avoid the expense, inconvenience and inherent risk of litigation as well as the concomitant disruption of its business operations.

L. Nothing in this Settlement or Settlement Agreement shall be construed as an admission or concession by Schiff of the truth of any allegations raised in the Litigation or of any fault, wrongdoing, liability or damages of any kind.

M. This Settlement Agreement, its terms, documents related to it and the negotiations or proceedings connected with it shall not be offered or received into evidence in the Litigation or in any other action or proceeding to establish any liability or admission by Schiff.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and general releases set forth below and subject to preliminary and final approval of the Court, the Parties hereby agree as follows:

II. DEFINITIONS

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

A. "Adequate Proof of Purchase" means: (i) cash register receipt reflecting the purchase of a Covered Product; (ii) intact box or bottle for a Covered Product that displays a

readable UPC code and a readable lot number; or (iii) similar documentation that identifies the Covered Product and date and location of purchase.

B. “Attorneys’ Fee Award” means the Court-approved award to Settlement Class Counsel as defined in Section VI Paragraph A.

C. “Cash Award” means the cash compensation that Settlement Class Members who submit Valid Claims shall be entitled to receive as detailed in Section IV Paragraphs A-B.

D. “Claim Deadline” means one hundred twenty (120) Days after the Preliminary Approval Date, which date will be specified in the Class Notice.

E. “Claim Form” means the claim form that Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein, which document shall be substantially in the form of Exhibit A hereto. The Claim Form requires a sworn signature under penalty of perjury, but does not require a notarization. Additional requirements relating to the completion of Claim Forms are set forth in Section V. Claim Forms will be processed after the Effective Date.

F. “Class Notice” means the Court-approved forms of notice to the Settlement Class, which will notify members of the Settlement Class of entry of the Preliminary Approval Order and the scheduling of the Fairness Hearing, among other things.

G. “Court” means the United States District Court for the Southern District of California.

H. “Covered Products” means the joint health products manufactured by Schiff and/or its affiliates as identified in Exhibit B – List of Covered Products.

I. “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event or default from

which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal or State of California legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State of California legal holiday.

J. “Effective Date” means the date defined in Section XI.

K. “Fairness Hearing” means the hearing at which the Court orders final approval of the Settlement.

L. “Final” means final as defined in Section XI Paragraph B.

M. “Final Order and Judgment” means the order defined in Section IX. Any reduction in the Attorneys’ Fee Award or Incentive Award shall not be considered a material alteration.

N. “Incentive Award” means the Court-approved award as defined in Section VI Paragraph B.

O. “Litigation” means the actions captioned *Luis Lerma v. Schiff Nutrition International, Inc. et al.*, No. 3:11-cv-01056-CAB-MDD (S.D. Cal. filed May 13, 2011) and *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed on Feb. 20, 2013).

P. “Named Plaintiffs” means Luis Lerma, Nick Pearson and Muriel Jayson. Individually, Mr. Lerma, Mr. Pearson and Ms. Jayson are each considered a “Named Plaintiff.”

Q. “Notice And Administration Costs” means any and all reasonable and authorized costs and expenses of notice and administration relating to this Settlement.

R. “Notice Date” means the first day on which the Settlement Administrator begins disseminating the Class Notice, and shall be no later than sixty (60) Days after the Preliminary Approval Date.

S. “Opt-Out” shall refer to a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section VII Paragraph D. An Opt-Out may rescind a request for exclusion by submitting a Claim Form to the Settlement Administrator to obtain benefits of the Settlement.

T. “Opt-Out List” shall refer to the list compiled by the Settlement Administrator pursuant to Section VII Paragraph G, identifying those who properly and timely submit a request for exclusion from the Settlement Class and become Opt-Outs.

U. “Opt-Out and Objection Date” means the date by which a request for exclusion must be filed with the Settlement Administrator in order for a member of the Settlement Class to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement. The Opt-Out and Objection Date shall be no later than one hundred and twenty (120) Days after the Preliminary Approval Date.

V. “Parties” means Named Plaintiffs and Settlement Class Members together with Schiff. Named Plaintiffs and Settlement Class Members shall be collectively referred to as one “Party,” with Schiff as the other “Party.”

W. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives and assignees.

X. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court and received by counsel for the Parties.

Y. “Preliminary Approval Order” means the order defined in Section VIII and attached hereto without material alteration as Exhibit C.

