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Attorneys for Plaintiff and the Proposed Settlement Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA COLA COMPANY,

Defendant.

Case No. 09-cv-06309 SJO (JRPx)

CLASS ACTION

PLAINTIFF'S NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: March 28, 2016
Time: 10:00 a.m.
Room: Courtroom 1 – 2nd Floor
Judge: Honorable S. James Otero

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 28, 2016 at 10:00 a.m. or as soon as counsel may be heard in Courtroom 1, Second floor, of the United States Courthouse located at 312 N. Spring St., Los Angeles, California, Plaintiff Niloofar Saeidian will, and hereby does, move the Court for: (1) an order granting preliminary approval of the terms of the settlement reached by Plaintiff and Defendant; (2) certification, for settlement purposes only, of the proposed Class; (3) approval of the form and method of notice of the settlement and of the pendency of the litigation to the Class and order that such notice be given; and (4) setting of a hearing for final approval of the settlement, as well as Plaintiff's unopposed application for an award of attorneys' fees and reimbursement of expenses, and incentive award request.

This Motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the Settlement Agreement and Release (including Exhibits), the Declarations of Zev B. Zysman and Steven Weisbrot, the pleadings and other files herein, and such other written and oral argument as may be permitted by the Court at the time of the hearing.

This Motion is unopposed by Defendant The Coca-Cola Company.

Dated: February 26, 2016

/s/ Zev B. Zysman

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA COLA COMPANY,

Defendant.

Case No. 09-cv-06309 SJO (JRPx)

CLASS ACTION

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: March 28, 2016
Time: 10:00 a.m.
Room: Courtroom 1 – 2nd Floor
Judge: Honorable S. James Otero

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I. PRELIMINARY STATEMENT

By this motion, Plaintiff Niloofar Saeidian respectfully requests preliminary approval of the proposed nationwide settlement of this class action with Defendant The Coca-Cola Company ("Coca-Cola"). The proposed settlement, set forth in the concurrently filed Settlement Agreement and Release (the "Agreement"), will bring to an end a case that has been pending for over six years, and provides significant relief to Settlement Class Members through one hundred percent cash refunds, fully transferable vouchers for free Coca-Cola products, and assurance from The Coca-Cola Company that it has stopped selling Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices (the "Product") and has no plans to reintroduce it into the market.

In addition to providing substantial relief to the Settlement Class, Coca-Cola will pay for the costs of notice and settlement administration estimated not to exceed $400,000. This includes a robust Notice Plan to be conducted by Angeion Group, a well-regarded and experienced claims administrator. Coca-Cola also will pay Class Counsel's attorneys' fee and expenses, which will not exceed $700,000 (and is well below the actual combined lodestar), and a modest incentive award of $5,000 to the Class Representative separate and apart from payments made to Settlement Class Members.

The Agreement is the result of hard-fought and arm's-length settlement discussions commencing with a full-day mediation at JAMS conducted by the Honorable Richard A. Kramer (Ret.), and followed by many months of further negotiations, often with the further assistance of Judge Kramer. The Parties negotiated the payment of attorneys' fees and costs, over and above the class relief, only *after* reaching agreement upon all other terms of this Agreement, with the direct assistance of Judge Kramer. In sum, the Agreement provides meaningful monetary relief and non-monetary relief for Settlement Class

Members who purchased the Product during the Settlement Class Period.

This case satisfies the requirements of Federal Rule of Civil Procedure 23 under the relaxed standards adopted by this Circuit for purposes of settlement. Accordingly, Plaintiff respectfully requests that the Court enter an Order which: (1) preliminarily approves the Class settlement; (2) certifies the Settlement Class for the purpose of effectuating the settlement; (3) approves the form and method of notice of the settlement and of the pendency of the litigation to the Settlement Class and order that such notice be given; and (4) schedules a hearing for final approval of the settlement. Coca-Cola supports the proposed resolution to this Action, and while it admits no liability under the Agreement, Coca-Cola has no objection to the entry of this Order.

II. SUMMARY OF THE CASE AND PROCEDURAL HISTORY

This case has a long and complicated procedural history, including a motion for class certification, a motion for judgment on the pleadings, three motions for summary judgment, a motion for reconsideration, extensive discovery, a stay while a related case proceeded to the Supreme Court, extensive settlement negotiations, and finally, this Agreement.

A. Procedural History

Plaintiff filed her original class action complaint on August 28, 2009, six and a half years ago. Plaintiff's claims were substantially similar to claims made by Pom Wonderful, in *Pom Wonderful LLC v. Coca Cola Co.*, 727 F. Supp. 2d 849, 871 (C.D. Cal. 2010) (Otero, J.), *aff'd in part, vacated in part, remanded*, 679 F.3d 1170 (9th Cir. 2012), *rev'd*, 134 S. Ct. 2228 (2014) (the "Pom Case").

In the complaint, Plaintiff alleged that the labeling, packaging, advertising and marketing methods used by Coca-Cola were false and misleading because they created the impression that the Product primarily contained pomegranate and blueberry juices, and that Coca-Cola had sought to capitalize on consumers' desire for the healthful and nutritional benefits provided by pomegranate and blueberry

juice. In truth, the product contained very little pomegranate or blueberry juice and was actually composed of mostly cheap filler juices, such as apple and grape juices. As a result, Plaintiff alleged that she and other members of the class overpaid for the Product, in that they did not get the high quality juices they believed they were purchasing. Plaintiff asserted claims under California Business & Professions Code §§17200, *et seq*. ("UCL") and California Business & Professions Code §§17500, *et seq.* ("FAL").

Defendant answered Plaintiff's Complaint in October 2009, and the Parties submitted a Joint Discovery Plan pursuant to Fed. R. Civ. P. 26(f) in November 2009, and began discovery from both sides. In March 2010, Plaintiff moved for class certification. Defendant opposed class certification, and filed a concurrent motion for judgment on the pleadings in April 2010. Both Parties thereafter moved for summary judgment. All four dispositive motions were fully briefed when, on October 8, 2010, less than two months before trial was scheduled to begin, this Court stayed this case due to developments in the Pom Case.

Specifically, this Court held that Pom Wonderful's state-law claims failed for lack of standing, and that Pom Wonderful's federal claim under the Lanham Act was precluded by the Food Drug and Cosmetic Act (the "FDCA") and FDA regulations governing the labeling for flavored juice blends. Pom Wonderful appealed those rulings, and the Court determined that, because the issues on appeal in the Pom Case overlapped with issues in this Action, a stay would promote judicial economy. The Court then struck the four fully briefed dispositive motions in this Action as moot, without prejudice to the motions being refiled at a later date.

The Pom Case followed a lengthy appellate process. With respect to Pom's state-law claims, the Ninth Circuit vacated this Court's standing ruling and remanded the state-law claims to this Court for further proceedings. This Court then held that Pom's state-law claims were expressly preempted by the FDCA and

barred by California's safe harbor doctrine, and Pom appealed that ruling. Meanwhile, with respect to Pom's federal claim, the Ninth Circuit affirmed this Court's ruling that Pom's federal claim was precluded by the FDCA, but the U.S. Supreme Court reversed that decision on June 12, 2014. Pom at that point voluntarily dismissed its appeal from the dismissal of its state-law claims, which left this Court's preemption and safe-harbor rulings as to Pom's state-law claims undisturbed.

On the heels of the Supreme Court decision, in June 2014, a putative consumer class action based on similar allegations to those asserted in this Action was filed in Florida entitled *Stansfield v. The Minute Maid Company,* Case No. 14-cv-290 (N.D. Fla.). Thereafter, on October 10, 2014, Coca-Cola filed a MDL Motion to Transfer the *Stansfield* action requesting that Panel on Multidistrict Litigation (the "Panel") coordinate and/or consolidate the *Stansfield* action with this Action in the Central District pending before this Court. Plaintiff Saeidian opposed the MDL transfer motion. On February 5, 2015, following oral argument in Florida, the Panel denied the MDL transfer motion. The Florida district court subsequently dismissed the *Stansfield* action, finding that state-law claims challenging the Product's name and label were expressly preempted.

The Court lifted the stay in this Action on February 23, 2015. On March 16, 2015, Plaintiff filed a First Amended Complaint and on April 6, 2015, Coca-Cola filed a renewed motion for summary judgment, asserting that Plaintiff's UCL and FAL claims are preempted by the FDCA and barred by California's safe harbor doctrine. This Court denied Defendant's motion on July 6, 2015. Defendant moved for reconsideration of that decision on August 26, 2015, which this Court denied on September 15, 2015. While this motion was pending, the Parties engaged in a day-long mediation before the Hon. Judge Kramer (Ret.) on September 9, 2015. The Parties did not reach an agreement that day, but resumed extensive settlement discussions for the remainder of the year with Judge

Kramer's assistance. The Parties reached a tentative agreement regarding the terms of a proposed settlement in December 2015.

B. Counsel's Efforts in Achieving this Settlement

Class Counsel has dedicated significant time and resources to this case over the course of the past six years. Class Counsel prepared the initial complaint, amended complaint, memoranda of law in support of class certification; a memorandum of law in opposition to Defendant's motion for judgment on the pleadings; memoranda of law in support of Plaintiff's motion for summary judgment and in opposition to Defendant's two motions for summary judgment; and a memorandum of law in opposition to Defendant's motion for reconsideration of its renewed motion for summary judgment. In connection with Plaintiff's motion for class certification and summary judgment, Plaintiff retained a consumer survey expert, Dr. Michael Belch, who conducted an exhaustive consumer survey regarding the advertising of the Product at considerable expense to Class Counsel.

In addition, Class Counsel engaged in an extensive period of discovery. Class Counsel served detailed class and merits discovery requests, including one set of special interrogatories, one set of requests for admission, and two sets of document requests, resulting in the production of nearly *200,000* pages of documents which Class Counsel reviewed. Throughout discovery, Class Counsel participated in hours of meet-and-confers with Defendant's counsel. Class Counsel also took three depositions of Defendant's employees, and served seven subpoenas on third party advertising and marketing firms that did work for Coca-Cola. Class Counsel also prepared responses to one set of special interrogatories and requests for admission, two sets of requests for production served by Coca-Cola, and prepared for and attended Plaintiff's all-day deposition. Class Counsel has also reviewed all the deposition transcripts and expert reports in the Pom Case.

This case has required significant resources by Class Counsel, in extensive

time and money required to litigate this case against a sophisticated and well-represented Defendant. As a result of these efforts, Class Counsel is fully informed of the merits of this Action and the proposed settlement.

C. Uncertainty Regarding the Outcome

Plaintiff is confident in the merits of her claims, but as with any litigation, the outcome of this case is far from certain. Many issues remain to be determined, and there is no guarantee that a trial would result in a liability finding against Defendant. Nor is it assured that recovery would be awarded to Plaintiff or Class Members. If the Parties did not reach a settlement, Defendant would have undoubtedly asserted it had no liability whatsoever to the Class and, that even in the event liability were established, it was uncertain whether Class Members could recover damages in the full amount of the purchase price of the Products, as permitted under the Settlement. *See Ivie v. Kraft Foods Global, Inc*., 2015 WL 183910, at *2 (N.D. Cal. Jan. 14, 2015) (advocating for the price premium model rather than awarding the full purchase price of the misbranded products).

Moreover, even if Plaintiff were to prevail at class certification and trial, any relief to Plaintiff and Class Members could be substantially delayed, and perhaps overturned, on appeal. Defendant has maintained throughout this case that Plaintiff's claims are preempted by the FDCA and barred by California's safe harbor ruling. While this Court rejected Defendant's motion for summary judgment on those grounds, Defendant has the right to appeal that determination after entry of a final judgment, and it is possible that the Ninth Circuit could reach a different conclusion, especially when two courts—the *Stansfield* court and this Court in the Pom Case—previously held that similar claims are preempted. As such, in the absence of the settlement, Plaintiff would have faced significant litigation risks and no substantial prospect of obtaining a better result on behalf of the Class Members. Therefore, this settlement provides complete relief to the Class without the delay and risk of further litigation.

III. THE PROPOSED SETTLEMENT IS A FAIR AND REASONABLE DISTRIBUTION OF BENEFITS TO CLASS MEMBERS

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise of claims brought on a class basis. Approval of a proposed settlement is a matter within the discretion of the district court. *See, e.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). This discretion should be exercised in the context of a public policy which strongly favors the pretrial settlement of class action lawsuits. *Id.*; *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("Voluntary conciliation and settlement are the preferred means of dispute resolution . . . ."); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *In re NVIDIA Corp. Deriv. Litig.*, No. C-06-06110-SBA, 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008). As the Court in *Nelson v. Bennett* explained:

> [T]he suggestion that there is no federal policy to encourage settlement truly borders on the absurd. Not only have federal courts long recognized the public policy in favor of the settlement of complex securities actions, but the Ninth Circuit in particular has stated: "It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits . . . which frequently present serious problems of management and expense." Especially in these days of burgeoning federal litigation, the promotion of settlement is as a practical matter, an absolute necessity.

662 F. Supp. 1324, 1334 (E.D. Cal. 1987) (internal citations omitted) (quoting *Van Bronkhorst*, 529 F.2d at 950).

Beyond this strong judicial policy favoring settlements, "the Court need only conclude that the settlement of the claims on the agreed upon terms is within

the range of possible approval." *In re NVIDIA Corp.*, 2008 WL 5382544, at *2. In making this determination, the Court evaluates whether the settlement is "fair, reasonable, and adequate," and that it is "not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.1982). The court need not "engage in analysis as rigorous as is appropriate for final approval." Manual for Complex Litigation, § 21.63 commentary, p. 489; *see also Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008) (stating that the court need do no more than a "cursory review of the terms of the parties' settlement for the purpose of resolving any glaring deficiencies").

An evaluation of the costs and benefits of settlement must be tempered by a recognition that any compromise involves concessions of the part of all of the settling parties. *In re NVIDIA Corp.*, 2008 WL 5382544, at *3. Indeed, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of higher hopes." *Id.* (quoting *Officers for Justice*, 688 F.2d at 624) (internal quotation marks omitted). As the Fifth Circuit noted in *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977): "The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained" (internal quotation marks omitted).

Applying the foregoing standards in this case, the proposed settlement between Plaintiff and Coca-Cola should be preliminarily approved.

A. The Proposed Notice Program Satisfies the Requirements of Due Process

Defendant has retained Angeion Group, which has developed a robust notice program that reaches the maximum number of Settlement Class Members practicable. As set forth in the Declaration of Steven Weisbrot, attached as Exhibit A to the Settlement Agreement, the Notice Plan will consist of a

combination of online advertisements and an advertisement in *People* magazine. This combined plan will reach approximately 70.2% of Class Members, which satisfies due process. *See also* Agreement, §§6.6-6.7.

Class Members will be directed to a Settlement Website, www.flavoredjuicesettlement.com, where claimants can easily locate all court documents and information regarding the settlement. Settlement class members will also be able to submit claims through an easy-to-use online submission program on the Settlement Website. Angeion will also establish a toll-free telephone support program, which will provide Settlement Class Members with general information about the settlement, answers to frequently asked questions, and the opportunity to request more information and to receive a claim form by mail, which they can subsequently submit by mail. In addition, Coca-Cola will place a direct link on the Minute Maid website (www.minutemaid.com) that will connect directly to the Settlement Website, allowing users who visit the Minute Maid website to locate information about the settlement and submit claims online. Agreement, §§6.3, 6.8, 6.9.

This Notice Plan satisfies the requirements for due process, provides class members with readily available information regarding the settlement, and provides a straightforward, easy method for submitting claims online.

B. The Settlement Provides Significant Value to Class Members Through Cash Refunds and Product Vouchers

Settlement Class Members can file a claim for ***full*** cash refunds pertaining to their purchases of the Product during the 90-day Class Period. Settlement Class Members who provide a Proof of Purchase, such as a sales receipt, print out from a loyalty program, or other relevant documentation will receive full cash refunds for all purchases so documented. To obtain the cash payment, Class Members need only fill out and submit a simple, straight-forward Claim Form where the claimant provides his or her name, address, telephone number, and the total

amount of their actual purchase(s) of the Product during the Class Period. There is ***no*** cap on the total amount of money that will be refunded to those Settlement Class Members who provide Proof of Purchase. The Claim Forms can be submitted online via the Settlement Website at www.flavoredjuicesettlement.com or downloaded and submitted by U.S. Mail. Settlement Class Members will also be able to request a copy of the Claim Form by calling a toll-free number operated by the Settlement Administrator or writing the Settlement Administrator. Agreement, §§4.1, 4.3. This relief is arguably more than claimants would have been able to obtain at trial, because it refunds the full purchase price of the Products, rather than limiting damages to the price premium attributable to Defendant's alleged misrepresentations. *See Ivie*, 2015 WL 183910, at *2.

At the Settlement Class Member's election, Coca-Cola will provide Product Replacement Vouchers (the "Vouchers") to Class Members who purchased the Product, but do not provide a Proof of Purchase. Agreement, §4.2. The Vouchers are redeemable for a ***free*** product replacement(s) of an eligible product. Eligible Coca-Cola products include products sold under the Minute Maid, Simply, Smartwater, Vitaminwater, Vitaminwater Zero, and Honest Tea brands. Class Members' claims will be honored on a first-come, first served basis until the number of Vouchers claimed reaches 200,000. Agreement, §§4.2.1, 4.2.3, 4.2.4.

In order to receive a Voucher(s), Settlement Class Members need only submit a short Claim Form where the claimant provides his or her name, address, telephone number, the number of Products (any size) purchased during the Class Period, and attesting that they purchased the Product(s). Agreement, §§4.2.2. This option for recovery is significant because it ensures that Class Members can participate in a manner that is convenient and does not require them to maintain or submit proof of past purchases.

For each bottle of the Product purchased, Class Members will receive one Voucher, with a maximum recovery of two Vouchers. The Vouchers in this case

may be used for the purchase of any product under the Minute Maid, Simply, Smartwater, Vitaminwater, Vitaminwater Zero, and Honest Tea brands, and have a maximum value of $4.99, which is intended to cover the full purchase price of the product. Class Members may submit one Claim Form per household. Absolutely ***no*** cash is required to redeem a Voucher for an eligible product as the Vouchers cover the entire purchase price of the eligible product. The maximum value of a single Voucher is $4.99, or $9.98 for a total of two (2) Vouchers. Vouchers are valid for eighteen (18) months and are fully transferable. Agreement, §§4.2.3, 4.2.5-4.2.8.

Courts have regularly held that vouchers like those to be distributed to Class Members in this case constitute valuable compensation. Moreover, in a recent decision, the Ninth Circuit determined that vouchers do not constitute a "coupon settlement" within the Class Action Fairness Act ("CAFA") and are not subject to the heightened scrutiny required under 28 U.S.C. § 1712(e). As explained by the Ninth Circuit, in CAFA's findings and purposes, "Congress emphasized its concern about settlements when class members receive little or no value" in cases in which "class members receive nothing more than promotional coupons to purchase more products from the defendants" and are required to "hand over more of their own money before they can take advantage of the coupon, and they often are only valid for select products or services." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 950–51 (9th Cir. 2015) (citing S. Rep. No. 109-14 at 15 (2005)). The Ninth Circuit contrasted those concerns with the settlement before it, which gave class members $12 gift cards to spend on any item sold at Walmart. *Id.* at 951. The gift cards could be used on multiple products, were "freely transferrable," and "did not require consumers to spend their own money," which the court found to be appropriate relief to the class. *Id.* Accordingly, the Court should follow the example of *Online DVD* and find that the Vouchers, like the gift cards in *Online DVD*, are not "coupons" within the meaning of CAFA.

District courts in the Ninth Circuit have consistently reached the same conclusion in class action settlements that offer gift cards or vouchers. *See Morey v. Louis Vuitton North America, Inc.*, 2014 U.S. Dist. LEXIS 3331 (S.D. Cal. Jan. 10, 2014) (emphasizing that coupons and vouchers are "not equivalent" and reasoning that a "voucher is more like a gift card or cash where there is an actual cash value, is freely transferable, and does not require the class members to spend any additional money in order to realize the benefits of the settlement"); *Foos v. Ann, Inc.*, 2013 U.S. Dist. LEXIS 136918 (S.D. Cal. Sept. 14, 2013) (holding that $15 gift cards to Ann Taylor stores were not "coupons" under CAFA because class members "will have the opportunity to receive *free* merchandise, as opposed to merely *discounted* merchandise") (emphasis in original); *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269 (N.D. Cal. Mar. 28, 2007) (approving settlement that distributed gift cards that were fully transferable; "this enables class members to obtain cash – something all class members find useful").

C. The Settlement Includes a Commitment From Coca-Cola That It Is No Longer Selling the Product and Has No Plans to Reintroduce It, As Well As a Donation by Coca-Cola of $300,000 in Goods To a Charitable Organization.

In addition to distributing an unlimited amount of cash refunds to class members with proof of purchase, 200,000 Vouchers worth $4.99 each, and separately covering the costs of notice and administration of this lawsuit (approximately $400,000), attorneys' fees and costs (up to $700,000), and an incentive payment ($5,000)[1], Coca-Cola has also affirmed that, while this case was pending, it stopped selling the Product, and that it has no plans to reintroduce it in

[1] Pursuant to *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 2010 WL 3239460 (9th Cir. 2010), Class Counsel will file an application to the Court for a fee and expense award and incentive award no later than 14 days in advance of the deadline for filing objections.

the United States. This relief provides additional value to Class Members, who will not be subject to the labeling and advertising that Plaintiff alleged was false and misleading. Coca-Cola has also agreed to donate $300,000 in goods to Feeding America, a charitable organization, in connection with this settlement.

IV. THE COURT SHOULD CERTIFY A CLASS FOR SETTLEMENT

"Parties may settle a class action before class certification and stipulate that a defined class be conditionally certified for settlement purposes." *In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (citing *Molski v. Gleich*, 318 F.3d 937 (9th Cir. 2003)). For the purpose of conditionally certifying the class for settlement purposes, the Court evaluates the relevant factors under Rule 23:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. Pro. 23(a); *see also In re Wireless Facilities, Inc.*, 253 F.R.D. at 610.

In addition, Plaintiff must establish that one of the factors under Rule 23(b) is met: (1) there is a risk of inconsistent or unfair adjudication if parties proceed with separate actions; (2) the defendant acted or refused to act on grounds generally applicable to the class, making injunctive or declaratory relief appropriate to the class as a whole; or (3) common questions of law or fact predominate and class resolution is superior to other available methods for fair and efficient adjudication of the controversy. Fed. R. Civ. Pro. 23(b).

Here, the Settlement Class satisfies the Rule 23(a) elements of numerosity, commonality, typicality, and adequacy of representation, and additionally satisfies Rule 23(b)(3), as set forth in full below.