Z. “Release” means the release and discharge, as of the Effective Date, by the Named Plaintiffs and all Settlement Class Members (and their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors) who have not excluded themselves from the Settlement Class of the Released Persons and shall include the agreement and commitment by the Named Plaintiffs and all Settlement Class Members to not now or hereafter initiate, maintain or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal and/or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Litigation or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body arising out of or related to the Released Claims.

AA. “Released Claims” means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations,

fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, violation of elder abuse and dependent adult civil protection acts, unfair business or trade practices, false advertising, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys' fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state or local law, which the Named Plaintiffs and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences on or prior to the Preliminary Approval Date arising from or relating to the Covered Products, including, without limitation, the causes of action and allegations made by the Named Plaintiffs in the Litigation as well as claims and allegations that the Released Persons made false and deceptive representations and warranties and/or omitted material information about the Covered Products, including, without limitation, causes of action for violation of the Consumers Legal Remedies Act, violation of the California Business & Professions Code, violation of the Illinois Consumer Fraud Act, violation of the Florida Deceptive and Unfair Trade Practices Act, and similar claims under the consumer protection and/or deceptive trade practices acts and common law of the other states and the District of Columbia as well as for negligence and breaches of express warranties.

BB. "Released Persons" means: (i) Schiff; (ii) any Reckitt Benckiser global corporate entity, including but not limited to Reckitt Benckiser Pharmaceuticals, Inc., Reckitt Benckiser (North America) LLC, Reckitt Benckiser LLC, Airborne, Inc., LRC North America, Inc., Reckitt Benckiser Investments (2012) LLC, Reckitt Benckiser USA (2012) LLC, Reckitt Benckiser US (2013) LLC, Reckitt Benckiser USA General Partnership, SSL Holdings (USA) Inc., The French's Food Company LLC; (iii) any Person or entity in the chain of distribution of the

Covered Products, including but not limited to (a) raw material suppliers (including but not limited to Unigen, Inc. and VDF FutureCeuticals Inc.), (b) distributors and (c) Retailers, (iv) any Person or entity that manufactured or sold the Covered Products from which Schiff or its affiliates acquired assets or contracts, (v) the affiliates of any of the foregoing Persons or entities described in (i) – (iv) of this Paragraph and (vi) each of the respective past, present and future direct and indirect predecessors, successors, assigns, parents, subsidiaries, affiliates, joint venturers, partnerships, limited liability companies, corporations, unincorporated entities, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers and attorneys of any of the foregoing entities and Persons described in (i) – (v) of this Paragraph.

CC. “Releasing Persons” means the Named Plaintiffs, on behalf of themselves and all Settlement Class Members, all Settlement Class Members, and the respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors of each of the Named Plaintiffs and Settlement Class Members.

DD. “Retailers” means Persons and entities and their affiliates that sell or have sold the Covered Products manufactured by Schiff and/or its affiliates, including but not limited to: Costco Wholesale Corporation; CVS Caremark Corporation; Publix Super Markets, Inc.; Rite Aid Corporation; Safeway Inc.; Sam’s Club; Target Corporation, Wal-Mart Stores Inc.; The Kroger Co.; Meijer, Inc.; and Walgreen Company.

EE. “Schiff” means Defendants Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc.

FF. “Schiff’s Counsel” means Latham & Watkins LLP.

GG. “Settlement” means the settlement set forth in this Settlement Agreement.

HH. “Settlement Administrator” means KCC Class Action Services, LLC, which will administer Class Notice, maintain the Settlement Website, administer the Settlement in accordance with this Settlement Agreement and engage in any other tasks directed by the Court, Settlement Class Counsel or Schiff’s Counsel.

II. “Settlement Agreement” means this Settlement Agreement and General Release, including all exhibits hereto.

JJ. “Settlement Class” means all Persons who fall within the definition of the class identified in Section III Paragraph A.

KK. “Settlement Class Counsel” means Elaine A. Ryan of Bonnett, Fairbourn, Friedman & Balint, P.C., Stewart M. Weltman of Stewart M. Weltman, LLC and Jeffrey Carton of Denlea & Carton LLP.

LL. “Settlement Class Members” means all Persons in the Settlement Class who do not exclude themselves (*i.e.*, become Opt-Outs) pursuant to Section VII Paragraph D.

MM. “Settlement Website” means the dedicated website created and maintained by the Settlement Administrator and will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Class Notice and the Claim Form.

NN. “Valid Claim” means a timely and fully completed Claim Form that includes Adequate Proof of Purchase, if applicable, submitted by a Settlement Class Member as more fully described in Section V.

OO. The plural of any defined term includes the singular, and vice versa, as made necessary in context.

III. PROPOSED CLASS FOR SETTLEMENT PURPOSES

A. Pursuant to Fed. R. Civ. P. 23, the Parties hereto agree to certification, for settlement purposes only, of the following Settlement Class:

All residents of the United States who purchased for personal use, and not resale or distribution, a Covered Product between January 1, 2005 and the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following Persons:

- (i) Schiff and its respective affiliates, employees, officers, directors, agents, and representatives and their immediate family members;
- (ii) Settlement Class Counsel; and
- (iii) The judges who have presided over the Litigation and their immediate family members.

B. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the entering an order preliminarily certifying the Settlement Class, appointing Luis Lerma, Nick Pearson and Muriel Jayson as representatives of the Settlement Class and appointing the following as counsel for the Settlement Class:

Elaine A. Ryan
BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Stewart M. Weltman
STEWART M. WELTMAN, LLC
53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

Jeffrey I. Carton
DENLEA & CARTON LLP
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400

C. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order appointing KCC Class Action Services, LLC as the Settlement Administrator.

D. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily

finding that the Named Plaintiffs and Settlement Class Counsel are adequate representatives of the Settlement Class.

E. Schiff does not agree to the certification of the Settlement Class or to the appointment or adequacy of the Named Plaintiffs or Settlement Class Counsel for any purpose other than to effectuate the Settlement and Settlement Agreement.

F. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in any material respect by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated, the Litigation shall proceed as if the Settlement Class had never been certified and no reference to the Settlement Class, this Settlement Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose in the Litigation or in any other action or proceeding.

G. Upon execution of this Settlement Agreement, the Parties shall immediately and jointly move for a complete stay of the Litigation.

IV. BENEFITS TO THE CLASS

A. **Payment Of Claims.** Settlement Class Members who submit Valid Claims shall be entitled to receive Cash Awards as follows:

(i) Settlement Class Members who submit Valid Claims accompanied by Adequate Proof of Purchase shall receive \$~~5~~10.00 per bottle of Covered Product, up to a maximum of ~~ten-five~~(105) bottles per household.

(ii) Settlement Class Members who submit Valid Claims without Adequate Proof of Purchase shall receive \$3.00 per bottle of Covered Product, up to a maximum of four (4) bottles per household.

(iii) The details, requirements, terms and limits of the claims' process are further defined in Section V.

B. **Minimum Total Payment To Claimants.** If the total dollar value of Valid Claims submitted pursuant to Paragraphs A(i) and (ii) above is less than \$2.0 million:

(i) First, the payment to each Settlement Class Member who submits a Valid Claim under Paragraph A(i) shall be increased *pro rata* up to a maximum of triple what he or she would otherwise be entitled to under Paragraph A(i) above.

(ii) If, after the increase identified in Paragraph B(i) above is made, the total payments still do not reach \$2.0 million, then the payment to each Settlement Class Member who submits a Valid Claim under Paragraph A(ii) shall be increased *pro rata* up to a maximum of double what he or she would otherwise be entitled to under Paragraph A(ii) above.

(iii) If, after the payments identified in Paragraphs A(i) and (ii) and B(i) and (ii) are made, the total Cash Awards to Settlement Class Members do not reach \$2.0 million, any residual amounts up to \$2.0 million are to be divided among the Settlement Class Members who have submitted Valid Claims *pro rata*.

C. **Labeling Changes.** Without admitting wrongdoing or liability and solely to avoid the cost and disruption of further litigation, Schiff agrees that for a period of twenty four (24) months commencing six (6) months after the Effective Date, and except as described herein, it will not make the following statements in the packaging or marketing of the Covered Products: "repair joints," "repair cartilage," "rebuild joints," rebuild cartilage," "rejuvenate joints" or "rejuvenate cartilage." The only statements that Schiff is agreeing not to use in the packaging and advertising of Covered Products are the statements listed above.

(i) The labeling change described in this Paragraph is not an admission by Schiff regarding the claims in the Litigation or the propriety of statements used or omitted on other versions of the packaging of the Covered Products.

(ii) Schiff shall have six (6) months from the Effective Date to begin shipping Covered Products with labels and/or packaging that conform to the terms of the Settlement.

(iii) Schiff shall not be required to recall, remove from shelves or pull from distribution or inventory any Covered Products that have been manufactured or shipped by Schiff prior to the date commencing six (6) months after the Effective Date.

(iv) If, after the date of Final Approval, Schiff becomes aware of an independent, well-conducted, published clinical trial substantiating that the Covered Products “repair joints,” “repair cartilage,” “rebuild joints,” rebuild cartilage,” “rejuvenate joints” and/or “rejuvenate cartilage,” Schiff may seek the agreement of Settlement Class Counsel to modify this Paragraph of the Settlement Agreement. If the Parties are not able to agree, Schiff may seek relief from the Court.