A. Numerosity

To satisfy numerosity, Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. Pro. 23(a)(1). "Impracticability means difficulty or inconvenience of joinder; the rule does not require impossibility of joinder." *In re Ashanti Goldfields Secs. Litig.*, No. CV 00 0717(DGT), 2004 WL 626810, at *11 (E.D.N.Y. Mar. 30, 2004) (quoting *In re Blech Sec. Litig.*, 187 F.R.D. 97, 103 (S.D.N.Y. 1999)). Plaintiff need not allege the exact number or identity of class members to satisfy the numerosity requirement. *See Ellis v. Costco Wholesale Corp.*, 240 F.R.D. 627, 637 (N.D. Cal. 2007). "As a general matter, courts have found that numerosity is satisfied when the class size exceeds 40 members." *Slaven v. BP Am., Inc*., 190 F.R.D. 649, 654 (C.D. Cal. 2000).

Here, the numerosity requirement is clearly satisfied. Among other things, Defendant is one of the largest beverage manufacturers in the United States. The Settlement Class is comprised of thousands of consumers who purchased the Juice Product, spread geographically throughout the United States. This overwhelming number of class members demonstrates that joinder is both difficult and impracticable. Accordingly, Rule 23(a)(1)'s numerosity requirement is readily satisfied.

B. Commonality

Next, Rule 23(a)(2) requires a showing of "questions of law or fact common to the Class." Fed. R. Civ. Pro. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). This means that the class members' claims "must depend on a common contention . . . of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that it is central to the validity of each one of the claims in one stroke." *Id*. "What matters to class certification . . . is not the

raising of common 'questions' – even in droves – but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id*. As the Ninth Circuit has noted, "All questions of fact and law need not be common to satisfy the rule. 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 v. Chrysler*, 150 F.3d 1011, 1019 (9th Cir. 1998).

Here, there are ample issues of both fact and law that are common to the members of the Class. The common and unifying allegations in the action are, *inter alia*, whether Defendant made false and/or misleading misrepresentations and/or omissions on the label of the product packaging and advertising with respect to the actual pomegranate and blueberry juice content of the Product and whether Defendant's representations and/or omissions have misled or are likely to mislead the Class into believing that the Product contains more pomegranate and blueberry juice than it actually does. Commonality is satisfied here, for settlement purposes, by the existence of these common factual issues. Courts have consistently certified classes in cases involving a course of conduct arising out of a common nucleus of operative facts. *See Browder v. Fleetwood Enters., Inc.*, No. ED CV 07-01180 SGL, 2008 WL 4384245, at *6 (C.D. Cal. 2008) (holding that commonality existed because defendant was alleged to have given the *same* defective instruction to all class members).

Moreover, Plaintiff's claims are brought under legal theories common to the class as a whole. Alleging a common legal theory is alone enough to establish commonality. *See Morgan v. Laborers Pension Trust Fund*, 81 F.R.D. 669, 676 (N.D. Cal. 1979). Here, all of the legal theories and causes of action, particularly those based on common law (breach of express warranty, negligent misrepresentation, and unjust enrichment) asserted by Plaintiff are common to all Settlement Class Members. Consumers who purchased the Product can establish

their claims via uniform and common proof, namely, that Plaintiff and the Class did not receive any disclosure on the product packaging that the Product contains very little pomegranate or blueberry juice. Because this case challenges Coca-Cola's labeling and advertising that contained the ***same*** representations and/or omissions, this is sufficient to demonstrate commonality under Rule 23(a)(2). Thus, the determination of whether the Defendant's labeling and advertising is or is not misleading will resolve a central issue on a classwide basis in "one stroke."

C. Typicality

The typicality requirement of Rule 23(a)(3) is met if the claims of the named plaintiff are typical of the class, though "they need not be substantially identical." *Hanlon*, 150 F. 3d at 1020. Rather, factual differences may exist between the class and the named plaintiff, provided the claims arise from the same events or course of conduct and are based upon the same legal theories. *Id*. The typicality and commonality elements under Rule 23(a) "tend to merge" because both assess whether the claims of the class and the named plaintiffs are sufficiently interrelated to make class treatment appropriate. *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n. 13 (1982). Moreover, the focus is "'on the defendants' conduct and plaintiff's legal theory,' not the injury caused to the plaintiff." *Simpson v. Fireman's Fund Ins. Co.*, 231 F.R.D. 391, 396 (N.D. Cal. 2005) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)).

Here, Plaintiff's claims arise from the same factual matrix and are based on the same legal theory as the claims of the absent class members. The claims of Plaintiff and the other Class Members all arise from the "same course of events" - that is, Coca-Cola's identical representations and/or omissions on the product label concerning the pomegranate and blueberry juice content of the product - and each Class Member would have been required to make the same legal arguments to prove Coca-Cola's liability. Plaintiff and the Settlement Class allege they have suffered or are likely to suffer the same type of injury as a result

of purchasing the Product. Plaintiff's claims are thus typical of the claims of the members of the Class.

D. Fair and Adequate Representation

Rule 23(a)(4) requires the court to ensure that "the representative parties will fairly and adequately protect the interests of the class." This factor requires (1) that the proposed representative Plaintiff does not have conflicts of interest with the proposed class, and (2) that Plaintiff is represented by qualified and competent counsel. *Hanlon*, 150 F. 3d at 1020.

Under this standard, Plaintiff will fairly and adequately protect the interests of the class. Plaintiff's interests are fully aligned with the Class Members, and no conflict of interest exists. The adequacy of Plaintiff and her counsel is also evidenced by the settlement negotiated with Defendant, which provides for significant relief to the Settlement Class. Further, Plaintiff is represented by competent counsel who have outstanding records of accomplishments in the prosecution of complex consumer class actions in both state and federal courts. *See* Declaration of Zev B. Zysman In Support of Motion for Preliminary Approval, ¶¶12-13, and Exhibit A.

E. Common Questions of Law and Fact Predominate Over Any Questions Affecting Only Individual Members, And A Class Action Is Superior To Other Methods of Adjudication

Plaintiffs seek certification of a Settlement Class under Rule 23(b)(3), in that "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); *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162-63 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1022. Rule 23(b)(3) encompasses those cases "in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (citations omitted and alterations in original). Moreover, when assessing predominance and superiority, the Court may consider that the class will be certified for settlement purposes only. *Id*. at 618-620. Accordingly, considerations of potential management problems for trial need ***not*** be considered in the settlement context. *Id*. at 621.

1. Common Questions Predominate Over Individual Issues

The Rule 23 (b)(3) predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "Predominance is a test readily met in certain cases alleging consumer . . . fraud . . ." *Id*. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Fed. Prac. & Proc., § 1778; *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.l3 (1982) (noting that commonality and typicality tend to merge).

The predominance requirement is satisfied here. Plaintiff's and Class Members' claims are based on the *identical* misrepresentations and/or omissions concerning the actual pomegranate and blueberry juice content that Coca-Cola made on *the label of every single bottle* it sold to the Class Members. There were *no* variances in their content from one consumer to the next. All purchasers were uniformly exposed to the identical labeling. As such, Plaintiff alleges that Class Members are entitled to the same legal remedies based on the same alleged

wrongdoing. The central issues for every Class Member are whether Defendant engaged in unlawful, unfair, misleading, or deceptive business acts or practices in violation of the UCL and FAL, whether Defendant is liable for negligent misrepresentation and breach of express warranty, whether Defendant has been unjustly enriched, and whether Plaintiff and Class Members are entitled to any damages, restitution, and/or other monetary relief, and if so, the amount and nature of such relief.

Under these circumstances, there is sufficient basis to find that the requirements of Rule 23(b)(3) are present. *See Weiner v. Dannon*, 255 F.R.D. 658, 669 (C.D. Cal. 2009) (predominance satisfied when alleged misrepresentation of product's health benefits were displayed on ***every*** package); *Hanlon*, 150 F.3d at 1022-23 ("[G]iven the limited focus of the action, the shared factual predicate and the reasonably inconsequential differences in state law remedies, the proposed class was sufficiently cohesive to survive Rule 23(b)(3) scrutiny."); *In Re Sony SXRD Rear Projection Television Class Action Litigation*, 2008 WL 1956267 (S.D.NY. 2008) (class treatment in the context of nationwide settlement-only is proper because allegations regarding Sony's violations of, *inter alia*, the various states express and implied warranties subject to the same generalized proof).

Furthermore, the Second Amended Complaint adds claims for common law causes of action, which ensure that common questions of law predominate over the nationwide class. Courts routinely certify nationwide classes in false advertising cases, particularly in cases that bring claims under the common law. *See In re Checking Account Overdraft Litig.*, 307 F.R.D. 656, 675 (S.D. Fla. 2015) (granting class certification in nationwide suit alleging unjust enrichment and concluding that, where defendant allegedly misled class members through uniform misrepresentations, "minor variations in the elements of unjust enrichment under the laws of the various states" do not defeat class certification) (citation, quotation marks, and ellipses omitted); *Rodriguez v. It's Just Lunch, Int'l*, 300 F.R.D. 125,

135–36 (S.D.N.Y. 2014) (certifying nationwide class for common law fraud claims where plaintiffs demonstrated materially uniform misrepresentations to class members); *Ebin v. Kangadis Food, Inc*., 297 F.R.D. 561 (S.D.N.Y. 2014) (certifying nationwide class of purchasers of oil allegedly mislabeled as "100% olive oil"); *Rossi v. P&G*, 2013 U.S. Dist. LEXIS 143180, at *1 (D.N.J. Oct. 3, 2013) (certifying and approving settlement in consumer class action over allegedly false labeling for Crest Sensitivity toothpaste); *Johnson v. General Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at *1 (C.D. Cal. June 17, 2013) (granting final approval to nationwide settlement in suit over "digestive health" claims in yogurt); *Gallucci v. Boiron, Inc.*, 2012 U.S. Dist. LEXIS 157039, at *1 (S.D. Cal. Oct. 31, 2012), *aff'd sub nom. Galluci v. Gonzales*, 603 F. App'x 533 (9th Cir. 2015) (approving nationwide class settlement in suit over labeling and advertising of homeopathic product). The predominance requirement is clearly satisfied in this case, as the Second Amended Complaint asserts claims for breach of express warranty, unjust enrichment, and negligent misrepresentation on behalf of a nationwide class of consumers. Variations in the elements of each cause of action in each state (if any) do not defeat the undeniable fact that common issues predominate over any individual variation in class members' claims in light of the uniform misrepresentations and omissions made by Coca-Cola in its labeling and advertising of the Product.

2. A Class Action is the Superior Method to Settle this Controversy

Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These factors include: (i) the class members' interest in individually controlling separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the

particular forum; and (iv) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3); *see Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-92 (9th Cir. 2001). "[C]onsideration of these factors requires the court to focus on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis." *Zinser*, 253 F.3d at 1190 (citations omitted); *see also Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (finding the superiority requirement may be satisfied where granting class certification "will reduce litigation costs and promote greater efficiency"). Application of the Rule 23(b)(3) "superiority" factors shows that a class action is the preferred procedure for this Settlement.

First, the amount of damage to which an individual class member would be entitled is not large. *Zinser*, 253 F.3d at 1191; *Wiener*, 255 F.R.D. at 671. It is neither economically feasible, nor judicially efficient, for the tens of thousands of Class Members to pursue their claims against Defendant on an individual basis. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980); *Hanlon*, 150 F.3d at 1023; *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971).

Second, except for this Action, Plaintiff is unaware of any other actions by Class Members against Defendant asserting similar claims as here.

Third, certification would be superior because concentrating this litigation in one forum would not only prevent the risk of inconsistent outcomes but would also "reduce litigation costs and promote greater efficiency." *Negrete v. Allianz Life Ins. Co. Of North America*, 238 F.R.D. 482, 493 (C.D. Cal. 2006).

Finally, the question here is "whether reasonably foreseeable difficulties render some other method of adjudication superior to class certification." *In re Prudential Ins. Co. Of Am. Sales Practice Litig*., 962 F. Supp. 450, 525 (D.N.J. 1997). Since this Action will now settle, the Court need not consider issues of manageability relating to the trial. As the Supreme Court recognized in *Amchem*,

for certification of a settlement class "predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Id.* at 625. The Court explained that predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Id.* at 623. Accordingly, when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Id.* at 620.

Indeed, under these same guiding principles, the Ninth Circuit has upheld *settlement-only* class certification in nationwide settlements. In *Hanlon*, the Ninth Circuit found predominance met for purpose of certifying a nationwide vehicle defect settlement class applying each individual's state consumer protection laws. Relying on *Amchem* and in discussing the elements of Rule 23(b)(3), the Ninth Circuit noted, "although some class members may possess slightly differing remedies based on state statute or common law, the actions asserted by the class representatives are not sufficiently anomalous to deny class certification. On the contrary, to the extent distinct remedies exist, they are local variants of a generally homogenous collection of causes which include products liability, breaches of express and implied warranties, and 'lemon laws.'" *Id.* at 1022. Accordingly, the Ninth Circuit upheld certification of the nationwide settlement-only class explaining that "idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over the shared claims." *Id.* at 1022-23.

Therefore, there are no serious manageability difficulties presented by conditionally certifying this case for nationwide *settlement purposes only*, such as choice of law issues. *See Johnson v. General Mills*, No. 10-cv-00061, 2013 WL 3213832, at *1 (C.D. Cal. June 17, 2013) (nationwide class certified for settlement purposes); *United Desert Charities v. Sloan Valve Company, et al.*, No. 12-cv-

06878-SJO, ECF No. 147 (C.D. Cal. Aug. 25, 2014) (same); *In re Alexia Foods, Inc. Litig.*, No. 11-cv-06119-PJH, ECF No. 66 (N.D. Cal. Dec. 12, 2013) (same). As this case will not go to trial if finally approved, all that would remain is claims administration if the settlement is granted final approval. Therefore, Plaintiff has satisfied the requirements of Rule 23(b)(3).

V. THE FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is a Final Approval Hearing at which this Court may hear all evidence and argument to determine whether to grant final approval to the settlement. Plaintiff respectfully requests that the Court set the following schedule for final approval of the settlement:

Serving Notice on Appropriate Federal and State Officials	Within 10 days following the filing of Proposed Settlement Agreement
Commencement of Class Notice to the Class Members ("Notice Date")	Within 30 days after Preliminary Approval
Last day for filing Plaintiff's Motion for Attorneys' Fees, Costs, and Incentive Award	No later than 14 days prior to the Objection Deadline
Last day for Class Members to Opt-Out or submit Objections to Settlement	Within 90 days from the Notice Date
Last day for filing Motion for Final Approval and Response to any Objections	No later than 14 days prior to Final Approval Hearing

Final Approval Hearing	On August 29, 2016 at 10:00 a.m. or first available date thereafter

VI. CONCLUSION

For the foregoing reasons, the Parties respectfully request that this Court (1) preliminarily approve the terms of the settlement reached by the Parties; (2) certify the Settlement Class for the purpose of effectuating the settlement; (3) approve the form and method of notice of the settlement and of the pendency of the litigation to the Class and order that such notice be given; and (4) set a hearing for Final Approval of the settlement.

Dated: February 26, 2016

/s/ Zev B. Zysman

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA COLA COMPANY,

Defendant.

Case No: 09-06309 SJO(JRPx)

CLASS ACTION

DECLARATION OF ZEV B. ZYSMAN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: March 28, 2016
Time: 10:00 a.m.
Room: Courtroom 1 - Second Floor
Judge: Honorable S. James Otero

I, Zev B. Zysman, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and the United States District Court for the Central District of California. I am counsel of record for Plaintiff in the instant action.[1]

2. I have been one of the attorneys primarily responsible for this case since its inception over six years ago, along with my co-counsel, Jordan L. Lurie of Capstone Law LLP. Therefore, I have personal knowledge of the matters stated herein, based on my active participation in the prosecution and settlement of the case, and if called as a witness, I could and would competently testify thereto.

3. I submit this Declaration in support of Plaintiff's Unopposed Motion for an Order (1) Preliminarily Approving Class Action Settlement, (2) Conditionally Certifying Settlement Class, (3) Approving Form and Methods of Class Notice, and (4) Scheduling Final Approval of Settlement.

The Settlement Negotiations

4. The settlement is the result of protracted, extensive, and hard-fought arm's-length negotiations by counsel, experienced in class action and other complex litigation, and was reached after intensive negotiations, including a full-day mediation session at JAMS on September 9, 2015 before Honorable Richard A. Kramer (Ret.), a well-respected and experienced mediator. With the assistance of Judge Kramer, a potential settlement was explored in detail. The Parties were unable to resolve the case at the mediation. However, over the ensuing months, the Parties engaged in a sustained mediation process overseen by Judge Kramer. The discussions that followed resulted in an executed Class Action Settlement Term Sheet in December 2015.

[1] This declaration incorporates by reference the definitions in the Settlement Agreement and Release ("Agreement"), and all terms used herein shall have the same meanings as set forth in the Agreement.

5. Thereafter, the Parties continued to vigorously negotiate and finalize all of the settlement terms, the notice program, the claims submission process, the formal settlement documents and the accompanying exhibits which spanned over a period of several months. Ultimately, the Parties agreed in principle to a class-wide settlement on the terms provided in the Agreement filed concurrently with this Motion.

6. The Parties negotiated the issue of attorneys' fees and costs, over and above the class relief, only *after* reaching agreement on all other substantive terms of the settlement, with the direct assistance of Judge Kramer.

7. Before settlement negotiations even commenced, the case had been vigorously litigated by both sides over the course of the past six years and required a significant amount of time and resources. As discussed in the Motion for Preliminary Approval, Class Counsel prepared and filed the initial class action complaint, amended complaint, motion for class certification and motion for summary judgment which was fully briefed. In connection with Plaintiff's motion for class certification and motion for summary judgment, Plaintiff retained a consumer survey expert, Dr. Michael Belch, who conducted a full-blown consumer survey directed specifically to the advertising for the Juice Product at considerable expense to Class Counsel. In addition, Plaintiff filed oppositions to Coca-Cola's motion for judgment on the pleadings, motion for summary judgment, renewed motion for summary judgment and motion for reconsideration of the renewed motion for summary judgment.

8. Class Counsel also conducted a thorough examination and investigation of the facts and law relating to the matters in this Action, including but not limited to, engaging in extensive discovery. Specifically, Class Counsel propounded multiple sets of detailed class certification and merits discovery, including special interrogatories, requests for production of documents, and requests for admissions. Thereafter, the Parties engaged in multiple meet and

confers which spanned several months regarding the scope of the discovery, the sufficiency of discovery responses and production, the retention of electronic documents and the timing of the production. Plaintiff's also took several Rule 30(b)(6) depositions relating to multiple categories, including advertising, marketing, labeling, naming, packaging, consumer comments, complaints and inquiries, and financial reporting information for the Juice Product. Plaintiff served numerous subpoenas directed to third-party advertising and marketing firms that did work for Coca-Cola to design the advertising campaign. For its part, Coca-Cola propounded multiple sets of written discovery, including special interrogatories and requests for production directed to Plaintiff. Coca-Cola also took Plaintiff Saeidian's all-day deposition.

9. Class Counsel also reviewed nearly *200,000 pages of documents* informally and formally produced by Coca-Cola, and otherwise obtained through their investigation. As part of that document review, Class Counsel reviewed all the responsive documents, dozens of deposition transcripts and expert reports from the related proceeding in *POM Wonderful v. Coca Cola Co*. In addition, Class Counsel closely monitored the *POM Wonderful* action, and even attended the hearing before the Ninth Circuit.

10. Given the motion and discovery practice in the case and the Court's rulings on the renewed motion for summary judgment and motion for reconsideration, the Parties were able to articulate the strengths of their claims and defenses and the weaknesses of each other's positions.

11. By the time Plaintiff agreed to settle, she and her counsel had adequate information to assess the facts and the applicable law and the risks of continued litigation, including the possibility in not obtaining class certification or prevailing on the merits at trial. As a result, Plaintiff and Class Counsel were well-informed of the material facts and law to make a thorough appraisal of the adequacy of the

settlement to provide meaningful relief to the Settlement Class. The full terms of the Parties' settlement were subsequently memorialized in the Agreement.

12. Plaintiff's Counsel has extensive experience in complex business litigation and class actions. Plaintiff's Counsel has successfully served as Class Counsel prosecuting numerous consumer class actions to Judgment, including *Press v. DS Waters of America, Inc.,* Case No. BC489552 (Los Angeles Superior Court, Central Civil West); *Brown v. Defender Security Co.*, Case No. 12-CV-7310-CAS (Central District of California)*; Big 5 Sporting Goods Song-Beverly Cases*, Case No. JCCP4667 (Los Angeles Superior Court, Central Civil West); *Burcham v. Welch Foods, Inc*., Case No. 09-CV-05946-AHM, (Central District of California); *Sosinov v. RadioShack, Corp.,* Case No. BC449675 (Los Angeles Superior Court, Central Civil West); *Konevskya v. Tommy Bahama Group, et al.*, Case No. BC424931 (Los Angeles Superior Court, Central Civil West); *Pomerants v. Skechers U.S.A. Inc*., Case BC436360 (Los Angeles Superior Court, Central Civil West); *Yu v. Microsoft Corp*., Case No. BC316448 (Los Angeles Superior Court, Central Civil West); *Satsuta v. The Linksys Group*, Case No. 1-03-CV002896 (Santa Clara Superior Court); *Brand v. Simple Tech, Inc*., Case No. BC360001 (Los Angeles Superior Court); and *In Re Wireless Product Cases*, JCCP Case No. 4381 (San Francisco Superior Court).

13. Attached hereto as Exhibit A is a true and correct copy of the firm resume of Capstone Law APC.

14. Prior to and throughout the duration of this litigation, along with my co-counsel, my firm has diligently investigated and prosecuted this matter, dedicating substantial resources to the investigation of the claims at issue in the action, and have successfully negotiated the settlement of this matter to the benefit of the Settlement Class. Although Plaintiff is confident in the strength of her claims and believes that she would ultimately prevail at trial, she also recognizes that litigation is inherently risky.

15. Based on my experience litigating class actions, and my active participation in the litigation of this action, I believe that the proposed settlement presents terms that are fair, reasonable and adequate, and in the best interests of the Settlement Class, given the inherent risks of litigation, the risk relative to class certification, the amount that each Class Member could recover at trial, and the costs of pursuing such litigation

16. Moreover, I believe that Plaintiff Saeidian's representative interests and active participation in this litigation demonstrate that she has and will continue to protect the interests of the Class.

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

Executed this 26th day of February, 2016 at Encino, California.

/s/ Zev B. Zysman
Zev B. Zysman

EXHIBIT A

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With twenty-six seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining tens of millions of dollars in recovery for employees and consumers. The firm's accomplishments include:

- In February, 2015, three Capstone attorneys, Glenn A. Danas, Raul Perez, and Ryan H. Wu, were honored with the prestigious California Lawyer of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement. The hard-fought *Iskanian* victory is a rare bright spot for plaintiffs in the challenging area of arbitration law.

- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for several precedential decisions in this area. In *Baumann v. Chase Inv. Servs. Corp*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act. And Capstone is currently lead counsel in *Williams v. Superior Court (Marshalls of Calif.)*, No. S227228, on the scope of discovery for PAGA claims pending before the California Supreme Court.

- In 2014, Capstone, along with co-counsel, certified one of the largest wage and hour classes in California, numbering over 120,000 non-exempt employees, in *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.). This is one of *twelve* certified class actions that Capstone is actively prosecuting following contested class certification motions.

- Capstone serves as class counsel in a number of significant wage and hour settlements, including $12 million on behalf of a nationwide class of nonexempt tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over $10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and $6 million on behalf of non-exempt hourly workers in *Sheldon v. AHMC Monterey Park Hospital LP*, Case No. BC440282 (L.A. Super. Ct.).

- Capstone is class counsel in a number of significant consumer actions, including *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.), *Asghari v. Volkswagen Group of America*, No. 13-02529 (C.D. Cal.), *Klee v. Nissan North America*, Case No. 12-08238 (C.D. Cal.), *MacDonald v. Ford Motor Co.,* No. 13-02988 (N.D. Cal.) (finding action was catalyst for nationwide recall), *Fernandez v. Home Depot U.S.A.,* No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-677 (S.D. Cal.), that have conferred benefits to class members valued in the tens of millions. These benefits include cash payments for statutory violations, complementary automotive repairs, costs reimbursement, parts replacement and extension of express warranties.

SUMMARY OF SIGNIFICANT SETTLEMENTS

In the past three years, Capstone has settled over 45 high-stakes class actions totaling over $100 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured hundreds of thousands in civil penalties for the State of California, including obtaining one of the largest civil penalties for PAGA on record.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of $12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of $10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Perrin v. Nabors Well Services Co*., Case No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over $6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *York v. Starbucks Corp.,* Case No. 08-07919 (C.D. Cal.): gross settlement of nearly $5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Forever 21 Wage and Hour Cases*, Case No. JCCP4745 (S.D. Super. Ct.): $3.75 million settlement to resolve wage and hour claims, including the failure to pay meal and rest period premiums;
- *Monjazeb v. Neiman Marcus*, Case No. CGC-10-502877 (S.F. Super. Ct.): $3.5 million settlement on behalf of over 6,000 non-exempt Neiman Marcus employees;
- *Hicks v. Toys 'R' Us-Delaware, Inc.*, Case No. 13-01302 (C.D. Cal.): $4 million wage and hour settlement on behalf of over 39,000 class members and secured policy changes for employees;
- *Fernandez v. Home Depot USA Inc.* , Case No. 13-648 (C.D. Cal.): settlement over $3 million to job applicants for violations for violations of the Fair Credit Reporting Act;
- *Felix v. Auto Club of Southern Calif.,* Case No. 07CC01421 (Orange Cty. Super. Ct.): $3.5 million settlement fund on behalf of over 2,000 insurance sales persons for wage and hour claims after taking this certified class action to trial;
- *Morasco vs Interact PMTI Inc.*, Case No. 56-2013-00439020-CU-OE-VTA (Ventura Super. Ct.): a settlement on behalf of approximately 50 non-exempt off-shore oil workers that secured an average payment of $11,500 per class member;
- *Williams v. Veolia Transp. Svcs*., Case No. 08-02582 (C.D. Cal.): $230,000 in PAGA civil penalties for rest break violations, a result that a former district court judge, serving as an arbitrator, recognized as being one of largest payments of PAGA civil penalties on record.
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over $20 million.
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over $10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is the managing partner of Capstone Law APC. She supervises the pre-litigation phase for all of the firm's cases, including investigation, analysis, and client consultation. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 35 cases, delivering tens millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. A partner at Capstone, Raul Perez has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in tens of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles,* 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Danas and Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Matthew Theriault. Mr. Theriault is a partner at Capstone. An expert in wage-and-hour law and litigation strategy, Mr. Theriault currently manages and assists Capstone's class action certification efforts and trials. Recently, Mr. Theriault was lead trial counsel in a rarely-seen class action trial, representing a certified class of insurance salespersons alleging unpaid wages and break premiums in *Felix v. Auto Club of Southern Calif.,* Case No. 07CC01421 (Orange Cty. Super. Ct.). The parties ultimately reached a multi-million dollar settlement in the middle of trial.

Over the course of his career, he has successfully certified numerous employee classes for claims involving misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. Cases where Mr. Theriault was certified as class counsel include *Zamora v. Balboa Life & Casualty LLC,* Case No. BC360026 (L.A. Super. Ct.), *York v. Starbucks Corp.,* Case No. 08-07919 (C.D. Cal.), *In re: Taco Bell Wage And Hour*, 2013 U.S. Dist. LEXIS 380 (N.D. Cal.), *In Re: Autozone, Inc., Wage and Hour Employment Practices Litigation*, Case No.: 3:10-md-02159-CRB (E.D. Cal.), *Mansfield v. Brackenhoff Mgmt. Group, Inc.*, No. BC356188 (L.A. Super. Ct.), and *Blair v. Jo-Ann Stores, Inc.*, Case No. BC394795 (L.A. Super. Ct.).

Mr. Theriault graduated from the Western New England School of Law in Springfield, Massachusetts, and received his undergraduate degree with honors from the University of Connecticut. After graduation, Mr. Theriault practiced law in Connecticut starting in 2001. He litigated primarily consumer actions involving allegations of auto dealership fraud, loan financing, and unlawful debt collection practices. After moving to California, Mr. Theriault joined a large plaintiffs firm, where he litigated wage and hour class actions and was eventually made partner.

Glenn A. Danas. A partner at Capstone, Glenn A. Danas heads the complex motion and appeals practice group. A leading authority on arbitration law and PAGA actions, Mr. Danas was recently honored with the CLAY award for his work as lead counsel in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014). Mr. Danas briefed and argued this closely-watched case before the California Supreme Court, which resulted in a landmark decision that preserved employees' right to pursue PAGA actions notwithstanding a waiver in an arbitration agreement. Mr. Danas was also recognized by The Daily Journal as one of California's Top 20 Lawyers Under 40 for 2013.

Mr. Danas has argued over twenty appeals in the California Court of Appeal, the California Supreme Court, and the Ninth Circuit Court of Appeals, and has served as lead appellate counsel in many more. While at Capstone, Mr. Danas argued before the Ninth Circuit as lead counsel in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), *Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916 (2013), which held that arbitration agreements may not be enforced if found unconscionable under general state contract law, and *Allen v. Bedolla*, 2015 U.S. App. LEXIS 9139 (9th Cir. 2015), which made law on judicial scrutiny of class action settlements. Prior to joining Capstone, Mr. Danas successfully briefed and argued the precedent-setting appeal in *Brown v. Ralph's Grocery Co.*, 197 Cal. App. 4th 489 (2011), regarding the unenforceability of PAGA waivers. Mr. Danas also successfully defeated an appeal of a motion to remand under the CAFA "local controversy exception" in *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011), establishing a new standard on when the circuit court may grant review in a discretionary appeal under CAFA.

Mr. Danas graduated from Emory University School of Law in 2001 with honors and authored *The Interstate Class Action Jurisdiction Act of 1999: Another Congressional Attempt to Federalize State Law*, 49 EMORY L.J. 1305 (2000), which was selected by the ABA as one of the top three student-written law journal articles in its annual nationwide competition. He received his undergraduate degree in Industrial and Labor Relations from Cornell University. After law school, he clerked for the Honorable U.W. Clemon, Chief U.S. District Judge

for the Northern District of Alabama and began his career at an international law firm in New York City, where he primarily focused on antitrust and securities litigation.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on four certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, the scope of discovery, and PAGA trials. Recently, in *Williams v. Veolia Transp. Svcs.*, Case No. 08-02582 (C.D. Cal.), Ms. Grant's tenacious prosecution led to a settlement with civil penalty payment of $230,000, one of the largest on record for a PAGA enforcement action.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Of Counsel

Jordan Lurie. A renowned class action litigator, Jordan Lurie heads the consumer litigation practice group at Capstone, prosecuting cases involving violations of state and federal consumer protection laws, the Fair Credit Reporting Act, federal and state privacy laws, and federal securities law. Mr. Lurie is currently counsel in a consolidated class action against Sony Corporation for the massive data breach in 2014 as well as numerous automobile defect cases.

Over his distinguished career, Mr. Lurie has obtained settlements in excess of $100 million in actions where he was lead or co-lead counsel. Notable cases where Jordan served as lead counsel include: *In re: Apria Healthcare Group Secs. Litig.*, where Jordan settled on behalf of investors for $42 million in a securities fraud class action; *Morganstein v. Aura Systems*, where he settled claims for $18 million in a securities fraud class action; *In re Quintus Secs. Litig.*, a securities fraud class action which settled for $10.1 million; and *In re Southern Pacific Funding Corp., Sec. Litig.*, Case No. Civ. 98-1239-MA, (D. Or.), where he settled a class action for $19.5 million. Mr. Lurie has been selected as one of Southern California's "Super Lawyers" every year from 2012 through 2015.

Prior to joining Capstone, Mr. Lurie spent most his career at a national plaintiffs' law firm specializing in corporate securities and consumer class actions, where he was the managing partner of the firm's Los Angeles office. Mr. Lurie graduated from the University of Southern California Gould School of Law in 1987, where he was Notes Editor of the University of Southern California Law Review. He received his undergraduate degree with honors from Yale University. When not litigating, Mr. Lurie is an active educator and community leader. Jordan participated in the first Wexner Heritage Foundation leadership program in Los

Angeles and holds leadership and executive positions in various organizations in the Los Angeles community. He has also been the featured speaker at California MCLE seminars regarding securities fraud and class actions, and has authored several publications for the California Continuing Education of the Bar.

Senior Counsel

Liana Carter. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included successfully defeating a challenge to overturn the denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Along with Mr. Danas, Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, Case No. S224086, granted by the California Supreme Court on April 1, 2015. *McGill* will decide whether consumers may continue to pursue public injunctions under state consumer laws in court notwithstanding an arbitration agreement that effectively forecloses the pursuit of this remedy. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Robert Drexler. Robert Drexler is a senior counsel with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2015.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored Defective Prosthetic Devices: Strict Tort Liability for the Hospital? 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Robert Friedl. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Stephen Gamber. A senior counsel with Capstone, Stephen Gamber handles the pre-litigation phase for prospective cases including investigation, claim identification and analysis and client consultation. He has an extensive background in wage-and-hour matters, having worked in this area of the law for more than a decade, and focusing on class actions for the past six years. Mr. Gamber's expertise includes claims for meal and rest violations, overtime wages, off-the-clock work, misclassification, and other employment and consumer claims.

Prior to joining Capstone, Mr. Gamber represented plaintiffs primarily in wage-and-hour class actions. Before attending Loyola Law School, where he graduated in 1994, Stephen worked as a controller and financial reporting accountant for several large corporations. He received his undergraduate degree with honors from the University of California, Santa Barbara and also earned an MBA from San Diego State University. Mr. Gamber is a member of LEFTJAW, a Southern California association of plaintiffs' employment lawyers.

Stan Karas. Stan Karas is a senior counsel at Capstone Law, where he focuses on many of the firm's most complex and high profile matters. He works on every stage of these cases from pleading challenges to class certification proceedings to trial and appeal. Mr. Karas is currently prosecuting four certified class actions. Mr. Karas started his legal career at Paul Hastings Janofsky and Walker, where he handled complex commercial and real estate litigation. Subsequently, he joined Quinn Emanuel Urquhart & Sullivan, where he specialized in class action and intellectual property litigation. Among other successes, Mr. Karas obtained a $3 million jury verdict for a client, along with a finding that the defendant was liable for punitive damages. In another trial, the court granted non-suit in favor of his client after he delivered the opening argument. Mr. Karas has also obtained multi-million dollar settlements for his clients, including settlements that fully compensated his client for all claimed losses.

Mr. Karas is a graduate of Stanford University, where he received a degree in History and Literature and was elected to Phi Beta Kappa. He graduated from Boalt Hall School of Law at UC Berkeley. In law school, Mr. Karas served as Articles Editor of the California Law Review and Notes and Comments Editor of the Berkeley Technology Law Journal. Mr. Karas has published on class action and privacy law issues including Privacy, Identity, Databases, 52 Am. U. L. Rev. 393 (2002) and The Role of Fluid Recovery in Consumer Protection Litigation, 90 Cal. L. Rev. 959 (2002). He is a member of the California Employment Lawyers Association (CELA), the Consumer Attorneys Association of Los Angeles (CAALA) and the National Employment Lawyers Association (NELA).

Katherine Kehr. A senior counsel at Capstone, Katherine Kehr prosecutes aggregate actions on behalf of California workers, handling all aspects of wage and hour litigation. While at Capstone, Ms. Kehr developed expertise on issues relating to arbitration and PAGA issues. At Capstone, Ms. Kehr was the primary attorney on *Brown v. Super. Ct.* (*Morgan Tire*), 216 Cal. App. 4th 1302 (2013) (superseded by grant of review), as well as the primary drafter of the intermediate court briefing in *Iskanian.* Recently, Ms. Kehr was one of the primary drafters of a contested motion for class certification, by which Capstone successfully certified a class and was appointed class counsel in *Romo v. GMRI, Inc.,* Case No. 12-cv-00715-JLQ-SP (C.D. Cal.).

Ms. Kehr graduated from the University of Southern California Gould School Of Law in 2002, where she was a member of the Moot Court Honors Program. After law school, she clerked for the Honorable Richard D. Savell of the Alaska Superior Court and the Honorable Anthony J. Mohr of the Los Angeles Superior Court. Ms. Kehr received her undergraduate degree in French literature *cum laude* from Bryn Mawr College. She received her training as an associate at Selman Breitman LLP, where she handled all aspects of pre-trial litigation, in both state and federal court.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Andrew Sokolowski. Mr. Sokolowski is a senior counsel with Capstone Law where he focuses on assisting litigation teams with positioning the firm's high-value cases for trial. He concentrates his practice on wage-and-hour and consumer protection class actions and has successfully litigated numerous class actions resulting in millions of dollars in recovery for class members. Mr. Sokolowski also has first-chair trial experience in state and federal court. Mr. Sokolowski began his career in 2003 as a litigation associate at the international law firm Orrick, Herrington & Sutcliffe LLP. He later joined the plaintiffs' bar, pursuing consumer protection and securities fraud class actions as an associate at Milberg LLP.

Mr. Sokolowski graduated from Loyola Law School, Los Angeles, cum laude and Order of the Coif in 2003, and was ranked in the top 5% of his class. He received his undergraduate degree in History from UCLA in 1997. Following college, Mr. Sokolowski served in the United States Army for three years as an infantryman before attending law school. He served on the Board of Governors for the Association of Business Trial Lawyers—Los Angeles Chapter from 2009 through 2013, and edited the chapter's publication, The ABTL Report. Mr. Sokolowski is also an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Consumer Attorneys of California (CAOC). He has authored several articles, including: Chicken Little and the Future of Class Actions, CAALA Advocate (October 2013); The Anti-Injunction Act Takes on Rule 23, ABTL Report—Los Angeles (Summer 2011); and The Overreaction to the Kelo Decision, Los Angeles Lawyer (January 2006). As a member of the Central District of California Pro Bono Civil Rights Panel, which assists indigent plaintiffs with prosecuting civil rights claims, Mr. Sokolowski received the Public Counsel Pro Bono Achievement Award in 2012 for his work as the sole trial attorney in one of Panel's civil rights cases. Mr. Sokolowski has been selected as one of Southern California's "Super Lawyers – Rising Stars" in 2013, 2014, and 2015.

Ryan H. Wu. Ryan H. Wu is a senior counsel at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including opposing defendants' efforts to decertify or overturn certified class actions, the scope and operation of PAGA, contested attorneys' fees motions, and

responding to objectors. Mr. Wu authored the appellate briefs in *Baumann v. Chase Inv. Servs. Corp*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Danas and Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Iskanian v. CLS Transportation*: Employees' Perspective" published in the *California Labor & Employment Bar Review*.

Associates

Arnab Banerjee. Arnab Banerjee is an associate with Capstone, where he litigates employment and consumer class actions. Mr. Banerjee's practice focuses primarily on wage and hour class action litigation where he has worked on more than 50 class action cases on behalf of employees for the failure to pay overtime and minimum wages, the failure to provide meal and rest breaks, and helping to obtain millions of dollars in recovery for employees. Admitted to the Bar in 2007, Mr. Banerjee began his career and received his training as an associate at Latham & Watkins LLP, where he handled all aspects of pre-trial litigation, in both state and federal court in a wide variety of business litigation matters ranging from white collar defense to environmental litigation. Mr. Banerjee graduated from the University of Southern California Gould School Of Law, where he was an editor on the Interdisciplinary Law Journal, and received his undergraduate degrees in Political Science and Sociology, with a minor in Humanities and Law from the University of California, Irvine where he graduated *cum laude* and Phi Beta Kappa.

Jamie Greene. Jamie Greene is an associate with Capstone where she evaluates potential new cases, develops new claims, and manages client relations. Well-versed in wage and hour law and federal and state consumer protection statutes, Ms. Greene supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation. Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. She is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California. She is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Robin Hall. Robin Hall is an associate with Capstone Law, where she heads the firm's research department. Ms. Hall assists in pre-litigation investigation of employment and consumer statutory claims, and handles complex research projects. A founding editor of the Impact Litigation Journal (ILJ), Ms. Hall has authored numerous articles on emerging legal issues published on ILJ. Ms. Hall began her career and received her training as an associate at Baker & Hostetler LLP, where she represented Fortune 500 companies in labor and employment litigation, including class actions. She attended Indiana University's Maurer School of Law, where she graduated *cum laude* in 2007. During law school, Ms. Hall served as Editor-in-Chief of the Indiana Journal of Global Legal Studies and Director of the Inmate Legal Assistance Clinic. She received her undergraduate degree from the University of Missouri and is admitted to practice law in California.

Jonathan Lee. An associate with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California. Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Suzy E. Lee. Suzy Lee, an associate with Capstone, litigates complex matters with a focus on wage-and-hour class actions. Ms. Lee has successfully litigated wage and hour class actions and single plaintiff cases in other practice areas, including consumer fraud, commercial litigation, personal injury, and employment discrimination. Prior to joining Capstone, Ms. Lee was an associate at several prominent plaintiff firms, where she litigated complex wage and hour and consumer class actions in state and federal courts. Ms. Lee also has experience defending businesses in cases involving contract disputes and other business litigation matters. Ms. Lee graduated from the Indiana University Maurer School of Law, where she served as the President of the Asian Pacific American Association. She received her undergraduate degree from the University of California, Irvine, where she graduated *cum laude*. Ms. Lee is proficient in Korean.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Eduardo Santos. Eduardo Santos, an associate at Capstone, represents employees and consumers in class action litigation, with a special focus on negotiating, structuring, managing, and obtaining court approval of Capstone's class action settlements. Having assisted in obtaining court-approval of over 60 wage and hour and consumer class action settlements during the course of his career, Mr. Santos has contributed significantly to the high approval rate of Capstone's settlements. Before joining Capstone, Mr. Santos was an associate at one of California's largest plaintiffs-only employment law firms, and prior to that, an associate at a prominent plaintiff's firm specializing in mass torts litigation, where he was part of a team that secured a total of $4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos received his JD from Loyola Law School of Los Angeles in 2007, which he attended on a full academic scholarship. While in law school, he was an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated *magna cum laude* from UCLA with majors in Political Science and History, and was a recipient of the Ralph J. Bunche scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is an associate with Capstone. Her practice focuses on identifying, analyzing, and developing new wage-and-hour and consumer claims, including violations of the Fair Credit Reporting Act, Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships. Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of

Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

Karen Wallace. An associate with Capstone, Karen Wallace handles the pre-litigation phase for prospective cases including investigation, claim identification and analysis, and client consultation. Ms. Wallace's expertise includes claims for meal and rest period violations, overtime wages, off-the-clock work, misclassification, and other employment and consumer claims. Before attending Southwestern Law School, Ms. Wallace worked as a teacher for many years. She received her doctorate in English from the University of California, Los Angeles, where she also earned her master's degree in American Indian Studies.

Tarek Zohdy. An associate with Capstone, Tarek Zohdy litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class action settlements that have provided significant relief to thousands of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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Attorneys for Plaintiff and the Proposed Settlement Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. THE COCA COLA COMPANY, Defendant.	Case No. 09-cv-06309 SJO (JRPx) **CLASS ACTION** **SETTLEMENT AGREEMENT AND RELEASE AND RELATED EXHIBITS** Date: March 28, 2016 Time: 10:00 a.m. Room: Courtroom 1 – 2nd Floor Judge: Honorable S. James Otero

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into as of February 19, 2016, by and between Plaintiff Niloofar Saeidian ("Plaintiff"),[1] in her individual capacity and on behalf of the putative Settlement Class, and The Coca-Cola Company ("Coca-Cola" or "Defendant"). This Settlement Agreement is subject to the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

A. Coca-Cola, by and through its Minute Maid Business Unit ("Minute Maid"), marketed and sold a flavored 100% juice blend called Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices ("the Product") from September 2007 until December 2014.

B. The Product was discontinued in 2014 after several years of declining sales, and Minute Maid has no plans to reintroduce it in the United States.

C. On August 28, 2009, Plaintiff filed a class action complaint (the "Complaint") against Coca-Cola in the United States District Court for the Central District of California, Case No. 09-cv-06309 SJO-JPR, on behalf of herself and a purported class of California purchasers of the Product, alleging that she was misled by Minute Maid's labeling and advertising for the Product.

D. Plaintiff filed an Amended Complaint on March 16, 2015 (the "First Amended Complaint"). In the First Amended Complaint, Plaintiff alleges that the Product's labeling and advertising misled consumers to believe that the primary

[1] Except as otherwise specified, capitalized terms shall have the same meanings set forth in Section 1 below.

ingredients by volume in the Product are pomegranate and blueberry juice. The First Amended Complaint further alleges that, even if the Product's name and label were authorized by U.S. Food and Drug Administration regulations specific to flavored juice blends, the Product's labeling and advertising nevertheless violated California's consumer protection laws. The First Amended Complaint includes claims for Violations of California Business & Professions Code § 17200 *et seq.* and § 17500 *et seq.*

E. Defendant denies the material allegations of the First Amended Complaint.

F. Defendant moved for Summary Judgment on April 6, 2015 on the grounds that Plaintiff's state-law claims are preempted by the Food, Drug, and Cosmetic Act ("FDCA") and barred by California's safe harbor doctrine. This Court had previously held, in a parallel case brought by Pom Wonderful LLC ("Pom"), *Pom Wonderful LLC v. The Coca Cola Company et al.*, Case No. 2:08-cv-06237 (C.D. Cal.) (the "Pom Matter"), that made substantially identical allegations, that Pom's California state-law causes of action challenging the name and label of the Product were preempted by the FDCA and barred by the safe harbor doctrine. Nonetheless, the Court denied Defendant's motion on July 6, 2015.