V. CLAIMS’ PROCESS

A. **Notice And Submission Of Claims.** The Class Notice shall provide information regarding the filing of Claim Forms. Claim Forms shall be available from the Settlement Administrator and on the Settlement Website. To file a Valid Claim, Settlement Class Members must: (1) complete a Claim Form, providing all of the information and documentation required by the Settlement Agreement and the Claim Form; (2) sign the Claim Form and state under penalty of perjury the number of bottles of Covered Products purchased, the names of the Covered Products purchased and the approximate dates and locations of the purchases; (3) indicate whether he or she is enclosing Adequate Proof of Purchase with his or her Claim Form and, if so, provide the same with the completed Claim Form; and (4) return the completed

and signed Claim Form and Adequate Proof of Purchase, if any, to the Settlement Administrator no later than one hundred twenty (120) Days after the Preliminary Approval Date, *i.e.*, the Claim Deadline. Only Settlement Class Members who submit Valid Claims shall be entitled to a Cash Award.

B. **Determination Of Validity.** The Settlement Administrator shall be responsible for reviewing all claims to determine their validity.

(i) Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement or is postmarked or submitted electronically later than the Claim Deadline, shall be rejected.

(ii) Following the Claim Deadline, the Settlement Administrator shall provide a report of any rejected claims to Schiff's Counsel and Settlement Class Counsel. If Settlement Class Counsel do not agree with the rejection of a claim, they shall bring it to the attention of Schiff's Counsel, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, the Parties will provide the Settlement Administrator with their positions regarding the disputed, rejected claim. The Settlement Administrator, after considering the positions of the Parties, will make the final decision in its sole discretion.

C. **Fraudulent Filings.** At any time during the claims' process, if the Settlement Administrator has a reasonable suspicion of fraud, the Settlement Administrator shall immediately notify both Settlement Class Counsel and Schiff's Counsel of that fact and the basis for its suspicion. Settlement Class Counsel and Schiff's Counsel shall endeavor to reach an agreed appropriate solution to any suspected fraud and, if necessary, Schiff may suspend the claims' process, and the Parties will promptly seek assistance from the Court.

D. **Timing Of Schiff's Payment Obligations.** Schiff shall have no obligation to make any payments under this Settlement Agreement until the Court enters a Preliminary Approval Order.

(i) After entry of the Preliminary Approval Order, Schiff shall pay reasonable Notice and Administration Costs arising under this Settlement Agreement by making such payments directly to the Settlement Administrator (or to such other party incurring such costs) as those costs are incurred and payment becomes due. Schiff shall pay Notice and Administration costs of up to \$1,500,000. If Notice and Administration Costs exceed \$1,500,000, Schiff may, in its sole discretion, elect to withdraw from the Settlement Agreement.

(ii) Except as otherwise provided herein, all payments to Settlement Class Members who submit Valid Claims will be made within one hundred twenty (120) Days after the Effective Date.

(iii) Schiff shall pay any Attorneys' Fee Award and any Incentive Award awarded by the Court, up to the maximums specified in Section VI Paragraph A, within fourteen (14) Days after the Effective Date.

VI. ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARD

A. **Attorneys' Fee Award.** The law firms of BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.; DENLEA & CARTON LLP and STEWART M. WELTMAN, LLC will apply to the Court for an aggregate award of attorneys' fees and actual expenses (including their court costs) in an amount not to exceed \$3,000,000. Schiff will not oppose application(s) for an Attorneys' Fee Award of up to an aggregate amount of \$3,000,000, to be paid by Schiff separate and apart from, and without diminishing or eroding, the payment of Cash Awards to Settlement Class Members described in Section IV Paragraphs A-B. Settlement Class Counsel agrees that upon payment by Schiff of the Attorneys' Fee Award as directed by the

Court, Schiff's obligations to Settlement Class Counsel shall be fully satisfied and discharged, and Settlement Class Counsel shall have no further or other claim against Schiff, including but not limited to a claim for enforcement of any attorneys' lien.

B. **Incentive Awards.** The Named Plaintiffs will apply collectively for Incentive Awards not to exceed \$10,000. Schiff agrees not to object to the Named Plaintiffs' application for such Incentive Award and to pay any Incentive Award (not to exceed \$10,000) that is awarded by the Court, separate and apart from, and without diminishing or eroding, the payment of Cash Awards to Settlement Class Members described in Section IV Paragraphs A-B.

C. **Attorneys' Fee Award and Incentive Award.** Any order or proceedings relating to the applications for the Attorneys' Fee Award and the Incentive Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of Final Order and Judgment approving the Settlement Agreement and the Settlement.

VII. SETTLEMENT NOTICE, OBJECTIONS AND OPT-OUT RIGHTS

A. The Settlement Administrator will work under the direction of Settlement Class Counsel and Schiff's Counsel.

B. The Parties will seek a determination from the Court regarding the best practicable notice procedure ("Settlement Class Notice Program") as described in the Motion for Preliminary Approval and in the exhibits thereto.

C. Any Settlement Class Member who intends to object must do so on or before the Opt-Out and Objection Date. In order to object, the Settlement Class Member must include in the objection submitted to the Court and served on Settlement Class Counsel and Schiff's Counsel: (a) the name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel; (b) a signed declaration stating that he or she is a member of the

Settlement Class and purchased one or more of the Covered Products; (c) a statement of all objections to the Settlement; and (d) a statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of his or her counsel who will attend. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this Paragraph and as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

D. A member of the Settlement Class who wishes to opt-out of the Settlement Class must complete and send to the Settlement Administrator a request for exclusion that is post-marked or submitted electronically no later than the Opt-Out and Objection Date. The request for exclusion must be personally signed by the member of the Settlement Class requesting exclusion, contain a statement that indicates his or her desire to be excluded from the Settlement Class and contain a statement that he or she is otherwise a member of the Settlement Class and purchased one or more of the Covered Products. A member of the Settlement Class may opt-out on an individual basis only. ~~So-called~~ So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of class members or multiple class members where no personal statement has been signed by each and every individual class member, shall not be allowed.

E. Except for those members of the Settlement Class who timely and properly file a request for exclusion, all members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any monetary relief.

F. Any member of the Settlement Class who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

G. The Settlement Administrator shall provide Settlement Class Counsel and Schiff's Counsel with the Opt-Out List within seven (7) Days after the Opt-Out and Objection Date.

VIII. SETTLEMENT APPROVAL PROCESS

After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order that is without material alteration from Exhibit C hereto, which:

- A. Preliminarily approves this Settlement Agreement;
- B. Preliminarily certifies the Settlement Class;
- C. Finds that the proposed Settlement is sufficiently fair, reasonable and adequate to warrant providing notice to the Settlement Class;
- D. Schedules a Fairness Hearing on final approval of this Settlement and Settlement Agreement to consider the fairness, reasonableness and adequacy of the proposed Settlement and whether it should be finally approved by the Court, such Fairness Hearing to take place not less than one hundred forty (140) Days after the Preliminary Approval Date;
- E. Appoints the Settlement Administrator in accordance with in accordance with Section III Paragraph C of this Settlement Agreement;
- F. Approves the Class Notice, and directs the Settlement Administrator to disseminate the Class Notice in accordance with the Settlement Class Notice Program;

G. Finds that the Settlement Class Notice Program: (i) is the best practicable notice, (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Litigation and of their right to object to or to exclude themselves from the proposed settlement, (iii) is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled to receive notice, and (iv) meets all requirements of applicable law;

H. Requires the Settlement Administrator to file proof of compliance with the Settlement Class Notice Program at or before the Fairness Hearing;

I. Approves the Claim Form, the content of which is without material alteration from Exhibit A to this Settlement Agreement, and sets a Claim Deadline;

J. Approves the creation of the Settlement Website in accordance with the terms of this Settlement Agreement;

K. Requires any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked or submitted electronically no later than the Opt-Out and Objection Date, or as the Court may otherwise direct, to the Settlement Administrator at the address on the Class Notice;

L. Orders that any member of the Settlement Class who does not submit a timely, written request for exclusion from the Settlement Class (*i.e.*, becomes an Opt-Out) will be bound by all proceedings, orders and judgments in the Litigation, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release;

M. Requires any Settlement Class Member who does not become an Opt-Out and who wishes to object to the fairness, reasonableness or adequacy of this Settlement or Settlement Agreement to file with the Court and serve on Settlement Class Counsel and Schiff's Counsel no

later than the Opt-Out and Objection Date, or as the court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing all of the following information:

- (i) The objector's full name, address, and telephone number;
- (ii) A signed declaration that he or she is a member of the Settlement Class and purchased the Covered Product(s);
- (iii) A written statement of all grounds for the objection;
- (iv) A statement of whether the objector intends to appear at the Fairness Hearing; and
- (v) If the objector intends to appear at the Fairness Hearing through counsel, the objection must also identify the attorney representing the objector who will appear at the Fairness Hearing;