G. Defendant subsequently moved for reconsideration of the Court's Summary Judgment ruling in light of a decision from the United States District Court for the Northern District of Florida, *Stansfield v. The Minute Maid Company and the Coca-Cola Company*, Case No. 4:14-cv-290-MW/CAS (N.D. Fla.), which held that claims nearly identical to those asserted by Plaintiff were preempted by the FDCA. The Court denied Defendant's motion for reconsideration on September 15, 2015.

H. Before entering into this Settlement Agreement, Plaintiff, through her Class Counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims and potential claims to determine the strength of liability, potential remedies, and all defenses thereto.

I. Plaintiff, through her Class Counsel, conducted an extensive investigation into the facts and law relating to the matters alleged in the Action, including (i) the label design and product formulation; (ii) the marketing and advertising of the Product; (iii) consumer comments, complaints and inquiries of the Product; and (iv) sales and pricing data. This investigation included extensive pretrial discovery, including the production of nearly 200,000 pages of documents, which included multiple deposition transcripts, expert reports, and other materials from the Pom Matter. Plaintiff propounded detailed class certification and merits discovery, including multiple sets of special interrogatories, requests for production of documents, and requests for admissions. Plaintiff also conducted three depositions of Minute Maid employees and representatives. Moreover, Plaintiff served numerous subpoenas directed to third-party advertising and marketing firms that did work for Minute Maid. In addition, Plaintiff retained and provided reports of two expert witnesses and conducted a consumer survey directed to the advertising for the Product. Plaintiff responded to multiple sets of written discovery, including special interrogatories and requests for production of documents. Plaintiff was also deposed by Defense Counsel as part of the discovery process in this case. Plaintiff filed a class certification motion and motion for summary judgment.

J. Class Counsel and counsel for Defendant, following correspondence and discussions over telephone and email, engaged in an extensive,

in-person mediation on September 9, 2015 before the Hon. Richard A. Kramer (Ret.). Settlement negotiations continued after the September 9, 2015, mediation with the full participation of Judge Kramer up to the execution of this Settlement Agreement. As a result of those extensive negotiations, the Parties have agreed to the terms of this Settlement Agreement.

K. The Parties and their counsel negotiated attorneys' fees and costs provided for in Section 5.2 below only after reaching agreement regarding all of the material terms of the Settlement, with the direct assistance of Judge Kramer.

L. Defendant, while disclaiming all liability with respect to all claims, considers it desirable to resolve the Action on the terms stated herein in order to avoid further expense, inconvenience and burden.

M. Class Counsel and the Class Representative believe that the claims asserted in the Action possess merit and have examined and considered the benefits to be obtained under the proposed settlement set forth in this Settlement Agreement, the risks associated with the continued prosecution of the complex and potentially time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel has fully investigated the facts and law relevant to the merits of the claims, conducted extensive formal and informal discovery, and conducted an independent investigation.

N. This Settlement Agreement is a product of sustained, arm's length settlement negotiations, and the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because it provides for certification of a Settlement Class and substantial relief to the Settlement Class in exchange for Settlement Class Members' release of the Released Claims.

O. The Parties intend to seek Court approval of this Settlement Agreement as set forth below.

P. The signatories to this Settlement Agreement agree that the recitals set forth herein are contractual in nature and form a material part of this Settlement Agreement.

TERMS AND CONDITIONS

In consideration of the foregoing recitals, without (a) any admission or concession on the part of Plaintiff of the lack of merit of the claims asserted in the proposed Second Amended Complaint, or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendant, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiff, the Settlement Class, Class Counsel, and Defendant that the Action and all Released Claims of the Settlement Class be settled, compromised, and dismissed on the merits with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein:

1. DEFINITIONS

1.1 "Action" means *Saeidian v. Coca-Cola Company*, 09-cv-6309 SJO-JPR , pending in the United States District Court for the Central District of California.

1.2 "Advertising" means the marketing and promotion of the Product, including but not limited to print, television, radio and Internet advertising, except as would constitute Labeling.

1.3 "Claims Period" means the period for Settlement Class Members to submit claims for cash recovery or product replacement vouchers.

1.4 "Class Representative" means Niloofar Saeidian.

1.5 "Class Settlement Website" means the Internet website to be established by the Settlement Administrator, as part of the Notice Plan as set forth in Section 6.3 below.

1.6 "Class Counsel" means Zev B. Zysman of Law Offices of Zev B. Zysman APC and Jordan L. Lurie and Robert K. Friedl of Capstone Law APC.

1.7 "Court" means the United States District Court for the Central District of California, where the Action is pending.

1.8 "Days," unless specified as "business days," means all calendar days, including Saturday, Sundays, and legal holidays, but if the last day of a period is a Saturday, Sunday, or a Court holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Court holiday.

1.9 "Defense Counsel" means Steven A. Zalesin and Travis J. Tu of Patterson Belknap Webb & Tyler, LLP.

1.10 "Effective Date" means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.

1.11 "Final Approval Hearing Date" means the hearing date set by the Court for the final approval of the Settlement Agreement that is in compliance with the provisions of 28 U.S.C. § 1715(d).

1.12 "Final Approval Order and Judgment" shall have the same meaning assigned in Section 9 of the Settlement Agreement.

1.13 "First Amended Complaint" means the Class Action Complaint filed in the Action on March 16, 2015 (Dkt. No. 144).

1.14 "Labeling" means the labeling of the Product, including all words and graphics included on the Product as sold to customers.

1.15 "Long Form Notice" means the longer form of notice to the Settlement Class under the Notice Plan, as further described in Section 6.5 below.

1.16 "Notice" means the forms of notice, attached as Exhibits B and C, or such other form as may be approved by the Court, as applicable, that inform the Settlement Class Members of: (i) the certification of the Action for settlement purposes; (ii) the dates and locations of the Final Approval Hearing Date; and (iii) the elements of the Settlement Agreement.

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

1.18 "Notice Plan" means the plan for providing Notice of this Settlement to Settlement Class Members, as set forth in Section 6 below and the Declaration of Steven Weisbrot, attached as Exhibit A.

1.19 "Objection Deadline" means the date by which any Settlement Class Member may object to the Settlement Agreement, and shall be ninety (90) Days from the Notice Date.

1.20 "Opt-Out Deadline" means the date by which any Settlement Class Member may be excluded from the Settlement Class, and shall be ninety (90) Days from the Notice Date.

1.21 "Parties" means Plaintiff and Defendant, each a "Party."

1.22 "Person" or "Persons" means all persons and entities (including, without limitation, natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs and assigns).

1.23 "Plaintiff" means Niloofar Saeidian in her individual capacity, and as a Class Representative of a class of nationwide purchasers of the Product.

1.24 "Plaintiff's Counsel" means Law Offices of Zev B. Zysman APC, Capstone Law APC, and WeissLaw LLP.

1.25 "Preliminary Approval" and "Preliminary Approval Order" mean the Court's Order Certifying a Settlement Class, Preliminary Approval of Proposed Settlement, Approving and Directing Notice Plan, Appointing Settlement Administrator, and Appointing Class Representative and Class Counsel , in substantially the same form as Exhibit E.

1.26 "Product" means the Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices, sold from September 2007 until December 2014.

1.27 "Released Claims" shall be defined and construed as broadly as possible to effectuate complete finality over this litigation involving Labeling and Advertising of the Product and shall mean those claims that the Settlement Class Members are releasing, as set forth in Section 8.1 below.

1.28 "Released Parties" shall be defined and construed as broadly as possible to effectuate a complete and comprehensive release of the Released Claims, and shall mean Defendant, as well as its past, present, and future predecessors, successors, and assigns; the

past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, or associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above, and any and all entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered the Product for sale.

1.29 "Releasing Parties" shall include Plaintiff and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, legal representatives, assigns, and successors.

1.30 "Second Amended Complaint" means the Second Amended Complaint attached hereto as Exhibit F.

1.31 "Settlement Administrator" means Angeion Group.

1.32 "Settlement Agreement" means this Settlement Agreement and Release, including its Exhibits.

1.33 "Settlement Class" or "Settlement Class Members" means the Class as defined in Section 3.1 below.

1.34 "Summary Notice" means the shorter form of the notice to the Settlement Class under the Notice Plan, as further described in Section 6.6 below.

2. MOTION FOR PRELIMINARY APPROVAL

2.1 Within fourteen (14) days after the signing of this Settlement Agreement, Class Counsel shall file with the Court a Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Approval of Notice Plan and Settlement Administrator and Appointment of Class Representative and Class Counsel that seeks

entry of an order substantially similar to the proposed order attached hereto as Exhibit E , which would, for settlement purposes only:

2.1.1 Certify a tentative Settlement Class under Federal Rule of Civil Procedure 23 composed of the Settlement Class Members;

2.1.2 Preliminarily approve this Settlement Agreement;

2.1.3 Approve the proposed Notice Plan and notice in forms substantially similar to those attached hereto as Exhibits B and C;

2.1.4 Grant leave to file the Second Amended Complaint;

2.1.5 Appoint the Settlement Administrator;

2.1.6 Appoint Niloofar Saeidian as Class Representative; and

2.1.7 Appoint Class Counsel.

3. CERTIFICATION OF SETTLEMENT CLASS

3.1 **Certification of the Settlement Class.** For the purposes of Settlement and the proceedings contemplated herein, the Parties stipulate and agree that a Class shall be provisionally certified, that Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative, and that Class Counsel shall be appointed as counsel for the Class. Plaintiff will file a Second Amended Complaint, subject to Court approval, adding nationwide allegations. The "Class" is defined as:

> All persons who purchased Coca-Cola's Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of Five Juices (the "Product") in the United States between September 1, 2007 and the date of entry of the Preliminary Approval Order. Excluded from the Class are any employees of Defendant, the Court, and its personnel.

3.2 Defendant's agreement to seek a Settlement Class under Federal Rule of Civil Procedure 23 is for settlement purposes only.

3.3 Nothing in this Settlement Agreement shall be construed as an admission by Defendant that this Action or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Plaintiff or Defendant from opposing or supporting class certification or seeking vacatur of any order conditionally certifying a Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason.

4. AWARD TO THE SETTLEMENT CLASS

4.1 **Cash Payment**. Defendant will provide a Cash Payment to Settlement Class Members in the form of refunds for prior purchases. The payment structure is as follows:

4.1.1 Defendant will provide a full and complete cash refund of the retail purchase price for all Product purchases demonstrated by a valid and timely submitted refund Claim Form, together with a Proof of Purchase, such as a sales receipt, print out from a loyalty program, or other documentation generated by the Retailer for each Product for which a claim is submitted.

4.1.2 There will be no cap on the amount of money that will be refunded to those Class Members who present valid Proof of Purchase.

4.2 **Product Replacement Recovery.** At the Settlement Class Member's election, Defendant will provide Product Replacement Vouchers to Class Members who do not provide a valid Proof of Purchase, redeemable for an eligible product replacement(s). The Voucher structure is as follows:

4.2.1 Defendant will provide Product Replacement Vouchers to Class Members who submit a valid and timely Claim Form, without a Proof of Purchase. Class Members' claims will be honored on a first-come, first-served basis until the number of Vouchers claimed reaches 200,000. If the available Vouchers are exhausted before a Class Member makes his/her claim, the Class Member will not receive a Voucher.

4.2.2 Because the claims process will not require a Proof of Purchase, each Class Member will need to sign and submit a Claim Form which includes an attestation of purchase under penalty of perjury.

4.2.3 Class Members may submit a maximum of one (1) claim on a single Claim Form for up to two (2) bottles of the Product purchased per household. Subject to the limitation in Paragraph 4.2.1. above, each bottle of the Product purchased will entitle the Class Member to one Voucher.

4.2.4 The Vouchers may be applied towards the purchase of one (1) of the following eligible beverage products sold by the Coca-Cola Company: Minute Maid, Simply, Smartwater, Vitaminwater, Vitaminwater Zero, and Honest Tea. Vouchers may not be applied toward the purchase of multi-packs.

4.2.5 No cash is required to redeem a Voucher for an eligible product, as the Vouchers cover the entire purchase price of the eligible product. The Vouchers may not be redeemed for cash from Minute Maid, Coca-Cola or from any retailer.

4.2.6 Vouchers are fully transferable, subject to reasonable measures to prevent fraud, duplication or counterfeiting of Vouchers.

4.2.7 Vouchers will be valid for eighteen (18) months after issuance.

4.2.8 The maximum value of a single Voucher is $4.99. The actual average sales price of the eligible product may vary, as different retailers set their own prices and purchases may be subject to discounts or coupons from retailers or from Defendant. Defendant will reimburse the retailer the then-current, non-discounted price of every eligible product that is redeemed by a Voucher.

4.3 **Claim Form Submission.** The Cash Payment and Product Replacement Claim Forms will be available on the Class Settlement Website or by requesting a copy from the Settlement Administrator. Class Members will have the option to submit completed Claims Forms in the following twoways: (1) on the Class Settlement Website; or (2) by U.S. Mail to the Settlement Administrator.

4.4 **Claims Period.** The Claims Period for submitting claims pursuant to Paragraph 4.3 above shall commence upon the Notice Date and continue for a period of time ordered by the Court, and no less than ninety (90) Days, except that the period for submitting claims for Product Replacement Vouchers shall end when Class Members have submitted valid claims for all Product Replacement Vouchers available to the Settlement Class under this Settlement Agreement as set forth in Paragraph 4.2 above.

4.5 **Review of Claims.** The Settlement Administrator shall be responsible for reviewing all claims to determine their validity. The Settlement Administrator shall reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of Sections 4.1 and 4.2, above. The Settlement Administrator shall notify the Settlement Class Member using the contact information provided in the Claim Form of the rejection. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within thirty (30) days from

receipt of the rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator. If the Claim Form defect cannot be cured, the claim will be rejected by the Settlement Administrator and such rejection will be made known to the claimant as soon as practicable after the attempt to contest the rejection. No person shall have any claim against Defendant, Defense Counsel, Plaintiff, Plaintiff' Counsel, Class Counsel and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement Agreement.

4.6 **Payment of Claims.** The Settlement Administrator shall begin to distribute benefits to eligible Settlement Class Members within sixty (60) days of the Effective Date.

4.7 **Responsibilities of the Settlement Administrator.** At the Preliminary Approval hearing, the Parties will propose that the Court appoint Angeion Group as Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective and timely manner. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel and Defense Counsel, the Parties and their representatives promptly upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with information concerning Notice, administration and implementation of the Settlement Agreement. Should the Court request it or should it

be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator.

4.8 **Charitable Product Donation.** Coca-Cola will make product donations of a combination of food and/or juice products, in Coca-Cola's discretion, to charitable organizations and/or non-profit organizations, to be mutually agreed upon by the Parties, in an amount not less than $300,000, which shall be made at times of Coca-Cola's choosing within eighteen (18) months following the Effective Date. The donations shall be spread out throughout the year rather than at one time in order to facilitate the organizations' ability to meet needs throughout the year, and to reduce the prospects of products going out of code before they can be distributed. The product donations shall be in good, saleable condition and not out of code or past their sale expiration dates at the time they are distributed. Coca-Cola represents that this agreement to make product donations is separate and apart from any other budgeted charitable product donation programs that Coca-Cola may participate in with regard to its food and/or juice products. Coca-Cola's agreement to participate and fund this charitable product donation program is a direct result of this Action and Coca-Cola would not have otherwise made this product donation.

5. CLASS COUNSEL ATTORNEYS' FEES AND EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS

5.1 **Class Representative Incentive Award.** Defendant agrees to pay, subject to Court approval, an incentive payment of $5,000 to the Plaintiff within five (5) business days of the Effective Date. Such payment is made at the request of Class Counsel for the Plaintiff's efforts and activities in furtherance of both the litigation and its ultimate resolution. The Parties represent that their negotiation of and agreement to the

compensation paid to the Class Representative did not occur until after the substantive terms of the Agreement had been negotiated and agreed to in principle with the assistance of Judge Richard A. Kramer (Ret.).

5.2 **Attorneys' Fees and Cost Award.** Defendant agrees to pay, subject to Court approval, attorneys' fees and costs in the total amount of $700,000.00 within five (5) business days of the Effective Date. Defendant agrees not to oppose Class Counsel's application for attorneys' fees and costs of up to $700,000, which Class Counsel represents to be below their lodestar fees. Plaintiff agrees to not petition the Court for more than $700,000 for attorneys' fees and costs. The application for an award of Attorneys' Fees and Costs will be made by Class Counsel on behalf of themselves and Plaintiff's Counsel. Class Counsel shall be responsible for allocating and distributing the Attorneys' Fee and Cost Award to Plaintiff's Counsel. The Parties represent that the amount of the attorneys' fees and costs to be requested by Class Counsel was negotiated at arm's-length, and only after agreement was reached on all substantive terms of the settlement, with the assistance of Judge Richard A. Kramer (Ret.).

5.3 Class Counsel shall prepare and file a Motion in Support of the Attorneys' Fee and Cost Award and Class Representative's Incentive Award not later than fourteen (14) Days before the Objection Deadline.

6. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT

6.1 **Notice.** Subject to Court approval, the Parties agree that within 30 Days after entry of the Preliminary Approval Order, the Settlement Administrator and Defendant will provide the Class with notice of the proposed settlement pursuant to the methods set forth in the Declaration of Steven Weisbrot, attached as Exhibit A.

6.2 **General Terms.** Collectively, the Notice Plan will:

6.2.1 inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed Settlement;

6.2.2 contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;

6.2.3 describe the proposed settlement outlined in this Settlement Agreement; and

6.2.4 state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

6.3 The Class Settlement Website will post the settlement documents and case-related documents such as the Settlement Agreement, the Long-Form Notice, Summary Notice, the Claim Form, the Second Amended Complaint, Motion in Support of the Attorneys' Fee and Cost Award and Class Representative's Incentive Award, 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. The Long-Form and Summary Notice (attached hereto as Exhibits B and C, respectively) will be made available in English and Spanish on the Class Settlement Website.

6.4 The Class Settlement Website will terminate (be removed from the Internet) and no longer be maintained by the Settlement Administrator sixty (60) days after either (a)

the Effective Date of the Settlement or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later.

6.5 **Long-Form Notice.** The parties have agreed that they will jointly recommend the Long-Form Notice, substantially in the form attached as Exhibit B, to the Court for approval. The Long-Form Notice is designed to provide comprehensive and easily understandable notice of the terms of the Settlement Agreement. The Long-Form Notice shall be posted on the Class Settlement Website as provided in Paragraph 6.2 above.

6.6 **Summary Notice and Publication Program.** The Parties have agreed that they will jointly recommend the Summary Notice, substantially in the form attached as Exhibit C, to the Court for approval. The Summary Notice is designed to provide the Settlement Class Members material information about the Settlement and direct them to the Long-Form Notice posted on the Class Settlement Website (where the Claim Form will be available). The Summary Notice will be published nationwide in a half page print ad in one issue of *People* Magazine as set forth in the Declaration of Steven Weisbrot, attached as Exhibit A.

6.7 **Internet Banner Notice.** Banner Advertisements on the Internet will disclose the Settlement and direct Settlement Class Member to the Class Settlement Website as set forth in the Declaration of Steven Weisbrot, attached as Exhibit A. The Settlement Administrator will implement a 4-week desktop and mobile campaign to target potential class members with tailored communications. Approximately 8,658,000 total impressions will be served.

6.8 **Toll-Free Telephone Support.** The Settlement Administrator will establish a toll-free phone number for Settlement Class Members to call to obtain: (1)

general information about the Settlement; (2) frequently asked questions and answers; and (3) and the ability to request the Long Form Notice and Claim Form. The toll-free number will be included in the Long Form Notice and Summary Notice as detailed in the Declaration of Steven Weisbrot, attached as Exhibit A.

6.9 **Minute Maid Website.** A link will be established on Minute Maid's website that will connect directly to the Class Settlement Website.

6.10 As set forth in the Declaration of Steve Weisbrot of Angeion Group, attached as Exhibit A, the Notice Plan is reasonably calculated to apprise the Class Members of the settlement, meet or exceed the requirements of due process, and is the best practicable method of giving notice to the Class, and will provide adequate and reasonable notice to the Class.

6.11 **Objections**. Any Settlement Class Member who has not requested exclusion from the Settlement Class may object to the terms of the proposed settlement. Any Settlement Class Member who intends to object to the Settlement must do so by the Objection Deadline. In order to object, the Settlement Class Member must file with the Court, and deliver a copy of the written objection to Class Counsel and Defense Counsel. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Settlement Class Members who do not serve their objections and/or notices of intent to appear in the manner set forth herein will be deemed to have waived all objections, will not be entitled to be heard at the Final Approval Hearing, and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement. If any objection is rejected or overruled, such Settlement Class Member will be bound by the final judgment

as if he or she had not objected. Any objector to the settlement must submit a timely and valid Claim Form in order to participate in the settlement in the event his or her objection is rejected. Any person who requests exclusion from the Class may not object. If any person submits a request for exclusion and also an objection, the request for exclusion shall take precedence and that person shall not be a member of the Settlement Class.

6.12 Any written objections must state:

6.12.1 The name, address, telephone number, and, if available, the email address of the person objecting, and if represented by counsel, of his/her counsel;

6.12.2 Specifically and in writing, all objections and grounds for such objections, along with any evidence or other information upon which the objections are based;

6.12.3 Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

6.12.4 A statement made under penalty of perjury sufficient to establish his/her membership in the Settlement Class, including all information required by the Claim Form; and

6.12.5 A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

6.13 **Requests for Exclusion**. Any Settlement Class Member may request to be excluded from the Class (i.e., "opt- out") by timely mailing a letter, by first class United States mail, to the Settlement Administrator containing a statement that he or she requests to be excluded from the Settlement Class. Any such request must be made in accordance with the terms set forth in the Long Form Notice and will be timely only if postmarked no later than the Opt-Out Deadline. The timeliness of any request for exclusion shall be conclusively determined by the postmark date. Any Settlement Class Member who timely elects to opt out of the Settlement shall not be permitted to object to the Settlement. Persons falling within the definition of the Settlement Class who validly and timely request exclusion from the Settlement effected by this Settlement Agreement, pursuant to the procedures set forth in this paragraph, shall not be Settlement Class Members, shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement. At least seven (7) calendar days prior to the Final Approval Hearing Date, Class Counsel shall prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the "Opt-Outs"), and Class Counsel shall file that list with the Court.

6.14 **CAFA Notice.** Defendant shall be responsible for providing the Class Action Fairness Act ("CAFA") notice required by 28 U.S.C. § 1715 no later than ten (10) days after the filing of the Preliminary Approval Motion. Defendant may delegate the service of the CAFA notice to the Settlement Administrator. If Defendant does so, it shall provide the Settlement Administrator with the form of CAFA notice which the Settlement Administrator shall serve on the appropriate state and federal officials. Defendant or

Settlement Administrator shall file a declaration with the Court no later than ten (10) days after serving the CAFA notice stating that the CAFA notice has been served on the appropriate officials.

6.15 **Settlement Implementation Costs.** Defendant shall bear all costs of providing Class Notice and costs associated with administration of the settlement, including the retention of an independent Settlement Administrator.

7. DISCONTINUATION OF PRODUCT

7.1 Defendant states that it had discontinued and ceased production of the Product when its fiscal year ended on December 31, 2014 and that Defendant will not reintroduce the Product into the market in the United States.

8. RELEASES

8.1 **Release of Claims.** Upon the Effective Date, the Releasing Parties forever release and discharge any and all claims that were alleged or that could have arisen out of the facts alleged in the Second Amended Complaint whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, Labeling or Advertising of the Product and all equitable claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters asserted in the Action. (collectively, the "Released Claims"). This Release includes a waiver of California Civil Code Section 1542 with respect to the Released Claims. Section 1542 provides that:

> **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.

Each and every term of this paragraph shall inure to the benefit of each and all of the Released Parties , and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph.

8.2 After entering into this Settlement Agreement, Settlement Class Members 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. Settlement Class Members, including Plaintiff, expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3 No default by any Person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection therewith shall affect the dismissal of the Actions, the res judicata effect of the Final Approval Order and Judgment, the foregoing releases, or any other provision of the Final Approval Order and Judgment; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all signatories to this Settlement Agreement.

9. ENTRY OF FINAL APPROVAL ORDER AND JUDGMENT

9.1 Before the Final Approval Hearing, the Class Representative shall move for entry of a Final Approval Order and Judgment that includes provisions:

9.1.1 Granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;

9.1.2 Ruling on Class Counsel's application for attorneys' fees, costs, and expenses and the Class Representative's incentive award;

9.1.3 Discharging and releasing the Released Parties, and each of them, from the Released Claims;

9.1.4 Permanently barring and enjoining all Released Parties from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims;

9.1.5 Directing that, as to Defendant, this Action be dismissed with prejudice and without costs;

9.1.6 Stating pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Approval Order and Judgment is a final, appealable order; and

9.1.7 Requesting that the Court reserve and continue to exercise exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

10. MODIFICATION, TERMINATION, AND EFFECT OF SETTLEMENT

10.1 In the event the terms or conditions of this Settlement Agreement, other than terms pertaining to the attorneys' fees, costs, and expenses provided for in Section 5.2 above, are materially modified by any court, either Party in its sole discretion to be exercised within fourteen (14) days after such a material modification may, but is under no obligation to, declare this Settlement Agreement null and void. For purposes of this

paragraph, material modifications shall be limited to any modifications to the definitions of the Settlement Class, Released Claims, Releasing Parties, or Released Parties, and any modifications to the Award to the Settlement Class or Notice to Class and Administration of Settlement. In the event that a Party exercises its option to withdraw from and terminate this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall have no force or effect. The Parties shall not be bound by this Settlement Agreement, and the Parties will be returned to their respective positions existing immediately prior to the execution of this Settlement Agreement. Notwithstanding the foregoing, in the event this Settlement Agreement is not approved by any court, or the Settlement set forth in this Settlement Agreement is declared null and void, or in the event that the Effective Date does not occur, each Party shall bear its own attorneys' fees and costs and Defendant's payment obligations shall cease.

10.2 The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses, or the agreed-upon incentive award to Plaintiff, shall not be grounds for Plaintiff, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement, and shall not be deemed a material modification under the terms of Paragraph 10.1 above.

10.3 If this Settlement Agreement is terminated pursuant to its terms, not approved by the Court or any appellate court, and/or not consummated for any reason, or the Effective Date for any reason does not occur, then the order certifying the Class for purposes of effectuating this Settlement Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court. This Action shall proceed as though the Class had never been

certified pursuant to this Settlement Agreement and such findings had never been made, and this Action shall return to the procedural status quo in accordance with this paragraph. The Parties shall not refer to or invoke the vacated findings and/or order relating to class settlement in the event this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendant under Rule 23 of the Federal Rules of Civil Procedure.

11. MISCELLANEOUS PROVISIONS

11.1 **Second Amended Complaint: No Prejudice to Defendant.** Defendant consents to the filing of the Second Amended Complaint for purposes of Settlement only. Defendant's consent to the filing of the Second Amended Complaint in connection with the Settlement Agreement is without prejudice to any argument by Defendant, in this case (if the Effective Date does not occur), or in any other case or controversy, that (a) the Second Amended Complaint fails to state a claim upon which relief may be granted, or (b) Plaintiff lacks standing to assert claims based on the laws of states in which she does not reside and did not purchase the Product, or (c) any other argument or position regarding any statement or claim in the Second Amended Complaint.

11.2 **Time to Answer.** Defendant's time to answer the Second Amended Complaint is tolled until further order of the Court. If this Settlement Agreement is terminated or for any reason does not occur (in whole or in part), Plaintiff will withdraw the Second Amended Complaint.

11.3 **Best Efforts to Obtain Court Approval.** Plaintiff, Defendant, and Class Counsel agree to use their best efforts to obtain Court approval of this Settlement

Agreement, subject, however, to the Parties' rights to terminate the Settlement Agreement under Section 10.1 above.

11.4 **No Admission.** This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

11.4.1 Offered or received by or against any Person as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Plaintiff or defense asserted by Defendant, of the validity of any Claim that has been or could have been asserted in this Action, or of any liability, negligence, fault or wrongdoing on the part of Plaintiff or Defendant;

11.4.2 Offered or received by or against any Person as a presumption, concession, admission or evidence of the violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of Plaintiff's claims, and evidence thereof shall not be offered, directly or indirectly, in any way (whether in the Action, or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Approval Order and Judgment, including, without limitation, asserting as a defense the release and waivers provided herein;

11.4.3 Offered or received by or against any Person as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as

may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, then the signatories to the Agreement may refer to it to enforce their rights hereunder; or

11.4.4 Construed as an admission or concession by Plaintiff, the Settlement Class or Defendant that the consideration to be given in this Settlement Agreement represents the relief that could or would have been obtained through trial in the Action.

11.5 **Administrative Costs.** Except as provided in Sections 6 (Notice) and 5.2 (Attorneys' Fees, Costs, and Expenses), above, each Plaintiff and Defendant shall be solely responsible for his, her, or its own costs and expenses.

11.6 **Taxes.** Class Representative 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.

11.7 **Public Statements.** Except in connection with any proceeding or court filing, or as expressly provided in the Notice Plan described in Section 6 above, or as expressly authorized in writing by Defendant or its counsel, Plaintiff and Class Counsel will not issue any public statements or press releases, or communicate with any third party, including the media, regarding the Settlement or the Action without prior approval of Defendant. If Plaintiff or Class Counsel receive an inquiry from any third party, they should refer to the Class Notice, refer to the Second Amended Complaint, make accurate factual statements regarding the Settlement (including the status of the approval process), or refer to the Court file.

11.8 **No Disparagement.** Plaintiff and Class Counsel agree not to disparage the Defendant, Defendant's products, the Product, or Defense Counsel. Disparage as used

herein, means to make any statement, written or oral, that casts Defendant, the Product, or Defense Counsel in a negative light. Nothing herein shall be interpreted to restrict Class Counsel from practicing law consistent with applicable rules and laws, or to prevent Class Counsel or Plaintiff from responding in a truthful and non-disparaging manner to Class Member inquiries regarding the Action and/or the Settlement Agreement.

11.9 **Complete Agreement.** This Settlement Agreement is the entire, complete agreement by and among Plaintiff, the Settlement Class, Defendant, and Class Counsel. In entering into this Settlement Agreement, no party to the Agreement has made or relied on any warranty or representation not specifically set forth herein. This Settlement Agreement shall not be modified except by a writing executed by all parties hereto. No extrinsic evidence or parol evidence shall be used to interpret this Settlement Agreement. Any and all previous agreements and understandings between or among the parties to this Settlement Agreement regarding the subject matter of this Agreement, whether written or oral, are superseded and hereby revoked by this Agreement. The parties to this Settlement Agreement expressly agree that the terms and conditions of this Agreement will control over any other written or oral agreements.

11.10 **Headings for Convenience Only.** The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

11.11 **Representative Capacity.** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is empowered to do so.

11.12 **Severability**. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision, subject, however, to the parties' rights to terminate the Agreement under Section 10.1 above.

11.13 **No Party Is the Drafter**. None of the parties to this Settlement Agreement shall be considered the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rules of interpretation or construction that might cause any provision to be construed against the drafter.

11.14 **Extensions of Time.** Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement. If the time to do or complete any act in the Settlement Agreement falls on a weekend or holiday, then that time shall be extended until the next business day.

11.15 **Binding Effect**. This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of Plaintiff, the Settlement Class, Defendant, the Releasing Parties, the Released Parties, as defined in Section 1 above, and any additional successors and assigns.

11.16 **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. The Settlement Agreement may be executed by facsimile or scanned signature.

11.17 **Governing Law**. Without regard to principles of conflicts of laws, this Settlement Agreement shall be governed by and interpreted in accordance with the laws of

the State of California. The Court shall retain continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

11.18 **Confidentiality**. All proprietary or confidential documents or information that have been previously provided to Class Counsel or Plaintiff, as of the Effective Date of this Agreement, shall be destroyed with certification of the destruction to be provided to the producing party within sixty (60) days of the Effective Date.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein written.

[The rest of this page intentionally left blank]

Niloofar Saeidian

Niloofar Saeidian, individually and as
Class Representative

Date: 2/22/2016

Date: _____

Russell S. Bonds
Associate General Counsel - Litigation
The Coca-Cola Company
One Coca-Cola Plaza
Atlanta, GA 30313
Telephone: (404) 676-3162
Fax: (404) 598-3162

Defendant, The Coca-Cola Company

APPROVED AS TO FORM:

Date: _____

Jordan L. Lurie
Robert K. Friedl
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067
Telephone: 310-556-4811
Fax: 310-943-0396

Date: _____

Niloofar Saeidian, individually and as
Class Representative

Date: _____

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Defendant, The Coca-Cola Company

APPROVED AS TO FORM:

Date: 2/22/16

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Capstone Law APC
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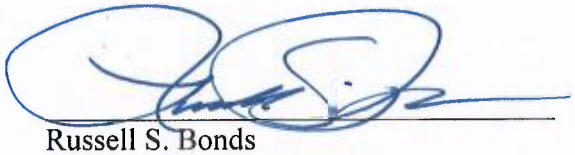
_____ Date: _____

Niloofar Saeidian, individually and as
Class Representative



Date: 2/25/2016

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Defendant, The Coca-Cola Company

APPROVED AS TO FORM:

_____ Date: _____

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Los Angeles, CA 90067
Telephone: 310-556-4811
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_____ Date: 2/22/16

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Class Counsel

_____ Date: _____

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Travis J. Tu
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Defendant's Counsel

Date: _____

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Class Counsel

Date: 2/26/16

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Defendant's Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA COLA COMPANY,

Defendant.

Case No: 09-cv-06309 SJO-FMO

DECLARATION OF STEVEN WEISBROT, ESQ.

I, Steven Weisbrot, hereby declare as follows:

1. I submit this declaration for the purpose of providing the Court with information regarding the design, implementation and adequacy of the notice program proposed in this case to reach unknown class members.

BACKGROUND AND QUALIFICATIONS

2. I am Executive Vice President of Notice and Strategy at the class action notice and claims administration firm, Angeion Group, LLC ("Angeion"). I have been responsible in whole or in part for the design and implementation of more than one hundred class action administration plans and have taught Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Class Action Notice Programs as well as Class Action Claims Administration generally. Additionally, I am the author of numerous articles on Class Action Notice, Class Action Claims Administration and Class Action Notice Design in publications such as *Bloomberg*, *BNA Class Action Litigation Report*, Law360 and professional law firm blogs. Prior to joining Angeion's executive team, I was employed as Director of Class Action Services at Kurtzman Carson Consultants, a nationally-recognized class action notice and settlement administrator. Previous to my claims administration experience, I was employed in private law practice and I am currently an attorney in good standing in the Commonwealth of Pennsylvania.

3. Angeion Group is a class action notice and claims administration company formed by a team of executives with more than 60 combined years of experience implementing claims administration and notice solutions for class action settlements and judgments. With executives that have had extensive tenures at five other nationally recognized claims administration companies, collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $10 billion to class members.

4. This declaration will describe the notice program and notice documents that my staff and I propose for this case (the "Notice Plan"), including the considerations that informed the development of the plan and why we believe it will be effective.

SUMMARY OF NOTICE PLAN

5. The Notice Plan is designed to reach 70.2% or more of class members, approximately 2.97 times.

6. The Notice Plan will achieve these benchmarks through a combination of national print and internet advertisements. The Notice Plan will include a toll-free telephone line and informational website which will further apprise class members of the rights and options in the settlement and allow class members to submit claims online and by U.S. Mail.

7. The reach of the Notice Plan is designed to meet due process requirements and is consistent with other effective court-approved notice programs.

CLASS DEFINITION AND TARGET

8. This matter contemplates a nationwide settlement class encompassing all persons who, from September 1, 2007 to the date of this certification, purchased the Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices (the "Product") in the United States. Angeion used data from GfK MRI[1] (2015 Doublebase, the most current data available), a leading supplier of publication readership and product usage data for the communications industry to profile the class,

[1]GfK MRI offers complete demographic, lifestyle, product usage and exposure to all forms of advertising media. As the leading U.S. source of multimedia audience research, GfK MRI provides information to magazines, television and radio networks and stations, internet sites, other media, leading national advertisers, and over 450 advertising agencies – including 90 of the top 100 in the U.S. MRI's national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

combining data regarding purchasers of juice blends (sold by any manufacturer) in general, and data regarding purchasers of Minute Maid juice products in particular.

9. Angeion also studied the socioeconomic characteristics of the class to ensure the firm chooses appropriate media to reach class members. In this case, the data indicates that just over half of class members (52%) are married with an average age of 42, and an average household income of $74,090. Class members are heavy internet users, utilizing the internet on average 17 hours per week, and also read magazines with greater frequency than the general population. Based on this data, Angeion concluded that a combination of media tactics with a heavy emphasis on internet advertisements would be the most effective way to reach class members.

INTERNET BANNER NOTICE

10. Angeion's Notice Plan utilizes a programmatic approach to purchasing internet media advertisements, which will enable the Notice Plan to target potential class members with tailored communications. Purchasing display and mobile inventory programmatically provides the highest reach for internet publication, allows for multiple targeting layers, and causes banner advertisements to be systematically shown to persons most likely to be class members.

11. Angeion will implement multiple targeting layers to ensure that notice is delivered to the persons most likely to be members of the class, inclusive of search targeting, social demographic targeting, category contextual targeting, keyword contextual targeting and site retargeting. Besides display and mobile inventory, messaging will also run through the Facebook Application Programming Interfaces ("API"). This enables Angeion to utilize the search terms that an individual has entered into web browsers (like Google), as well as a person's social media activity on Facebook, to deliver banner ads to individuals most likely to be class members. Angeion will develop a list of search terms relevant to juice, Minute Maid products, and foods and beverages generally.

12. Before delivering an internet advertisement directing a potential class member to the settlement website, Angeion will also take into account an individual's demographics and the websites he or she frequents. The purpose of such filtering is to maximize the likelihood that members of the class receive notice of the settlement.

13. Based on this approach, individuals who meet the relevant criteria based on their demographics, internet search history, and Facebook activity will see a Banner Ad disclosing the settlement and directing the viewer to the Case Website, discussed in Paragraph 17, below.

14. Angeion will implement a 4-week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50, 300x50). Approximately, 8,658,000 total impressions will be served.

PUBLICATION NOTICE

15. To identify the best print vehicle for delivering the message to the target audience, Angeion analyzed over 200 titles in GfK MRI (2015 Doublebase). *People* Magazine was determined to be the publication most widely read by the target audience.[2] Angeion will run a half page print ad nationwide in one issue of *People* Magazine disclosing the settlement and directing readers to the Case Website for more information.

RESPONSE MECHANISMS

16. Angeion will establish a toll-free telephone line to provide settlement-related information to callers. The toll-free telephone number will be included in the summary notice and long form notice. Class members who call the telephone line will be able to obtain Claim Forms and/or the Long Form Notice, as well as general information concerning deadlines for opting out of the Settlement or objecting to it, and the dates of the relevant Court proceedings, including the Final Approval Hearing.

17. Angeion will also establish an informational case website at www.flavoredjuicesettlement.com where class members can view relevant court documents, operative dates and a frequently asked questions page ("The Case Website"), and also submit claims online. The Case Website will be prominently displayed on all notice materials.

[2] Target audience reflects GfK MRI 2015 Doublebase reported delivery to "Other Fruit Juices & Drinks Brands Total Users Last 6 Months (Principal Shopper) [Minute Maid] and Other Fruit Juices & Drinks Kinds Total Users Last 6 Months (Principal Shopper) [Juice Blends]."

CONCLUSION

18. The Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* dictates that an effective notice program shall reach at least 70% of class members. This Notice Plan will deliver 70.2% reach with an average frequency of 2.97 times each.

19. Based on my experience, this Notice Plan will satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and will provide members of the Settlement Class the best possible notice under the circumstances.

Declared under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

2/24/16
Date

Steven Weisbrot

EXHIBIT B

If you purchased Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices in the United States any time from September 1, 2007 To [Date of Preliminary Approval], you may be entitled to a cash refund or voucher from a class action settlement.

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

Para una notificación en Español, por favor llame al ____ o visite nuestro sitio web, www.flavoredjuicesettlement.com***.***

This Notice advises you of a proposed class action settlement. The settlement resolves a lawsuit over whether The Coca-Cola Company, through its Minute Maid business unit, misled purchasers to believe that the primary ingredients by volume in the Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices were pomegranate juice and blueberry juice. You should read this entire Notice carefully because your legal rights are affected whether you act or not.

Your Legal Rights and Options as a Settlement Class Member	
Submit a Claim Form	This is the only way to receive a settlement benefit.
Opt Out	Get no settlement benefit. This is the only option that allows you to ever be a part of any future lawsuit against The Coca-Cola Company with respect to the legal claims in this case.
Object	Write to the Court if you don't like the settlement and tell the Court why you think it shouldn't be approved.
Go to the Hearing	Ask to speak in Court about the fairness of the settlement.
Do Nothing	Do not receive a settlement benefit. Give up your legal rights to sue The Coca-Cola Company about the claims in this case.

Your rights and options – **and the deadlines to exercise them** – are explained in this Notice. Your legal rights may be affected whether you act or do not act. Please read this Notice carefully.

What is this Notice and why is it important?

The Court authorized this Notice to inform you about a proposed settlement of a class action lawsuit, and about all your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after objections and appeals, if any, are resolved, an administrator appointed by the Court will make the payments that the settlement allows.

This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

A class action is a lawsuit in which one or more individuals sue an individual, company or other entity on behalf of all other people who are in a similar position. Collectively, these people are referred to as a "Class" or "Class Members." In a class action, the court resolves certain legal issues, legal claims and defenses for all

Class Members in one lawsuit, except for those who ask to be excluded from the Class. (See below for more information about excluding yourself from the Class.)

What is this Lawsuit about?

The Lawsuit claims that the labeling and advertising for Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices (the "Juice") was false and misleading because it misled purchasers to believe that the primary ingredients by volume in the Juice were pomegranate juice and blueberry juice. The Coca-Cola Company stands by its labeling and advertising and denies it did anything wrong.

Why is there a settlement?

The Court did not decide who was right. Instead, both sides agreed to a settlement that they believe is a fair, reasonable, and an adequate compromise of their respective positions. The Parties reached this agreement only after extensive negotiations, and exchange of information, and consideration of the risks and benefits of the settlement.

Counsel for the Plaintiff and the Class Members have considered the benefits from the settlement that will be given to Class Members and balanced these benefits against the risk that a trial could end in a verdict for The Coca-Cola Company. They also considered the benefits to Class Members in light of the costs and delay of litigation through trial and appeals and the risk that a class would not be certified. Even if Plaintiff was successful in these efforts, Class Members may not receive any benefit for years.

How do I know if I am in the Settlement Class?

To receive benefits from the settlement, you first have to determine if you are a Class Member. Class Members are those persons who purchased the Juice in the United States any time from September 1, 2007 to [Date of Preliminary Approval]. Excluded from the Class are officers, directors and employees of The Coca-Cola Company and its parent and/or subsidiaries, as well as judicial officers and employees of the Court.

What does the Settlement provide?

Benefits. If the proposed settlement is approved by the Court, The Coca-Cola Company will provide cash refunds to Class Members with Proof of Purchase, without limitation. The Coca-Cola Company has also agreed to distribute 200,000 Vouchers on a first-come, first-served basis, to Class Members without Proof of Purchase.

Charitable Donations. The Coca-Cola Company will also make product donations of a combination of food and/or juice products to charitable organizations and/or non-profit organizations in an amount not less than $300,000.

Fees and Costs. The Coca-Cola Company will pay a Settlement Administrator to notify the Class about this Lawsuit and the settlement, as well as the costs to administer the settlement. In addition, The Coca-Cola Company will pay for the court-approved fees of the attorneys representing the Class and related litigation expenses, and an incentive payment to the Class Representative.

What cash payments and vouchers does the settlement provide?

Class Members may elect a single option:

Option 1: Settlement Class Members who complete the Claim Form and provide valid Proof of Purchase showing their actual purchase(s) of the Juice shall receive a full cash refund (in the form of a check) for their purchases of the Juice. There is no limit on the total recovery for products for which Class Members submit Proof of Purchase; **or**

Option 2: In lieu of a full cash refund, Settlement Class Members who complete the Claim Form and do not provide valid Proof of Purchase shall receive, for up to two bottles of Juice purchased, a Product Replacement Voucher that may be redeemed for an eligible Coca-Cola product. Eligible Coca-Cola products include products sold under the Minute Maid, Simply, Smartwater, Vitaminwater, Vitaminwater Zero, and Honest Tea brands. For each bottle of Juice purchased, eligible Class Members will receive one Voucher, with a maximum recovery of two Vouchers.

No cash is required to redeem a Voucher for an eligible product. The maximum value of a single Voucher is $4.99. Vouchers are valid for 18 months after issuance and are fully transferable.

How do I file a claim and receive a cash payment or voucher?

To receive a cash refund payment or Voucher for a free replacement product(s), you MUST submit a Claim Form. A copy of the Claim Form, together with instructions, is available from the Settlement Website, www.flavoredjuicesettlement.com, or by contacting the Settlement Administrator at Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____, or by calling toll-free xxx-xxx-xxxx.

There are two ways to submit a filled-out Claim Form:

(1) on the Settlement Website at www.flavoredjuicesettlement.com; or

(2) by U.S. Mail to the Settlement Administrator at Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____ .