N. Any response to an objection shall be filed with the Court no later than seven (7) Days prior to the Fairness Hearing;

O. Specifies that any Settlement Class Member who does not file a timely written objection to the Settlement or who fails to otherwise comply with the requirements of Section VII Paragraph C of this Settlement Agreement shall be foreclosed from seeking any adjudication or review of this Settlement by appeal or otherwise;

P. Requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement, the Attorneys' Fee Award or the Incentive Award and who intends to make an appearance at the Fairness Hearing to provide to the Settlement Administrator (who shall forward it to Settlement Class Counsel and Schiff's Counsel) and to file with the

Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date or as the Court may otherwise direct;

Q. Requires any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing shall so state in their objection papers or as the Court otherwise may direct;

R. Directs the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications, and providing that only the Settlement Administrator, Settlement Class Counsel, Schiff's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Settlement Agreement;

S. Directs that Settlement Class Counsel shall file their applications for the Attorneys' Fee Award and Named Plaintiffs' Incentive Award in accordance with the terms set forth in Section VI Paragraph A of this Settlement Agreement;

T. Orders the Settlement Administrator to provide the Opt-Out List to Settlement Class Counsel and Schiff's Counsel no later than seven (7) Days after the Opt-Out and Objection Date, and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than five (5) Days thereafter or on such other date as the Parties may direct;

U. Preliminarily enjoins all members of the Settlement Class unless and until they have timely excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving

rise to the Litigation and/or the Released Claims; (ii) filing, commencing, participating in or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Schiff and/or any other Released Person and Settlement Class Counsel as a result of the violation. This Settlement Agreement is not intended to prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency; and

V. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the proposed settlement.

IX. FINAL ORDER AND JUDGMENT AND RELEASES

A. **Final Order.** If this Settlement Agreement (including any modification thereto made with the consent of the Parties as provided for herein) is approved by the Court following the Fairness Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request the Court to enter a Final Order and Judgment pursuant to the Federal Rules of Civil Procedure and all applicable laws that, among other things:

(i) Finds that the Court has personal jurisdiction over the Named Plaintiffs and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Settlement Agreement and all exhibits thereto;

(ii) Certifies a Settlement Class solely for purposes of this Settlement;

(iii) Grants final approval to this Settlement Agreement as being fair, reasonable and adequate as to all Parties and consistent and in compliance with all requirements of due process and applicable law, as to and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Settlement Agreement in accordance with its terms and provisions;

(iv) Declares this Settlement Agreement and the Final Order and Judgment to be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of the Named Plaintiffs and all Settlement Class Members, as well as their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors;

(v) Finds that the Settlement Class Notice Program: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice, and (iv) met all requirements of due process and any other applicable law;

(vi) Approves the Claim Form that was distributed to the Settlement Class, the content of which was without material alteration from Exhibit A to this Settlement Agreement;

(vii) Finds that Settlement Class Counsel and the Named Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Settlement Agreement;

(viii) Dismisses the Litigation now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment;

(ix) Adjudges that the Named Plaintiffs and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against Schiff and the Released Persons;

(x) Approves payment of the Attorneys' Fee Award and the Named Plaintiffs' Incentive Award;

(xi) Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the Settlement Administrator, Schiff, the Named Plaintiffs and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement, the Settlement Agreement and Final Order and Judgment and for any other necessary purposes;

(xii) Provides that upon the Effective Date, the Named Plaintiffs and all Settlement Class Members, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Schiff and/or any Released Persons, and any such Settlement Class Members shall have released any and all Released Claims as against Schiff and all Released Persons;

(xiii) Determines that the Settlement Agreement and the Settlement provided for therein and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of, a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Schiff or any Released Persons or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Settlement Agreement and the Settlement provided for therein in such proceedings solely as may be necessary to effectuate the Settlement Agreement;

(xiv) Bars and permanently enjoins all Settlement Class Members from (i) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, and (ii) organizing Settlement Class Members who have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency;

(xv) States that any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Schiff and/or any other Released Persons and Settlement Class Counsel as a result of the violation;

(xvi) Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all members of the Settlement Class who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment, except for Opt-Outs who subsequently elect to submit Claim Forms during the Claim Period; and

(xvii) Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Settlement Agreement and all exhibits hereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of the Parties or Settlement Class Members.

B. **Release Provisions.** As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of and from all Released Claims by operation of entry of the Final Order and Judgment.

(i) Subject to Court approval, all Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Litigation or this Settlement.

(ii) Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Settlement Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Incentive Award to the Named Plaintiffs and the Attorneys' Fee Award to Settlement Class Counsel.

(iii) The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which 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 MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding California or other law, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights and benefits of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons and the Released Persons hereby agree and acknowledge that this is an essential term of the Releases. In connection with the Release, the Releasing Persons and the Released Persons acknowledge that they are aware that they may hereafter discover claims presently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished and discharged.

(iv) Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

C. **Continuation Of Label Changes.** Schiff may elect, in its sole discretion, to continue the label changes identified in Section IV Paragraph C beyond the twenty-four (24) month required period. For as long as Schiff continues to comply with the terms of Section IV

Paragraph C beyond the twenty-four (24) month required period, no Releasing Party may sue any Released Party based on any claim that was or could have been asserted in the Litigation.

D. **Additional Releases.** Except as to the rights and obligations provided for under this Agreement, Schiff releases and forever discharges as of the Effective Date the Named Plaintiffs, Settlement Class, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which the Released Persons may now have, own or hold or which the Released Persons at any time may have, own, or hold, against the Named Plaintiffs, Settlement Class, or Settlement Class Counsel arising out of the Litigation and/or the Settlement.

X. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT

A. Within fifteen (15) Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Settlement Agreement:

(i) If the Court fails to approve the Settlement Agreement as written or if on appeal the Court's approval is reversed or modified;

(ii) If the Court materially alters any of the terms of the Settlement Agreement, except that a reduction in the Attorneys' Fee Award or the Incentive Award shall not be deemed to be a material alteration; or

(iii) If the Preliminary Approval Order, as described in Section VIII, or the Final Order and Judgment, as described in Section IX, is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason.

B. In the event of a withdrawal pursuant to Paragraph A above, any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Litigation to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

C. If members of the Settlement Class properly and timely submit requests for exclusion from the Settlement Class as set forth in Section VII Paragraph D, thereby becoming Opt-Outs, are in a number more than the confidential number submitted to the Court by the Parties under seal at the time of filing the Motion for Preliminary Approval, then Schiff may elect in its sole discretion to withdraw from the Settlement and terminate this Settlement Agreement. In that event, all of Schiff's obligations under this Agreement shall cease to be of any force and effect; the certification of the Settlement Class shall be vacated without prejudice to Schiff's position on the issue of class certification; and Schiff shall be restored to its litigation position existing immediately before the execution of this Settlement Agreement. In order to elect to withdraw from the Settlement and terminate this Settlement Agreement on the basis set forth in this Paragraph, Schiff must notify Settlement Class Counsel in writing of its election to do so within fourteen (14) Days after the Opt-Out List has been served on the Parties. In the event that Schiff exercises such right, Settlement Class Counsel shall have fourteen (14) Days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number on the Opt-Out List subsequently becomes and remains fewer than the number submitted to the Court under seal at the time of filing the Motion For Preliminary Approval, Schiff shall withdraw its election to withdraw from the Settlement and terminate the Settlement Agreement. In no event, however, shall Schiff have any further

obligation under this Agreement to any Opt-Out unless he or she withdraws his or her request for exclusion. For purposes of this Paragraph, Opt-Outs shall not include (i) Persons who are specifically excluded from the Settlement Class under Section VII Paragraph D of the Settlement Agreement; (ii) Opt-Outs who elect to withdraw their request for exclusion; and (iii) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim or any other claim that would otherwise be a Released Claim as defined in this Settlement Agreement.

D. If Notice and Administration Costs exceed \$1,500,000, Schiff may, in its sole discretion, elect to withdraw from the Settlement Agreement.

E. In the event of withdrawal by any Party in accordance with the terms set forth in this Section X, the Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Litigation and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to Schiff, the Named Plaintiffs and the Settlement Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

XI. EFFECTIVE DATE

A. The Effective Date of this Settlement Agreement shall be the date when each and all of the following conditions have occurred:

(i) This Settlement Agreement has been fully executed by all Parties and their counsel;

(ii) Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement and approving the forms of Class Notice and Claim Form, all as provided above;

(iii) The Settlement Class Notice Program has been executed in accordance with the Preliminary Approval Order;

(iv) The Court has entered a Final Order and Judgment finally approving this Agreement, as provided above; and

(v) The Final Order and Judgment has become Final as defined in Paragraph B below.