To receive a cash refund payment, Class Members must complete, sign, and submit a Claim Form, together with valid Proof of Purchase. Such valid Proof of Purchase shall constitute a sales receipt, print out from a loyalty program or other documentation generated by the Retailer for each bottle of Juice for which a claim is submitted. There is **no** cap on the amount of money to be refunded to those Class Members who provide valid Proofs of Purchase.

To receive a Voucher for a free replacement product(s), **no** Proof of Purchase is necessary. However, the Claim Form must (i) affirm under penalty of perjury that the Class Member purchased the Juice during the Settlement Class Period and (ii) state how many bottles of the Juice the Class Member purchased during the Settlement Class Period. For each bottle of Juice purchased, eligible Class Members will receive one Voucher, with a maximum recovery of two Vouchers. Class Members may only submit one Claim Form per household.

Class members *must mail or submit a completed Claim Form* for cash refund payments by (Month, Day, 2016). However, please note that the Claim Period for submitting a claim for Vouchers will end when Class Members have submitted valid claims for all 200,000 Vouchers. Vouchers will be provided to eligible Class Members on a first-come, first-served basis.

Please be careful to read and follow all of the instructions on the Claim Form so that your claim will be approved. If you do not properly complete and submit the Claim Form in a timely fashion, you run the risk of not receiving a cash payment or Voucher under the Settlement.

What am I giving up to get settlement benefits or stay in the Class?

If the Court approves the proposed settlement, unless you exclude yourself, as described below, you will be releasing your claims against Defendant and its related parties. This means that you can't sue or be part of any other lawsuit against Defendant or its related parties about the issues raised in this case. The Settlement Agreement, available at www.flavoredjuicesettlement.com, contains the full terms of the release.

When will I get my cash payment or voucher?

Cash payments and vouchers will be distributed if the Court gives final approval to the proposed settlement and after the final approval is no longer subject to appeal.

A Settlement Hearing is scheduled for _____, 2016. If the Court approves the settlement and there are no appeals, the cash refunds and Vouchers will begin to be distributed approximately 60 days after the Court gives final approval to the Settlement. If there are appeals, cash refunds and Vouchers will begin to be distributed only once all appeals are resolved. If the Court does not approve the settlement, or if the settlement is overturned on appeal, no cash payments or Vouchers will be distributed.

How will The Coca-Cola Company revise its practices?

Discontinuation of the Product. Under the settlement, The Coca-Cola Company has stated that it ceased distributing the Juice as of December 31, 2014, and that it will not reintroduce the Juice into the market in the United States.

Who represents my interests in the settlement?

The Court has appointed the Plaintiff who brought the Lawsuit, Niloofar Saeidian, as the class representative and Zev B. Zysman of Law Offices of Zev B. Zysman APC and Jordan L. Lurie and Robert K. Friedl of Capstone Law APC as the lawyers for the Class, sometimes referred to in this Notice as Class Counsel. The Class Representative and Class Counsel will act as your representatives for this settlement if you do not exclude yourself from the Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

Do I have to pay money to participate in the Class?

No. You will not be responsible for any cost or attorneys' fees incurred in this Lawsuit. If the Court approves the proposed settlement, Class Counsel will request that the Court award attorneys' fees and costs in an amount not to exceed $700,000. Class Counsel will also request that the Court approve The Coca-Cola Company's payment of an incentive award of $5,000 to the Class Representative for her representation of the Class. The Parties negotiated the payment of attorneys' fees and costs, over and above the class relief, only after reaching agreement upon all other terms of this Settlement Agreement. In addition, settlement administration fees and costs of notice in an amount estimated not to exceed $400,000 will be paid by The Coca-Cola Company.

All fees and expenses awarded to Class Counsel, incentive award awarded to the Class Representative, and settlement administration and notice costs will be paid in addition to – that is, separate and apart from – the cash refunds and Vouchers for free products to Class Members, subject to the terms set forth in the Settlement Agreement, and will therefore have no effect on the relief available to you should you submit a valid and timely Claim Form.

Class Counsel will file any motion for attorneys' fees and costs and incentive awards on or before (Month, Day, 2016). After that date, you may view the motion at www.flavoredjuicesettlement.com.

Can I exclude myself from the settlement?

You have the right to not be part of the Lawsuit by excluding yourself or "opting out" of the Class. If you wish to exclude yourself, you must send a letter or postcard by first class United States mail, postmarked no later than _____, 2016 to Minute Maid Class Action Settlement Administrator, [administrator address]. The timeliness of any request for exclusion shall be conclusively determined by the postmark date on the letter or postcard. Your letter or postcard must request exclusion from the Class. Specifically, you must include (1) the case name and number of this lawsuit, which is *Saeidian v. The Coca-Cola Company*, 2:09-cv-6309 (C.D. Cal.); (2) your full name, address and telephone number; (3) your signature; and (4) a clear statement that you request to be excluded from the settlement. If you do not include the required information or submit your request for exclusion on time, you will remain a Class Member and

be bound by the settlement and Final Judgment and Order. If you exclude yourself from the Class, you give up your right to receive any settlement benefits, you will not be bound by the settlement or Final Judgment and Order, you cannot object to the terms of the settlement, and you will not be barred from pursuing any individual claim you may otherwise have relating to the subject matter of the Lawsuit.

I wish to object to the Settlement. What do I do?

If there is something about the settlement that you do not like, you may file an objection and may appear with an attorney at your own cost. You will still be in the settlement class, will remain a Class Member, and will receive benefits if the settlement is approved and you timely submit your Claim Form. ***Even if you object, you may return the Claim Form to receive the settlement benefits under the settlement.*** If you want to object, you must submit your objection in writing to the Court, Class Counsel, and The Coca-Cola Company's Counsel. Your objection must include:

(1) Your name, address, telephone number, and, if available, your e-mail address;
(2) Your signature;
(3) State the reasons why you object, including the factual and legal grounds, and provide copies of any documents that you wish to submit in support of your position;
(4) Provide a statement, sworn to under penalty of perjury, sufficient to establish membership in the Class, including a statement that you purchased the Juice during the Settlement Class Period and how many bottles of the Juice you purchased during the Settlement Class Period.
(5) Whether you intend to appear at the Final Approval Hearing, either with or without counsel;
(6) The case name and number of this lawsuit, which is *Saeidian v. The Coca-Cola Company*, 2:09-cv-6309 (C.D. Cal.);
(7) If you are represented by counsel, the name, address and telephone number of all counsel; and
(8) A detailed list of any other objections submitted by you, or your counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If you or your counsel have not objected to any other class action settlement in any court in the United States in the previous five (5) years, you shall affirmatively state so in the written materials provided in connection with the Objection to this settlement

You must file your written objection with the Court no later than _____, 2016, by mail or in person with the Clerk of Court, Clerk of the Court, United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012. You **must** also send a copy of your objection to Class Counsel and The Coca-Cola Company's Counsel at:

Counsel for Plaintiff:
Jordan L. Lurie
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067

Zev B. Zysman
Law Offices of Zev B. Zysman APC
15760 Ventura Boulevard, 16th Floor
Encino, CA 91436

Counsel for Defendant:
Steven A. Zalesin
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036

Objections must be postmarked or submitted in person by [insert date] to be considered timely or your objection will not be considered. The timeliness of any objection that is deposited in the U.S. Mail shall be conclusively determined by the postmark date on the return-mailing envelope.

If your objections do not meet all of the requirements set forth in this section, they will be deemed invalid and will be overruled. Any person who attempts both to object to and exclude themselves from the settlement will be deemed to have excluded themselves and will forfeit the right to object to or participate in the settlement or any of its terms.

When and where will the Court decide whether to approve the settlement?

The Court has scheduled a Final Approval Hearing on _____, 2016, before Judge S. James Otero in the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012, in Courtroom 1. The hearing may be continued or rescheduled by the Court without further notice. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also consider Class Counsel's request for attorneys' fees and expenses and the Class Representative's incentive award. After the hearing the Court will decide whether to grant final approval of the settlement. It is not known at this time how long these decisions will take.

Where do I get more information?

Complete copies of the pleadings and other documents filed in this Litigation may be examined and copied during regular office hours at the Clerk of the Court, United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012.

The Settlement Agreement, Claim Form and other information are also available at www.flavoredjuicesettlement.com, or by calling the Settlement Administrator at 1-8XX-XXX-XXXX, or by writing to _____ Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____.

PLEASE DO NOT CALL OR WRITE THE COCA-COLA COMPANY OR THE COURT FOR ADDITIONAL INFORMATION OR ADVICE

EXHIBIT C

LEGAL NOTICE

If You Purchased Minute Maid Enhanced Pomegranate Blueberry Flavored Blend Of 5 Juices Any Time From September 1, 2007 To [Date of Preliminary Approval]
You May Be Entitled To A Cash Refund Or Voucher From A Class Action Settlement.

Para una notificación en Español, por favor llame al ____ o visite nuestro sitio web, www.flavoredjuicesettlement.com**.**

A proposed settlement has been reached in a class action lawsuit claiming that the labeling on Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices (the "Juice") misled purchasers to believe that the primary ingredients by volume in the Juice were pomegranate juice and blueberry juice. The Coca-Cola Company, which sold the Juice through its Minute Maid business unit, stands by its labeling and denies it did anything wrong. However, The Coca-Cola Company has settled to avoid the cost and distraction of litigation.

Who is a Class Member? You are a Class Member if you purchased the Juice in the United States from September 1, 2007 through [].

What does the settlement provide? The settlement provides that Class Members with Proof of Purchase will receive a full cash refund for their purchases. There is no limit on the total recovery for products for which Class Members submit Proof of Purchase. The settlement also provides up to 200,000 Product Replacement Vouchers (the "Voucher") to reimburse Class Members who do not provide Proof of Purchase for their purchases of the Juice, which may be used to redeem another eligible Coca-Cola product at no cost. In addition, The Coca-Cola Company will also make product donations of food and/or juice products to charitable organizations and/or non-profit organizations in an amount not less than $300,000.

The Coca-Cola Company will also pay to Class Counsel their attorneys' fees and costs in an amount not to exceed $700,000, an incentive payment of $5,000 to the Class Representative, and costs of notice and to administer the settlement. These amounts will not reduce the benefits available to Class Members under the Settlement. In addition, The Coca-Cola Company has stated that it stopped selling the Juice as of December 31, 2014 and will not reintroduce the Juice into the U.S. market in the future.

Class Members who complete and return a Claim Form may choose one of the following options:

Option 1: Settlement Class Members who complete the Claim Form and provide valid Proof of Purchase showing their actual purchase(s) of the Juice shall receive a full cash refund (in the form of a check) of the retail purchase price for their purchases of the Juice. There is no limit on the total recovery for products for which Class Members submit Proof of Purchase; or

Option 2: In lieu of a full cash refund, Settlement Class Members who complete the Claim Form and do not provide valid Proof of Purchase shall receive, for up to two bottles of Juice purchased, a Product Replacement Voucher that may be redeemed for an eligible

Coca-Cola product. Eligible Coca-Cola products include products sold under the Minute Maid, Simply, Smartwater, Vitaminwater, Vitaminwater Zero, and Honest Tea brands. For each bottle of Juice purchased, eligible Class Members will receive one Voucher, with a maximum recovery of two Vouchers.

No cash is required to redeem a Voucher for an eligible product. The maximum value of a single Voucher is $4.99. Vouchers are valid for 18 months after issuance, and are fully transferable Vouchers will be provided to eligible Class Members on a first-come, first-served basis. Class Members may submit only one claim per household.

Claim Forms are available by going to www.flavoredjuicesettlement.com, by contacting the Settlement Administrator at Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____, or by calling toll-free _____. **Class members *must mail or electronically submit a completed Claim Form*** for cash refunds by (Month, Day, 2016). However, please note that the claim period for submitting a claim for Vouchers will end when Class Members have submitted valid claims for all Vouchers.

What are my Options?

Do nothing: you will not receive the cash payment or Voucher benefits, but you **will** be bound by the decisions of the court regarding these claims, including certain releases of The Coca-Cola Company.

Exclude yourself: you will maintain your right to sue The Coca-Cola Company about the legal claims in this case. To exclude yourself, you must do so in writing by [Month, Day 2016]. If you exclude yourself you will not receive the cash payment or Voucher benefits from this settlement. Complete details about the requirements for excluding yourself from the settlement are available at www.flavoredjuicesettlement.com, or by calling or writing to the Settlement Administrator listed below.

Object: you may write to the court and say why you don't like the settlement. The objection deadline is [Month, day 2016]. Complete details about the requirements for objecting to the settlement are available at www.flavoredjuicesettlement.com, or by calling or writing to the Settlement Administrator listed below.

The Court will hold a hearing at [**_____a.m._**] **on Month, Day, 2016**, in the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012-4701 in Courtroom 1 to consider approval of the settlement, payment of attorneys' fees and costs and Class Representative incentive awards. Class Counsel will make a motion for attorneys' fees and costs and incentive awards on or before (Month, Day, 2016). After that date, you may view the motion at www.flavoredjuicesettlement.com.

How can I get more information?

This is only a summary. For complete details, and to obtain a claim form, detailed court documents and other information, call toll-free _____, visit www.flavoredjuicesettlement.com , or write to _____ Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____.

EXHIBIT D

Saeidian v. The Coca-Cola Company
CLAIM FORM

If you purchased Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices in the United States, you may be entitled to a cash refund or a Product Replacement Voucher from a class action settlement. Complete the required information on this Claim Form and submit it to the Settlement Administrator.
Please keep copy a copy of your completed Claim Form, along with your Proof of Purchase, if any, for your records.

CLASS MEMBER INFORMATION

Refunds and Vouchers will be distributed by mail. You **MUST** provide your mailing address to receive a refund or Voucher.

NAME: _____ TELEPHONE_____ EMAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CLAIM OPTION

You may choose Option 1 or Option 2, but not both.

Option 1: CLAIMS WITH VALID PROOF OF PURCHASE ATTACHED.

Complete the Claim Form to receive a full cash refund (in the form of a check) for the retail purchase price paid for each bottle of Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices (any size), between September 1, 2007 and [Preliminary Approval Date]. There is no limit on the total recovery for products for which you submit Proof of Purchase. Proof of Purchase means a sales receipt, print out from a loyalty program, or other documentation.

YOU MUST ATTACH THE PROOF OF PURCHASE WITH YOUR CLAIM FORM

- **What is the total amount of Proof of Purchases you are submitting? $_____**

OR

Option 2: CLAIMS WITHOUT PROOF OF PURCHASE.

Complete the Claim Form, answer the following question, and confirm below under penalty of perjury that you purchased Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices between September 1, 2007 and [Preliminary Approval Date] to receive one Voucher for every bottle purchased, up to a maximum of two Vouchers. You may only submit one Claim Form per household.

- **How many bottles of Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of 5 Juices did you purchase?** _____

AFFIRMATION FOR OPTION 2 ONLY

UNDER PENALTY OF PERJURY, I AFFIRM THAT I PURCHASED MINUTE MAID ENHANCED POMEGRANATE BLUEBERRY FLAVORED BLEND OF 5 JUICES AND THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: _____ DATE:_____

TWO WAYS TO SUBMIT A CLAIM FORM:

(1) Settlement Website at www.flavoredjuicesettlement.com; or

(2) U.S. Mail to the Settlement Administrator at Settlement Administrator c/o Angeion Claims Group, P.O. Box _____, Philadelphia, PA _____ .

CLAIM FORMS MUST BE POSTMARKED OR ELECTRONICALLY SUBMITTED NO LATER THAN [MONTH DAY, 2016].*

***UNDER THE TERMS OF THE SETTLEMENT, THE CLAIMS PERIOD FOR SUBMITTING CLAIM FORMS FOR VOUCHERS WILL END ON [DATE] OR WHEN THE NUMBER OF VOUCHERS SENT REACHES 200,000. VOUCHERS WILL BE SENT TO ELIGIBLE CLASS MEMBERS ON A FIRST-COME, FIRST SERVED-BASIS.**

QUESTIONS? VISIT WWW.FLAVOREDJUICESETTLEMENT.COM OR CALL 1-800-XXX-XXXX.

EXHIBIT E

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. THE COCA COLA COMPANY, Defendant.	Case No. CV 09-cv-06309 SJO (JRPx) [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, APPROVING FORM OF NOTICE TO THE CLASS AND SETTING HEARING OF FINAL APPROVAL OF SETTLEMENT

Upon review and consideration of Plaintiff Niloofar Saeidian's unopposed motion for preliminary approval of the class action settlement, Settlement Agreement and Release, and all declarations and exhibits submitted therewith, which have been filed with the Court, it is hereby ORDERED and ADJUDGED as follows:

FINDINGS:

1. For purposes of this Order, the Court adopts and incorporates all definitions set forth in the Settlement Agreement and Release ("Settlement Agreement"), filed with the Court.

2. The Court GRANTS Plaintiff's motion for preliminary approval of the class action settlement.

3. The Court finds, for purposes of the settlement, that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and other laws and rules applicable to preliminary settlement approval of class actions have been satisfied: (a) The members of the Class are so numerous that joinder of all members is impractical; (b) There are questions of law or fact common to members of the Class; (c) The claims of the named Plaintiff Niloofar Saeidian are typical of the Class's claims; (d) The named Plaintiff is an adequate Class Representative and possesses the same interests in the outcome of this case as the other Class Members; (e) Plaintiff's Counsel, Law Offices of Zev B. Zysman APC and Capstone Law LLC APC are qualified to serve as Class Counsel; and (f) Common issues predominate and the proposed settlement is a superior way to resolve this national controversy.

4. For these reasons, the Court preliminarily approves the settlement of this Action as memorialized in the Settlement Agreement, which is incorporated herein by this reference, as being fair, just, reasonable and adequate to the Settlement Class and its members, subject to further consideration at the Final Approval Hearing described below, and thus hereby:

> (a) conditionally certifies for purposes of implementing the Settlement Agreement the Class consisting of all persons who purchased Coca-Cola's Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of Five Juices (the "Product") in the United States between September 1, 2007 and the date of entry of the Preliminary Approval Order. Excluded from the Class are any employees of Defendant, the Court, and its personnel.

(b) appoints Plaintiff Niloofar Saeidian as the representative of the Class; and

(c) appoints Zev B. Zysman, Esq., Law Offices of Zev B. Zysman, APC and Jordan L. Lurie, Esq., and Robert K. Friedl, Esq., Capstone Law APC as attorneys for the Class for purposes of settlement and finds for the purposes of settlement that these attorneys are qualified to represent the Class.

5. The Court approves the filing of the proposed Second Amended Complaint attached to the Settlement Agreement as Exhibit F in this Action for purposes of this settlement only. The Second Amended Complaint shall be filed within five (5) days of the date of this Order. If the Settlement Agreement is terminated or for any reason does not occur (in whole or in part) Plaintiff will withdraw the Second Amended Complaint.

6. A hearing (the "Final Approval Hearing") shall be held on August 29, 2016, at 10:00 a.m. before the Honorable S. James Otero, in Courtroom 1 of the United States District Court for the Central District of California, located at 312 N. Spring Street, Los Angeles, California 90012. At that time, the Court shall determine: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, just, reasonable and adequate and should be finally approved; (b) whether judgment as provided in the Settlement Agreement should be entered herein; and (c) whether to approve Class Counsel's application for an award of attorneys' fees and costs, and Plaintiff Niloofar Saeidian's application for an incentive payment. The Court may continue or adjourn the Final Approval Hearing without further notice to members of the Class.

7. The Court approves the Notice Plan as set forth in the Declaration of Steven Weisbrot, attached as Exhibit A to the Settlement Agreement, and approves as to form and content, the Long Form Notice attached to the Settlement Agreement as Exhibit B, the Summary Notice attached to the Settlement Agreement as Exhibit

C, and the Claim Form attached to the Settlement Agreement as Exhibit D. The Court finds that distribution of the Long Form Notice and Summary Form Notice and publication of the Summary Notice in the manner set forth in this Order and Settlement Agreement constitutes valid, due and sufficient notice to all members of the Class, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable laws. The forms of notice set forth herein and in the Settlement Agreement provide a means of notice reasonably calculated to apprise the Class Members of the pendency of the action and the proposed settlement, and thereby meet the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well as due process under the United States Constitution and any other applicable law, and shall constitute due and sufficient notice to all Class Members entitled thereto.

8. The Court approves the selection of Angeion Group to be the Settlement Administrator. The Settlement Administrator shall administer the relief provided by the Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective and timely manner. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel and Defense Counsel, the Parties and their representatives promptly upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with information concerning Notice, administration and implementation of the Settlement Agreement. Should the Court request it or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator. All fees, costs and expenses of the Settlement Administrator shall be paid as provided in the Settlement Agreement.

9. Any person may request to be excluded from the Class by mailing a letter, by first class U.S. Mail to the Settlement Administrator, containing a statement that he or she requests to be excluded from the Class. Any such request must be made in accordance with the terms set forth in the Long Form Notice and will be timely only if postmarked no later than ninety (90) days from the first day upon which the Class Notice is disseminated ("Notice Date"). The timeliness of any request for exclusion shall be conclusively determined by the postmark date.

10. At least seven (7) calendar days prior to the Final Approval Hearing Date, Class Counsel shall prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the "Opt-Outs"), and Class Counsel shall file that List with the Court.

11. Class Counsel shall file a motion for final approval of settlement no later than fourteen (14) days prior to the Final Approval Hearing date. Class Counsel shall also file any papers supporting its request for attorneys' fees and costs, and the Class Representative's incentive payment with the Court at least fourteen (14) days prior to the deadline for Class Members to object to the Settlement. The application for attorneys' fees and costs shall be posted on the website of the Settlement Administrator so that it may be reviewed and printed out by any member of the Class.

12. Any Class Members wishing to object to the approval of the Settlement or the award of attorneys' fees and reimbursement of expenses to Class Counsel or the Class Representative's incentive payment ("Objecting Class Members") shall no later than ninety (90) days after the Notice Date, file a written objection with this Court, and deliver upon Class Counsel and Defense Counsel at the addresses below, such written objection and copies of any papers and briefs desired to be considered by the Court, together with proof of membership in the Settlement Class in the manner set forth in the Long Form Notice. The delivery

date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark.

Class Counsel:

Zev B. Zysman
Law Offices of Zev B. Zysman, APC
15760 Ventura Boulevard, 16th Floor
Encino, CA 91436

Jordan L Lurie
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067

Defense Counsel:

Steven A. Zalesin
Patterson Belknap Webb & Taylor LLP
1133 Avenue of the Americas
New York, NY 10036

Any Class Member who has filed and served such written objections may, but is not required to, appear himself or herself, or through counsel, at the Final Approval Hearing, to object to the approval of the Settlement, the award of attorneys' fees and reimbursement of expenses to Class Counsel, or the Class Representative's service payment. However, Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing, must also deliver to Class Counsel and Defense Counsel, and file with the Court, a Notice of Intention to Appear no later than ninety (90) days after the Notice Date. Only Class Members who file and serve timely Notices of Intention to Appear may speak at the Final Approval Hearing

13. Any settlement Class Member who does not make his, her or its objection(s) and/or notice of intent to appear in the manner so provided herein and in the Long Form Notice shall be deemed to have waived such objection(s) and

shall forever be foreclosed from making any objection(s) (whether by a subsequent objection, intervention, appeal, or any other process) to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, the award of attorneys' fees and reimbursement of expenses to Class Counsel, or the Class Representative's incentive payment, and the right to appeal any orders that are entered relating thereto.

14. The Court reserves the right to adjourn the date of the Final Approval Hearing and any adjournment thereof may be without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve the settlement, with such modifications as may be agreed to by the parties to the settlement, if appropriate, without further notice to the Class.

Dated: _____

_____
Hon. S. James Otero
United States District Court Judge

EXHIBIT F

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA COLA COMPANY,

Defendant.

Case No:CV 09-06309 SJO(JRPx)

CLASS ACTION

SECOND AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Niloofar Saeidian, brings this action against Defendant The Coca Cola Company ("Defendant" or "Coca-Cola"), on behalf of herself and all others similarly situated, upon information and belief, except as to her own actions, the investigation of her counsel, and the facts that are a matter of public record, as follows:

INTRODUCTION

1. The claims asserted herein on behalf of a nationwide class of purchasers are premised on violations of California Business & Professions Code §§17200, *et seq*. ("UCL"), California Business & Professions Code §§17500, *et seq*. ("FAL"), breach of express warranty, negligent misrepresentation, and unjust enrichment created by Coca-Cola's uniform nationwide advertising and marketing campaign and product labeling of its "Minute Maid Enhanced Pomegranate Blueberry" juice product (the "Pomegranate Blueberry Juice"). All purchasers of the product were uniformly exposed to the identical labeling on the product. By characterizing the product as "Pomegranate Blueberry" and including the prominent display of a pomegranate next to blueberries on the front label of each bottle, Coca-Cola created the materially misleading impression that the product contains more pomegranate and blueberry juice than it actually does.

2. The Federal Food Drug and Cosmetic Act ("FDCA") regulates food and beverage labeling and provides that food is "deemed to be misbranded" in a variety of circumstances. 21 U.S.C. § 343. Only the federal government may enforce the FDCA, 21 U.S.C. § 337(a); the FDCA contains no private right of action. Plaintiff's claim that Coca Cola's product label is misleading and deceptive does not seek to challenge the product's formal name and labeling in areas for which the Food and Drug Administration ("FDA") has promulgated regulations implementing the FDCA. Plaintiff's claim does not seek to contest or enforce the FDCA or FDA regulation requirements at all. Nor does Plaintiff seek an interpretation of the FDA regulations.

3. Importantly, the UCL and FAL claims based on the juice *label* affixed to the product impose liability *identical* to the FDCA, and are therefore not preempted. The UCL and FAL claims, in part, are predicated on Coca-Cola's violation of California's Sherman Food, Drug and Cosmetic Act ("Sherman Law"), California Health & Safety Code § 110660, which imposes legal obligations identical to those imposed by § 343(a)(1) of the FDCA. Specifically, California Health and Safety Code §110660, states: "Any food is misbranded if its labeling is false or misleading in any particular." Similarly, § 343(a) deems a food misbranded if "its labeling is false or misleading in any particular." 21 U.S.C. § 343(a)(1).

4. The FDCA, as amended by the Nutrition Labeling and Education Act of 1990 ("NLEA"), contains an express preemption provision codified at 21 U.S.C. § 343-1. This provision preempts state-law liability that either directly or indirectly imposes liability for food labeling that is "not identical to" liability imposed by the FDCA itself, or the regulations which are propounded by the FDA pursuant to the FDCA. Significantly, the preemption clause in § 343-1 does not include § 343(a) in the specific enumeration of statutory provisions which preempt state-law claims that are "not identical" to these provisions.

5. Accordingly, not only does the FDCA not bar a claim that Coca-Cola's label is deceptive, the language of § 343(a)(1) affirmatively imposes an overarching duty to avoid misleading consumers with labels that may comply with technical regulations that are propounded pursuant to the FDCA's general authority.

6. As the Ninth Circuit held in its seminal ruling on FDCA preemption, state-law tort liability is not preempted when it parallels FDCA liability. *See Stengel v. Medtronic, Inc.*, 704 F.3d 1224, 1227-29 (9th Cir. 2013) (en banc). In the specific context of food labeling claims, the same standard applies. Where the state law claim imposes liability that parallels the FDCA, there is no preemption.

See In re Farm Raised Salmon Cases, 42 Cal.4th 1077 (2008) (food labeling claims predicated on California's Sherman Law not preempted by FDCA because they impose *identical* liability). Plaintiff's UCL and FAL claims based on the juice label are predicated on California's Sherman Law (Cal. Health & Safety Code § 110660), which precisely mirrors § 343(a) of the FDCA, imposing identical liability. And, even if specific aspects of the Pomegranate Blueberry Juice's label comply with certain regulations, the label's *overall effect* on consumers is misleading as confirmed by Coca-Cola's own fatal admissions. That is a violation of the FDCA. Since the FDA can bring false advertising claims under the FDCA against Coca-Cola's juice label, Plaintiff can likewise assert her parallel claims under California state law.

7. Further, the UCL and FAL claims based on the unified misleading *advertising and marketing* campaign of the Pomegranate Blueberry Juice are not subject to FDA regulations as this Court previously reiterated in a summary judgment motion in the related action, *POM Wonderful LLC v. The Coca Cola Company*, Case No. CV-08-06237 SJO (Docket No. 360 at 36). FDA preemption does not extend to advertising for the juice for the simple reason that the FDA does not regulate advertising of juice. The advertising and marketing claims are based on *different deceptive elements from the label* (*i.e.,* a different product name and different fruit vignettes).

8. Moreover, the UCL claim is not barred by California's so-called "safe harbor" doctrine. For a safe harbor defense to apply, the legislation must "actually 'bar' the action or clearly permit the conduct" challenged. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal 4th 63, 183 (1999). Nothing in the FDCA or its implementing regulations "actually bar" Plaintiff's UCL claim and nothing in the FDCA "clearly permits" the choice of graphics, vignettes and other elements that jointly give the impression that the primary ingredients in the Pomegranate Blueberry Juice are pomegranate and blueberry.

NATURE OF ACTION

9. Coca Cola introduced the Pomegranate Blueberry Juice nationwide, including California, in supermarkets and other retailers in September 2007 and has represented to this Court that it discontinued the product from the marketplace in December 2014.

10. At all times relevant to the matters alleged in this Second Amended Complaint, Defendant has deceptively advertised and labeled its "Minute Maid Enhanced Pomegranate Blueberry" juice product. Specifically, the Pomegranate Blueberry Juice which has been packaged, advertised, marketed and sold by Coca-Cola based on the label and other forms of advertising to Plaintiff, and others similarly situated, tricks and deceives consumers into believing that the primary ingredients in the juice product are pomegranate and blueberry juice. In fact, the Pomegranate Blueberry Juice contains *a minuscule amount of pomegranate or blueberry juice*, a fact which Defendant knew and purposely failed to disclose to its consumers. The primary ingredients are actually composed of over 99.4% cheap apple and grape juices. The juice inside the bottle is artificially colored a deep purple that resembles the color of pomegranate and blueberry juice.

11. In May 2010, this Court's opinion on Coca-Cola's summary judgment motion in the action, *POM Wonderful LLC v. The Coca Cola Company*, Case No. CV-08-06237 SJO (Docket No. 360 at 8), publicly revealed for the first time that the Pomegranate Blueberry Juice contains only 0.3% pomegranate juice, 0.2% blueberry juice, and 0.1% raspberry juice, respectively. Nowhere on Coca-Cola's label are these percentages actually disclosed. The percentages were subsequently identified in the U.S. Supreme Court's landmark unanimous decision of *POM Wonderful LLC v. Coca-Cola*, 134 S.Ct. 2228, 2235 (2014). Despite the token amounts of pomegranate and blueberry juices included in its 100% juice product, the product was labeled as "Pomegranate Blueberry," and prominently displayed a picture of a pomegranate and blueberries on the label, when in fact the product

contains over 99.4% cheap apple and grape juices. Such minuscule amounts of pomegranate and blueberry juices have almost no discernible flavor impact relative to the primary juices. The product is *actually* flavored and colored by using added flavor additives and colorants to perpetuate and strengthen consumers' misimpression that it contains appreciable quantities of pomegranate and blueberry juices.

12. Coca-Cola knew that the Pomegranate Blueberry Juice's label was deceptive and misleading when it was sold to consumers nationwide, and willingly choice to assume that risk. A fourteen-year employee of Coca-Cola, responsible for fielding consumer complaints about many Minute Maid products, admitted "that there have been no Minute Maid products about which consumers have complained more." One such consumer, for example, complained: "Today I made the mistake of buying [the] Minute Maid product that you call 'Pomegranate Blueberry[.]' What a crock. It's nothing but fancy apple grape juice."

13. Coca-Cola knew that the Pomegranate Blueberry Juice's label was deceptive and misleading even before releasing the Pomegranate Blueberry Juice product. Coca-Cola's Director of Scientific and Regulatory Affairs, and the person responsible for making sure that Coca-Cola's product labels are not misleading, confirmed in a stunning internal email that its labeling created a "risk from a misleading standpoint as the product has less than 0.5% of pomegranate and blueberry juices." But Coca-Cola was "willing to assume the risk."

14. Coca-Cola's decision to call its product "Pomegranate Blueberry," rather than, for example, "Apple Grape," demonstrates Coca-Cola's intention to deceive consumers by focusing them on the trace amounts of pomegranate and blueberry juice in the product, rather than the cheaper juices the product primarily contains. Coca-Cola's highly suggestive uniform marketing and packaging, and misleading presentation of Defendant's product, in fact, led consumers (including Plaintiff) across the nation to believe they were purchasing the high quality juices

primarily consisting of pomegranate and blueberry juices when in fact, they were purchasing mostly apple and grape juice.

15. As a further consequence of Defendant's unfair and deceptive practices, Plaintiff and members of the Class purchased the Pomegranate Blueberry Juice under the impression that, by drinking Defendant's product they would be enjoying the healthful and nutritional benefits associated with a product they believed at least primarily contained pomegranate and blueberry juices. Significantly, Plaintiff and members of the Class have *each* been exposed to the *same* deceptive labeling which was prominently displayed on the product label at the time of purchase. Moreover, Plaintiff and members of the Class were exposed to Coca-Cola's unified advertising and marketing campaign, including point-of-purchase displays, print advertisements, television commercials and website which are all materially deceptive.

16. As a result of Defendant's deceptive advertising and labeling of the the Pomegranate Blueberry Juice, Plaintiff and Class members overpaid for the juice because the value of the product was diminished at the time it was sold to consumers. Had Plaintiff and Class members been made aware that the juice contained almost no pomegranate or blueberry juice, they would not have purchased the Pomegranate Blueberry Juice at all, or would have paid less for it.

17. As a result of Defendant's deceptive advertising and labeling, Plaintiff and Class members across the nation bought hundreds of thousands of units of the Pomegranate Blueberry Juice and have suffered – and continue to suffer – injury in fact as a result of Defendant's wrongful conduct.

18. Defendant's conduct as alleged herein constitutes a violation, *inter alia*, of California Business & Professions Code §§17200 and 17500 *et seq*., breach of express warranty, negligent misrepresentation, and unjust enrichment. Plaintiff asserts claims under these state statutes, as well as under common law.

19. This action seeks, among other things, equitable relief; restitution of all amounts illegally retained by Defendant; and disgorgement of all ill-gotten profits from Defendant's wrongdoing.

JURISDICTION AND VENUE

20. This Court has original jurisdiction over this class action pursuant to 28 U.S.C. §1332(d)(2) which explicitly provides for the original jurisdiction of the federal court in any class action in which any member of the Class is a citizen of a state different from any Defendant, and in which the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000. Plaintiff alleges that the claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, and that the total number of members of the proposed Class is greater than 100, as required by 28 U.S.C. §1332(d)(2), (5). Further, as set forth below, Plaintiff is a citizen of a state different from Defendant.

21. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to this action occurred in this district and because defendant:

(a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution and sale of its products in this district;

(b) does substantial business in this district; and

(c) is subject to personal jurisdiction in this district.

THE PARTIES

22. At all times relevant to this matter, Plaintiff Niloofar Saeidian resided and continues to reside in this district. During the class period, Plaintiff was exposed to and saw Defendant's advertising and packaging claims, purchased the Pomegranate Blueberry Juice in reliance on these claims, and suffered injury in fact and lost money as a result of the unfair competition described herein.

23. In making her purchasing decision, Plaintiff relied upon, *inter alia*, the labeling, packaging, advertising and/or other promotional materials which were prepared and approved by Defendant and its agents and disseminated through its packaging, advertising and marketing, and/or through local and national advertising media, including Defendant's television commercials and in-store advertisements, containing the deceptive and misleading elements alleged hereafter.

24. Defendant Coca Cola is a multinational corporation organized under the laws of the State of Delaware, with its principal executive offices in Atlanta, Georgia. Coca Cola is the world's largest beverage company. Coca Cola manufactures, distributes, and markets nonalcoholic beverages, mineral waters and beverage concentrates under various brand names, including Coca-Cola, Diet Coke, Fanta, Sprite, Odwalla and Minute Maid. Coca-Cola's activities caused the sale of Pomegranate Blueberry Juice in supermarkets and other retailers across the nation. Coca-Cola utilized the express warranties and misrepresentations to effectuate its plan to market and sell Pomegranate Blueberry Juice as described herein.

SUBSTANTIVE ALLEGATIONS

25. It has become recently well-known to consumers that both pomegranate and blueberry juices are high in powerful antioxidants, recognized for years to be helpful in maintaining health and preventing disease. Pomegranate juice has very high levels of unique polyphenols[1], potent antioxidants that are especially effective at neutralizing free radicals,[2] helping to prevent cell and tissue damage that can lead to dysfunctions and diseases associated with aging. Based on laboratory and human pilot studies, the juice of the pomegranate has been effective

[1] Polyphenols are a class of phytochemicals found in plants. Phenol is a kind of molecule, a carbon-based chemical structure, and many of them bound together form a polyphenol.

[2] Free radicals are atoms or molecules in one's body with an unpaired electron making them highly unstable. Normally, electrons come in pairs, and therefore the free radicals collide with other molecules in an attempt to steal an electron, which in turn, may start a chain reaction, causing damage to cell membranes and DNA through a process known as oxidative stress. Indeed, free radicals are able to aggressively destroy healthy cells and have been linked to serious health threats, such as cancer and heart disease.

in reducing heart disease risk factors, including LDL oxidation, macrophage oxidative status, and foam cell formation, all of which are steps in atherosclerosis and cardiovascular disease. Pomegranate juice has also been shown to reduce systolic blood pressure by inhibiting serum angiotensin-converting enzyme, may inhibit viral infections, and may also have antibacterial effects against dental plaque.

26. Like the pomegranate, the blueberry is considered a "wonder fruit" or "super fruit" and has become a popular drink among consumers because of its known high antioxidant capacity. Blueberries are also highly protective to the cardiovascular system and nervous system and are among the fruits with the highest antioxidant activity.

27. With the nutritional and health benefits of pomegranate and blueberry juices becoming widely known, consumer demand for pomegranate and blueberry juices has increased rapidly. It was this enormous new market that Defendant hoped to tap with the sale of its new Pomegranate Blueberry Juice product.

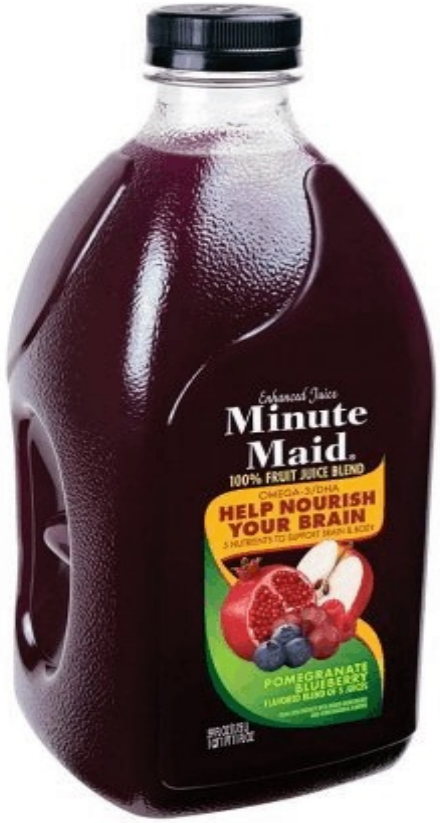
28. Indeed, on September 24, 2007, Coca-Cola issued a press release, introducing its "Minute Maid Pomegranate Blueberry" juice product as part of Minute Maid's "Enhanced Juices." According to the press release, the new product launch in 2007 was supported with a marketing program that included "national print and television advertising, point-of-purchase displays, an interactive Web site, public relations and national in-store sampling programs." In addition, the press release stated that the new Minute Maid Pomegranate Blueberry Juice focused on the "health-conscious shopper" and emphasized the juice's healthy nutrients which "helps nourish the brain and body."

29. Defendant's Pomegranate Blueberry Juice purported to combine two of nature's most potent antioxidants, pomegranates and blueberries into a single "Enhanced Juice." However, the truth is that the main ingredients in Defendant's

Pomegranate Blueberry Juice were neither pomegranate nor blueberry juice, but instead, cheap apple and grape juice.

The Label Of Minute Maid's Pomegranate Blueberry Juice

30. Even though the Pomegranate Blueberry Juice contained very little pomegranate or blueberry juice, Coca-Cola made a tactical marketing and/or advertising decision to create a deceptive and misleading label with many elements not required by state or federal regulation. For example, despite the fact that apple and grape juice were the predominant juices in its product, Defendant decided to give this juice product the brand name of "Pomegranate Blueberry" juice which appeared in large font with the words "Flavored Blend of 5 Juices" appearing in smaller font below the name on the front label; to artificially color the juice inside a deep purple to resemble the color of pomegranate and blueberry juice; and to prominently display a picture of a pomegranate next to three blueberries, among other misleading elements. The front label on *each* juice product substantially appeared as follows:



31. The back label called the juice "MINUTE MAID POMEGRANATE BLUEBERRY" and stated that the juice contained "Antioxidant Vitamin E may help shield the omega-3s in the brain from free radicals."

32. By characterizing this product as "Pomegranate Blueberry" on the **front and back label**, including the prominent display of a pomegranate and blueberries on the **front label**, emphasizing the "antioxidants" which will help defend against "free radicals" on the **back label**, and creating an artificially darkened juice, Coca-Cola misled Plaintiff and other consumers, who reasonably expected that the juice product was an antioxidant-rich product consisting primarily of pomegranate and blueberry juices when they purchased the product.

33. Plaintiff's claim that Coca-Cola's product label was misleading and deceptive does not seek to challenge the product's formal name and labeling in

areas for which the FDA has promulgated regulations implementing the FDCA. Plaintiff's claim does not seek to contest or enforce the FDCA or FDA regulation requirements. Nor does Plaintiff seek an interpretation of the FDA regulations.

34. Plaintiff's state law claims are aimed at the features of the naming and labeling which are voluntary, and not required by the FDA regulations, which Coca-Cola selected in order to maximize the label's deceptive impact upon Plaintiff and other members of the Class. Indeed, FDA regulations did not require Defendant to name its product after an ingredient found in only trace amounts and feature that trace ingredient in large font and with a prominent pomegranate graphic on its front label. And the regulations certainly do not authorize actual consumer confusion, particularly where Coca-Cola knew that it "risk[ed]" misleading consumers but opted "to assume th[at] risk."

35. Defendant easily could have complied with the FDA's requirements, for example, by declining to emphasize pomegranate and blueberry juice more prominently than the juices making up almost all of the product or disclosing the actual percentage of pomegranate and blueberry juice actually contained in the product. If Coca-Cola had done so, it could have complied with the FDCA and FDA regulations *and* marketed a product that was not misleading under § 343(a)(1) of the FDCA which is *identical* to the liability imposed by § 110660 of the Sherman Law.

Minute Maid's Website And Other Forms Of Advertising For Its Pomegranate Blueberry Juice

36. In addition to the product label, Defendant deceptively advertised the Pomegranate Blueberry Juice nationwide on its website at www.minutemaid.com. This interactive website was accessible to the general public and the product label itself identified the website as a resource for additional consumer information about the product.

37. As shown above, Minute Maid's website identified its product as "Minute Maid Enhanced Pomegranate Blueberry," without identifying that the primary ingredients were actually apple and grape juice, which are much less expensive juices than pomegranate juice and blueberry juice. The website displayed an image of the front of the bottle with pomegranates, blueberries, and raspberries piled in front of the bottle, despite that these fruits made up ***only 0.6%*** of the juice's content. The homepage also displayed apples and grapes which are almost completely obscured behind a bottle in front of the juice, in contrast to the pomegranates, blueberries, and raspberries which were prominently displayed in front of the bottle. In doing so, Coca Cola again deceptively conveyed the uniform nationwide marketing and/or advertising message in a calculated way to lead consumers to believe that the product primarily contained pomegranate and blueberry juice, when in fact it did not.

38. Plaintiff's claim that Minute Maid's website is misleading and deceptive is based on specific marketing and/or advertising content which Defendant displayed on its website, distinct from the misleading aspects of the product label. Significantly, the misleading and deceptive website content was not required by FDA labeling regulations. Instead, Defendant voluntarily selected each of the features on the website in order to maximize its impact on consumers seeking to obtain information concerning the Pomegranate Blueberry Juice. However, *nowhere* on the website did Coca Cola inform consumers that the primary juices in the product were *actually not pomegranate and blueberry juices, but in fact apple and grape juice.*

39. In addition to its website, Coca Cola has conveyed its deceptive claims about the Pomegranate Blueberry Juice through a variety of other media, including national television commercials.

40. For example, Coca Cola has advertised its Pomegranate Blueberry Juice in television commercials which have aired regularly across the United States during the highly popular show "American Idol." In some of these commercials, Coca-Cola identified the juice as "pomegranate and blueberry flavored juice blend." In other television commercials, Coca-Cola identified the juice as "pomegranate blueberry flavored juice blend."

41. Coca-Cola also conveyed its deceptive claims about the Pomegranate Blueberry Juice through a variety of national in-store promotional materials. For example, Coca-Cola's in-store promotional materials for the juice displayed images of pomegranates, but no other fruit, heaped about the bottle. Other in-store promotional materials displayed blueberries heaped in front of the bottle, with a prominent pomegranate to its side. Further, Coca-Cola published a variety of coupons calling the juice "Pomegranate Blueberry Flavored 100% Juice Blend." Moreover, some of the print advertisements identified the juice as "Minute Maid Pomegranate Blueberry."