B. “Final,” when referring to a judgment or order means that (i) the judgment is a final, appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment having been commenced, the date by which such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

C. If, for any reason, this Settlement Agreement fails to become Final pursuant to the foregoing Paragraph B, the orders, judgment and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the status *quo ante* with respect to the Litigation as if this Settlement Agreement had never been entered into.

XII. NOTICES

A. All Notices (other than the Class Notice and CAFA Notices) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All Notices to Settlement Class Counsel shall be sent to Settlement Class Counsel, c/o:

Elaine A. Ryan
BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Jeffrey I. Carton
DENLEA & CARTON LLP
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400

All Notices to Schiff's Counsel provided herein shall be sent to Schiff's Counsel, c/o:

Mark S. Mester
Kathleen P. Lally
Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

B. The notice recipients and addresses designated above may be changed by written notice.

C. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion, or other documents or filings received as a result of the Class Notice.

XIII. MISCELLANEOUS PROVISIONS

A. **Interpretation.** This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, agreements or understandings among them as well as any and all prior drafts of this Settlement Agreement. All terms are contractual. For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that

the Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party, and the Parties further agree that any prior drafts may not be used to construe or interpret this Settlement Agreement.

B. **Binding Effect.** The terms are and shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest and successors as well as upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

C. **Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

D. **No Rescission on Grounds of Mistake.** The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

E. **Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their counsel. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

F. **Integration Of Exhibits.** The exhibits to this Settlement Agreement are an integral and material part of the Settlement and are hereby incorporated and made a part of the Settlement Agreement.

G. **Jurisdiction.** The United States District Court for the Southern District of California has jurisdiction over the Parties to this Settlement Agreement and the Settlement Class.

H. **No Admission.** Neither this Settlement Agreement nor any of its provisions, its exhibits or related documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Order and Judgment), its negotiation or any proceedings relating in any way to the Settlement shall be construed as or deemed to be evidence of an admission or concession by any person, including Schiff, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order. The provisions of this Paragraph shall become effective when this Settlement Agreement has been signed by the Parties and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise rendered null and void pursuant to Section X.

I. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of California.

J. **Counterparts.** This Settlement Agreement may be executed in counterparts and may be executed by facsimile, and as so executed shall constitute one agreement.

K. **No Media Statements.** Subject to the Preliminary Approval Order issued by the Court, neither the Named Plaintiffs nor Settlement Class Counsel or any other counsel acting on behalf of the Named Plaintiffs shall issue any press release, or make any statement to any media or press of any sort, regarding this Settlement, including any references on websites maintained by the Named Plaintiffs or Settlement Class Counsel, other than to state that the Litigation has been resolved on terms satisfactory to the Parties and contained in this Settlement Agreement. Settlement Class Counsel will be permitted to provide a link to the Settlement Website on their website with accompanying language to be reviewed and approved by Schiff and Schiff's Counsel, such approval not to be unreasonably withheld, before posting of the same.

L. **Confidentiality.** All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

M. **Return Of Material.** Within thirty (30) Days after the Effective Date, Settlement Class Counsel and Schiff's Counsel will return all material produced by one to the other in discovery or otherwise in connection with the Litigation.

N. **No Assignment.** The Named Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against the Released Persons that the Named Plaintiffs, or any of them, have or may have arising out of any allegations made in any of the actions comprising the Litigation or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which the Named Plaintiffs, or any of them, may be entitled, has been assigned, transferred, or conveyed by or for the Named Plaintiffs, or any of them, in any manner; and no Person other than the Named Plaintiffs has any legal or equitable interest in the

claims, demands, actions, or causes of action referred to in this Agreement as those of the Named Plaintiffs.

O. **Stay.** The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve final judicial approval of this Settlement Agreement.

P. **Dismissal of Jayson v. Schiff International, Inc., et al.** Upon entry of the Final Approval Order, Class Counsel and Named Plaintiff Muriel Jayson will seek a dismissal with prejudice of *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed Feb. 20, 2013).

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____

Nick Pearson

By: _____

Muriel Jayson

By: _____

Approved as to form:

**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**

By: _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100
Facsimile: (602) 274-1199

STEWART M. WELTMAN, LLC

By: _____

Stewart M. Weltman
53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

DENLEA & CARTON LLP

By: _____

Jeffrey I. Carton
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400
Facsimile: (914) 761-1900

Settlement Class Counsel

Defendants:

SCHIFF NUTRITION INTERNATIONAL, INC.

By: _____

Its: _____

SCHIFF NUTRITION GROUP, INC.

By: _____

Its: _____

Approved as to form:

LATHAM & WATKINS LLP

By: _____

Mark S. Mester
Kathleen P. Lally
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

Counsel for Defendants