42. Through the uniform nationwide deceptive and misleading advertising and marketing campaign, Coca-Cola led consumers to believe that the primary ingredients in the product were pomegranate and blueberry juices.

43. As a result of this campaign, the average consumer, unaware that the product actually contained very little pomegranate and blueberry juices, purchased the product believing that the product was derived primarily from these two juices. The primary ingredients of the product were actually apple and grape juice, which are much less expensive than, and do not contain as many antioxidants as, either pomegranate or blueberry juice.

44. Moreover, consumers' confusion was reasonable given that some companies are selling juices advertised as pomegranate and/or blueberry juice which truly are composed 100% (or at least primarily) of those juices. For example, on information and belief, Plaintiff alleges that R.W. Knudson Just Pomegranate, POM Wonderful Pomegranate and Odwalla PomaGrand Pomegranate Juice are juice products that actually contain primarily pomegranate juice.

45. Accordingly, Defendant's representations regarding the Pomegranate Blueberry Juice were likely to deceive consumers into believing they were purchasing primarily pomegranate and blueberry juice.

46. As a result of Defendant's deceptive and misleading advertising, Plaintiff overpaid for the Pomegranate Blueberry Juice she purchased because the value of the juice was diminished at the time of sale. Had Plaintiff been aware that the Pomegranate Blueberry Juice included very little pomegranate or blueberry juice she would not have purchased the juice or would have paid less for it. Moreover, for all the reasons stated herein, Plaintiff suffered injury in fact and has lost money or property as a result of Defendant's actions.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this suit as a class action on behalf of herself and on behalf of others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Class may be expanded or narrowed. Plaintiff seeks to a represent a proposed Class defined as follows:

> All persons who purchased Coca-Cola's Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of Five Juices (the "Product") in the United States between September 1, 2007 and the date of entry of the Preliminary Approval Order. Excluded from the Class are any employees of Defendant, the Court, and its personnel.

48. This action has been brought and may properly be maintained as a class action pursuant to Fed. R. Civ. Pro. 23 and case law thereunder.

49. **Numerosity**: The members of the Class are so numerous that joinder of all members is impracticable. The Class comprises many tens of thousands of consumers throughout the United States.

50. **Commonality**: Common questions of law and fact exist as to all members of the Class. These common questions predominate over the questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

a. Whether Defendant's conduct is an unlawful act or practice within the meaning of California Business & Professions Code §17200;

b. Whether Defendant's conduct is a deceptive act or practice within the meaning of California Business & Professions Code §17200;

c. Whether Defendant's conduct is an unfair act or practice within the meaning of California Business & Professions Code §17200;

d. Whether Defendant's advertising is untrue or misleading within the meaning of California Business & Professions Code §17500;

d. Whether Defendant is liable for negligent misrepresentation;

e. Whether Defendant is liable for breach of express warranty;

f. Whether Defendant has been unjustly enriched by the sale of the Pomegranate Blueberry Juice;

g. Whether Plaintiff and the other members of the Class have sustained damages, and if so, the proper measure of damages.

h. Whether Defendant, through its conduct, received money that, in equity and good conscience, belongs to members of the proposed Class; and

i. Whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to restitution and/or disgorgement.

These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class.

51. **Typicality**: Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's uniform wrongful conduct described above and were subject to the same misrepresentations and omissions that accompanied each and every bottle of Pomegranate Blueberry Juice. Plaintiff is advancing the same claims and legal theories on behalf of herself and all other members of the Class.

52. **Adequacy**: Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

53. Plaintiff is similarly situated in interest to all of the members of the proposed Class and is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions.

Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class.

54. Plaintiff explicitly reserves the right to add additional class representatives, provided that Defendant is given an opportunity to conduct discovery on the chosen representative(s). Plaintiff will identify and propose class representatives with the filing of Plaintiff's motion for class certification.

55. This suit may be maintained as a class action under Fed. R. Civ. Pro. 23(b)(3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

(Unlawful, Unfair and Deceptive Business Practices in Violation of California Business & Professions Code §17200, *et seq.* - Asserted On Behalf of Plaintiff and the Class)

56. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

57. Plaintiff brings this cause of action on behalf of herself and on behalf the Class.

58. The Unfair Business Practices Act defines unfair business competition to include any "unfair," "unlawful," or "fraudulent" business act or practice. California Business & Professions Code §17200, *et seq*. The Act also provides for restitution for violations.

59. Defendant's conduct as alleged herein constitutes unlawful, unfair and/or fraudulent business acts and practices.

60. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of California Business & Professions Code §17200, *et seq*.

61. Defendants' business practices and acts are "fraudulent" because they deceived and/or are likely to deceive Plaintiff and members of the Class. Specifically, but without limitation, Defendant intentionally and misleadingly designed the product's front label by displaying the product's name "Pomegranate Blueberry" in close conjunction with images of a pomegranate next to three blueberries, among other misleading elements. Defendant intentionally and misleadingly did so in order to falsely communicate to consumers that the product was primarily made of pomegranate and blueberry juice, when in fact it was not.

62. In addition to the product label, Defendant's website misled and deceived consumers because it identified its juice product as "Minute Maid Enhanced Pomegranate Blueberry," without identifying that the primary ingredients were actually apple and grape juice, which are much less expensive juices than pomegranate juice and blueberry juice. Moreover, the website displayed an image of the front of the bottle with pomegranates and blueberries (and other fruit) piled around it in order to lead consumers to believe that the product primarily contained pomegranate and blueberry juice.

63. Defendant has also engaged in other forms of advertising and/or marketing of its Pomegranate Blueberry Juice, including television commercials, print advertisements, point-of-purchase displays, and national in-store sampling

programs. Through the uniform nationwide deceptive and misleading advertising and marketing campaign, Coca Cola led consumers to believe that the primary ingredients in the product were pomegranate and blueberry juices.

64. Defendant's business practices, and each of them, are "unfair" because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are led to believe that the Pomegranate Blueberry Juice have qualities and benefits they do not have. Specifically, Defendant conveyed that the Pomegranate Blueberry Juice was made primarily of pomegranate and blueberry juices, when, in fact, it was primarily composed of less expensive and less healthful apple and grape juice. The injury to Plaintiff and consumers greatly outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances.

65. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

66. Defendant's acts and practices were "unlawful" because they violate or violated California Health and Safety Code §110660, which states: "Any food is misbranded if its labeling is false or misleading in any particular." Section 110660 is part of California's Sherman Food, Drug, and Cosmetic Law, California Health & Safety Code §109875, *et seq*. (the "Sherman Law"). Defendant has violated Section 110660 because the product label misled and deceived consumers into believing that the primary ingredients in the juice product were pomegranate and blueberry juice. In fact, the Pomegranate Blueberry Juice contained very little pomegranate or blueberry juice, a fact which Defendant knew and purposely failed to disclose to its consumers. The primary ingredients were actually cheap apple and grape juice.

67. In addition, Defendant's acts and practices were "unlawful" because Defendant engaged in false and/or misleading advertising in violation of California Business & Professions Code §17500, *et seq*.

68. Plaintiff and the Class reserves the right to allege other violations of law which constitute other unlawful business acts or practices.

69. Defendant has represented to this Court that it discontinued the product from the marketplace in December 2014, and accordingly, Plaintiff is no longer seeking injunctive relief which is available under California Business & Professions Code §17203.

70. State law claims based on a food product's misleading and deceptive label are expressly permitted when they impose legal obligations *identical* to the FDCA and its implementing FDA regulations, including FDA regulations concerning naming and labeling. *See e.g., In re Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1094-95 (2008). The Sherman Law expressly incorporates into California law all of the food labeling regulations adopted pursuant to the FDCA. Plaintiff's Section 17200 claim that the label of the Pomegranate Blueberry Juice violates California Health and Safety Code §110660 imposes legal obligations identical to 21 U.S.C. §343(a) of the FDCA which states that: "A food shall be deemed to be misbranded . . . [i]f (1) its labeling is false or misleading in any particular[.]" Since Section 110660 imposes the identical legal obligation that "any food is misbranded if its labeling is false or misleading in any particular," Plaintiff's Section 17200 claim, which is based, in part, on Section 110660, is expressly permitted and not preempted by the FDCA. Further, Section 343(a) of the FDCA is not subject to express preemption provision set forth in 21 U.S.C. §343-1 of the FDCA.

71. Plaintiff and members of the Class have suffered injury in fact and have lost money or property as a result of Defendant's unfair competition, as more fully set forth herein. Plaintiff and members of the Class have been injured because they overpaid for the Pomegranate Blueberry Juice since the value of the juice was diminished at the time of sale. Plaintiff and members of the Class have been injured because had they been made aware that the Pomegranate Blueberry Juice contained

primarily apple and grape juice and very little pomegranate or blueberry juice, they would not have purchased the juice or would have paid less for it.

72. Defendant, through its acts of unfair competition, have unfairly acquired money from Plaintiff and members of the Class. It is impossible for the Plaintiff to determine the exact amount of money that Defendant have obtained without a detailed review of Defendant's books and records. Plaintiff requests that this Court restore this money.

73. Plaintiff seeks an order requiring Defendant to (a) make full restitution of all monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or profits, together with interest thereon.

74. Plaintiff also seeks attorney's fees and costs pursuant to, *inter alia*, Civil Code §1021.5.

SECOND CAUSE OF ACTION

(False and Misleading Advertising in Violation of California Business & Professions Code §17500, *et seq.* - Asserted On Behalf of Plaintiff and the Class)

75. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

76. Plaintiff brings this cause of action on behalf of herself and on behalf the Class.

77. The misrepresentations and/or omissions by Defendant of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of Business and Professions Code §17500 *et seq*.

78. At all times relevant, Defendant's advertising and promotion regarding its Pomegranate Blueberry Juice was untrue, misleading and likely to deceive the public and/or has deceived the Plaintiff and consumers by conveying that the product contained primarily, pomegranate and blueberry juices. Defendant knew and failed to disclose that the Pomegranate Blueberry Juice contained primarily apple and grape juice and very little pomegranate or blueberry juice.

79. Moreover, state law claims based on a food product's misleading and deceptive label are expressly permitted when they impose legal obligations identical to the FDCA and its implementing FDA regulations, including FDA regulations concerning naming and labeling. *See e.g., In re Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1094-95 (2008). Plaintiff's Section 17500 claim that the label of the Pomegranate Blueberry Juice is false or misleading imposes legal obligations identical to 21 U.S.C. §343(a) of the FDCA which states that: "A food shall be deemed to be misbranded . . . [i]f (1) its labeling is false or misleading in any particular[.]" Further, Section 343(a) of the FDCA is not subject to express preemption provision set forth in 21 U.S.C. §343-1 of the FDCA.

80. Defendant engaged in the false and/or misleading advertising and marketing alleged herein with an intent to directly or indirectly induce the purchase of the Pomegranate Blueberry Juice.

81. In making and disseminating the statements and/or omissions alleged herein, Defendant knew or should have known that the statements and/or omissions were untrue or misleading, and acted in violation of California Business & Professions Code §17500, *et seq*.

82. Plaintiff and members of the Class have suffered injury in fact and have lost money or property as a result of Defendant's unfair competition, as more fully set forth herein. Plaintiff and members of the Class have been injured because they overpaid for the Pomegranate Blueberry Juice since the value of the juice was diminished at the time of sale. Plaintiff and members of the Class have been injured because had they been made aware that the Pomegranate Blueberry Juice contained primarily apple and grape juice and very little pomegranate or blueberry juice, they would not have purchased the juice or would have paid less for it.

83. Defendant, through their acts of unfair competition, have unfairly acquired money from Plaintiff and the members of the Class. It is impossible for

the Plaintiff to determine the exact amount of money that Defendant have obtained without a detailed review of Defendant's books and records.

84. Plaintiff seeks an order requiring Defendant to (a) make full restitution of all monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or profits, together with interest thereon.

85. Plaintiff also seeks attorney's fees and costs pursuant to, *inter alia*, Civil Code §1021.5.

THIRD CAUSE OF ACTION

(Breach Of Express Warranty - Asserted On Behalf of the Plaintiff and the Class)

86. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

87. Plaintiff brings this cause of action on behalf of herself and on behalf the Class.

88. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Pomegranate Blueberry Juice. The terms of that contract include the promises and affirmations of fact made by Defendant on its product labels and through its uniform marketing campaign, as described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant on the other.

89. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

90. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the product which could provide the benefits described above.

91. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the purchase price of the Pomegranate Blueberry Juice they purchased.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation - Asserted On Behalf of the Plaintiff and the Class)

92. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

93. Plaintiff brings this cause of action on behalf of herself and on behalf the Class.

94. Plaintiff and the other members of the Class were harmed because Defendant negligently misrepresented important facts to Plaintiff and members of the Class.

95. Defendant made statements on the label and advertising for the Pomegranate Blueberry Juice that convey that the product contained primarily, pomegranate and blueberry juices and those representations are inaccurate. Defendant had a duty to disclose that the Pomegranate Blueberry Juice contained primarily apple and grape juice and very little pomegranate or blueberry juice.

96. At the time Defendant made representations about the primary ingredients in the juice product, Defendant knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

97. At an absolute minimum, Defendant negligently misrepresented and/or negligently omitted material facts about the Pomegranate Blueberry Juice.

98. The negligent misrepresentations and omissions made by Defendant, upon which Plaintiff and the members of the Class reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and members of the Class to purchase Pomegranate Blueberry Juice.

99. Plaintiff and members of the Class would not have purchased the Pomegranate Blueberry Juice if the true facts had been known.

100. The negligent actions of Defendant caused damage to Plaintiff and members of the Class, who are entitled to damages and other legal and equitable relief as a result.

FIFTH CAUSE OF ACTION

(Unjust Enrichment - Asserted On Behalf of the Plaintiff and the Class)

101. Plaintiff hereby incorporates the above allegations by reference as if set forth fully herein.

102. Plaintiff brings this cause of action on behalf of herself and on behalf the Class.

103. By its wrongful acts and misrepresentations, Defendant was unjustly enriched at the expense of Plaintiff and members of the Class, who did not receive the goods to which they were entitled for the payments made to Defendant, and thus, Plaintiff and members of the Class were unjustly deprived.

104. It would be inequitable and unconscionable for Defendant to retain the profit, benefit and other compensation it obtained from its deceptive, misleading and unlawful conduct alleged herein.

105. Plaintiff and members of the Class seek restitution or disgorgement of monies paid to Defendant, or such other appropriate equitable remedy as appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of the Class defined herein, pray for judgment and relief on all Causes of Action as follows:

1. An order certifying that the action may be maintained as a class action as defined herein;

2. An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the Class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or regulations, or constituting unfair competition;

3. Distribution of any monies recovered on behalf of members of the Class via fluid recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendant from retaining the benefits of their wrongful conduct;

4. An order awarding Plaintiff and members of the Class compensatory damages in an amount according to proof at trial.

5. Statutory pre-judgment and post-judgment interest;

6. Reasonable attorneys' fees pursuant to, *inter alia*, Code of Civil Procedure, §1021.5;

7. Costs of this suit; and

8. Such other and further relief as the Court may deem necessary or appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: February__, 2016

LAW OFFICES OF ZEV B. ZYSMAN APC
CAPSTONE LAW APC

/s/ Zev B. Zysman
Zev B. Zysman

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR SAEIDIAN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. THE COCA COLA COMPANY, Defendant.	Case No. CV 09-cv-06309 SJO (JRPx) [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, APPROVING FORM OF NOTICE TO THE CLASS AND SETTING HEARING OF FINAL APPROVAL OF SETTLEMENT

Upon review and consideration of Plaintiff Niloofar Saeidian's unopposed motion for preliminary approval of the class action settlement, Settlement Agreement and Release, and all declarations and exhibits submitted therewith, which have been filed with the Court, it is hereby ORDERED and ADJUDGED as follows:

FINDINGS:

1. For purposes of this Order, the Court adopts and incorporates all definitions set forth in the Settlement Agreement and Release ("Settlement Agreement"), filed with the Court.

2. The Court GRANTS Plaintiff's motion for preliminary approval of the class action settlement.

3. The Court finds, for purposes of the settlement, that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and other laws and rules applicable to preliminary settlement approval of class actions have been satisfied: (a) The members of the Class are so numerous that joinder of all members is impractical; (b) There are questions of law or fact common to members of the Class; (c) The claims of the named Plaintiff Niloofar Saeidian are typical of the Class's claims; (d) The named Plaintiff is an adequate Class Representative and possesses the same interests in the outcome of this case as the other Class Members; (e) Plaintiff's Counsel, Law Offices of Zev B. Zysman APC and Capstone Law LLC APC are qualified to serve as Class Counsel; and (f) Common issues predominate and the proposed settlement is a superior way to resolve this national controversy.

4. For these reasons, the Court preliminarily approves the settlement of this Action as memorialized in the Settlement Agreement, which is incorporated herein by this reference, as being fair, just, reasonable and adequate to the Settlement Class and its members, subject to further consideration at the Final Approval Hearing described below, and thus hereby:

> (a) conditionally certifies for purposes of implementing the Settlement Agreement the Class consisting of all persons who purchased Coca-Cola's Minute Maid Enhanced Pomegranate Blueberry Flavored Blend of Five Juices (the "Product") in the United States between September 1, 2007 and the date of entry of the Preliminary Approval Order. Excluded from the Class are any employees of Defendant, the Court, and its personnel.

(b) appoints Plaintiff Niloofar Saeidian as the representative of the Class; and

(c) appoints Zev B. Zysman, Esq., Law Offices of Zev B. Zysman, APC and Jordan L. Lurie, Esq., and Robert K. Friedl, Esq., Capstone Law APC as attorneys for the Class for purposes of settlement and finds for the purposes of settlement that these attorneys are qualified to represent the Class.

5. The Court approves the filing of the proposed Second Amended Complaint attached to the Settlement Agreement as Exhibit F in this Action for purposes of this settlement only. The Second Amended Complaint shall be filed within five (5) days of the date of this Order. If the Settlement Agreement is terminated or for any reason does not occur (in whole or in part) Plaintiff will withdraw the Second Amended Complaint.

6. A hearing (the "Final Approval Hearing") shall be held on August 29, 2016, at 10:00 a.m. before the Honorable S. James Otero, in Courtroom 1 of the United States District Court for the Central District of California, located at 312 N. Spring Street, Los Angeles, California 90012. At that time, the Court shall determine: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, just, reasonable and adequate and should be finally approved; (b) whether judgment as provided in the Settlement Agreement should be entered herein; and (c) whether to approve Class Counsel's application for an award of attorneys' fees and costs, and Plaintiff Niloofar Saeidian's application for an incentive payment. The Court may continue or adjourn the Final Approval Hearing without further notice to members of the Class.

7. The Court approves the Notice Plan as set forth in the Declaration of Steven Weisbrot, attached as Exhibit A to the Settlement Agreement, and approves as to form and content, the Long Form Notice attached to the Settlement Agreement as Exhibit B, the Summary Notice attached to the Settlement Agreement as Exhibit

C, and the Claim Form attached to the Settlement Agreement as Exhibit D. The Court finds that distribution of the Long Form Notice and Summary Form Notice and publication of the Summary Notice in the manner set forth in this Order and Settlement Agreement constitutes valid, due and sufficient notice to all members of the Class, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable laws. The forms of notice set forth herein and in the Settlement Agreement provide a means of notice reasonably calculated to apprise the Class Members of the pendency of the action and the proposed settlement, and thereby meet the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well as due process under the United States Constitution and any other applicable law, and shall constitute due and sufficient notice to all Class Members entitled thereto.

8. The Court approves the selection of Angeion Group to be the Settlement Administrator. The Settlement Administrator shall administer the relief provided by the Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective and timely manner. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel and Defense Counsel, the Parties and their representatives promptly upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with information concerning Notice, administration and implementation of the Settlement Agreement. Should the Court request it or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator. All fees, costs and expenses of the Settlement Administrator shall be paid as provided in the Settlement Agreement.

9. Any person may request to be excluded from the Class by mailing a letter, by first class U.S. Mail to the Settlement Administrator, containing a statement that he or she requests to be excluded from the Class. Any such request must be made in accordance with the terms set forth in the Long Form Notice and will be timely only if postmarked no later than ninety (90) days from the first day upon which the Class Notice is disseminated ("Notice Date"). The timeliness of any request for exclusion shall be conclusively determined by the postmark date.

10. At least seven (7) calendar days prior to the Final Approval Hearing Date, Class Counsel shall prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the "Opt-Outs"), and Class Counsel shall file that List with the Court.

11. Class Counsel shall file a motion for final approval of settlement no later than fourteen (14) days prior to the Final Approval Hearing date. Class Counsel shall also file any papers supporting its request for attorneys' fees and costs, and the Class Representative's incentive payment with the Court at least fourteen (14) days prior to the deadline for Class Members to object to the Settlement. The application for attorneys' fees and costs shall be posted on the website of the Settlement Administrator so that it may be reviewed and printed out by any member of the Class.

12. Any Class Members wishing to object to the approval of the Settlement or the award of attorneys' fees and reimbursement of expenses to Class Counsel or the Class Representative's incentive payment ("Objecting Class Members") shall no later than ninety (90) days after the Notice Date, file a written objection with this Court, and deliver upon Class Counsel and Defense Counsel at the addresses below, such written objection and copies of any papers and briefs desired to be considered by the Court, together with proof of membership in the Settlement Class in the manner set forth in the Long Form Notice. The delivery

date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark.

Class Counsel:

Zev B. Zysman
Law Offices of Zev B. Zysman, APC
15760 Ventura Boulevard, 16th Floor
Encino, CA 91436

Jordan L Lurie
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067

Defense Counsel:

Steven A. Zalesin
Patterson Belknap Webb & Taylor LLP
1133 Avenue of the Americas
New York, NY 10036

Any Class Member who has filed and served such written objections may, but is not required to, appear himself or herself, or through counsel, at the Final Approval Hearing, to object to the approval of the Settlement, the award of attorneys' fees and reimbursement of expenses to Class Counsel, or the Class Representative's service payment. However, Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing, must also deliver to Class Counsel and Defense Counsel, and file with the Court, a Notice of Intention to Appear no later than ninety (90) days after the Notice Date. Only Class Members who file and serve timely Notices of Intention to Appear may speak at the Final Approval Hearing

13. Any settlement Class Member who does not make his, her or its objection(s) and/or notice of intent to appear in the manner so provided herein and in the Long Form Notice shall be deemed to have waived such objection(s) and

shall forever be foreclosed from making any objection(s) (whether by a subsequent objection, intervention, appeal, or any other process) to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, the award of attorneys' fees and reimbursement of expenses to Class Counsel, or the Class Representative's incentive payment, and the right to appeal any orders that are entered relating thereto.

14. The Court reserves the right to adjourn the date of the Final Approval Hearing and any adjournment thereof may be without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve the settlement, with such modifications as may be agreed to by the parties to the settlement, if appropriate, without further notice to the Class.

Dated: _____

_____
Hon. S. James Otero
United States District Court Judge