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DSM NUTRITIONAL PRODUCTS, LLC
(erroneously sued as DSM Nutritional Products, Inc.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JANE DOE, individually, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

DSM NUTRITIONAL PRODUCTS, INC., a
New Jersey corporation; I-HEALTH, INC., a
Connecticut corporation; and DOES 1-20,
Inclusive,

Defendants.

Case No. 30-2011-00510631-CU-MT-CXC
The Hon. Robert Moss
Department CX-102

**STIPULATION AND AGREEMENT OF
CLASS ACTION SETTLEMENT**

Complaint Filed: September 23, 2011

1 This Class Action Settlement Agreement (“Agreement”), is made and entered into by and
2 between the Representative Plaintiff, on behalf of herself and the Class, and Defendant to settle and
3 compromise this action and settle, resolve, and discharge the Released Claims, as defined below,
4 according to the terms and conditions herein.
5

6 **RECITALS**

7 **WHEREAS**, *Jane Doe v. DSM Nutritional Products, Inc et al.*, Case No. 30-2011-
8 00510631-CU-MT-CXC, is currently pending before the Honorable Robert Moss of the Superior
9 Court of California for the County of Orange (the “Action”);

10 **WHEREAS**, Representative Plaintiff has alleged that Defendant violated California’s
11 Consumer Legal Remedies Act (Cal. Code of Civ. P. § 1750 *et seq.*), California’s Unfair
12 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*), and California’s False Advertising
13 Law (Cal. Bus. & Prof. Code § 17500, *et seq.*);
14

15 **WHEREAS**, Defendant DSM Nutritional Products, LLC erroneously sued as DSM
16 Nutritional Products, Inc., denies each and every one of Representative Plaintiff’s allegations of
17 unlawful conduct, damages, or other injuries;

18 **WHEREAS**, based upon the discovery taken to date, investigation, and evaluation
19 of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties
20 of continued litigation and all factors bearing on the merits of settlement, the Settling Parties have
21 agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement
22 Agreement;
23

24 **WHEREAS**, I-Health, Inc. has been dismissed from the Action by stipulation and Order of
25 the Court;

26 **WHEREAS**, the Doe Defendants have been or will be dismissed from the Action;
27
28

1 **NOW THEREFORE**, subject to the Final Approval of the Court as required herein and by
2 applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises
3 and covenants contained herein, that any Released Claims against any Released Parties shall be
4 settled, compromised and forever released upon the following terms and conditions.
5

6 **TERMS AND CONDITIONS OF THE SETTLEMENT**

7 **1. DEFINITIONS**

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

9 1.1 “Notice” shall mean publication of notice of class action settlement of this Litigation.

10 1.2 “i-Cool for Menopause” means the dietary supplement manufactured and sold by
11 Defendant at issue in this Litigation containing the ‘Clinically proven to safely reduce hot flashes by
12 up to 85 percent’ claim.

13 1.3 “Claim Form” means the document to be submitted by Claimants seeking payment
14 pursuant to this Settlement, attached as Exhibit A.

15 1.4 “Claim-In Period” means a period of sixty (60) days after the Notice Date. The
16 Claim-In Period is the same as the Opt-Out Date in Section 1.27 below.

17 1.5 “Claimant” means a Class Member who submits a claim for payment within the
18 Claim-In Period.

19 1.6 “Class” means All women who were located within California when they purchased
20 i-Cool from a retailer for personal use at any time during the four years preceding the filing of this
21 Complaint on September 23, 2011 and contained the ‘Clinically proven to safely reduce hot flashes
22 by up to 85 percent’ claim.

23 1.7 “Claims Administrator” means ILYM Group, Inc.

24 1.8 “Class Period” means the time period that Class Members are eligible to submit a
25 Claim Form, namely September 23, 2008 through the Opt-Out Date.

26 1.9 “Class Counsel” means Scott J. Ferrell of Newport Trial Group.

27 1.10 “Class Member” means a Person who falls within the definition of the Class set forth
28 in Paragraph 1.6, who does not opt out of the Settlement as set forth in Paragraph 7.4.

1.11 “Court” means the Superior Court of California for the County of Orange.

1.12 “Complaint” means the Third Amended Complaint filed May 24, 2013 (operative complaint in this Litigation at the time the Court enters the Preliminary Approval Order).

1.13 “Defendant” means DSM Nutritional Products, LLC (improperly named as DSM Nutritional Products, Inc.), collectively, as well as its past, present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.14 “Defense Counsel” means Defendant’s counsel of record in the Litigation, David Jacobs, of Epstein, Becker & Green, P.C.

1.15 “Modifications” means the non-monetary relief provided for in paragraph 4.1.1.

1.16 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final.

1.17 “FDA” means the U.S. Food and Drug Administration.

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

1.19 “Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and Class Members have been given reasonable notice and an opportunity to object or to exclude themselves from the Settlement, in which the Court will determine whether to finally approve the Settlement and to enter Judgment.

1 1.20 “Final Approval Order” means an order, providing for, among other things, final
2 approval of the Settlement by the Court.

3 1.21 “Household” means all Class Members who reside at the same address at the time of
4 submitting a claim.

5 1.22 “Judgment” means the judgment to be entered by the Court pursuant to the
6 Settlement.

7 1.23 “Litigation” means *Jane Doe v. DSM Nutritional Products, Inc et al.*, Orange County
8 Superior Court, Case No. 30-2011-00510631-CU-MT-CXC (“the Action”).

9 1.24 “Notice” means a document, substantially in the form of Exhibit B hereto, and
10 “Summary Notice” means a document substantially in the form of Exhibit C hereto, to be
11 disseminated in accordance with the Preliminary Approval Order, informing Persons who fall
12 within the Class definition of, among other things, the pendency of the Litigation, the material terms
13 of the proposed Settlement, and their options with respect thereto.

14 1.25 “Notice Date” means the first date on which the Summary Notice is published in a
15 newspaper of general circulation in California under the Notice Plan.

16 1.26 “Notice Plan” means the method of providing the Class with notice of the settlement,
17 as approved by the Court.

18 1.27 “Opt-Out Date” means the date that is sixty (60) days after the Notice Date.

19 1.28 “Parties” means, collectively, the Representative Plaintiff and Defendant.

20 1.29 “Person” means an individual, corporation, partnership, limited partnership,
21 association, joint stock company, estate, legal representative, trust, unincorporated association,
22 government or any political subdivision or agency thereof, any business or legal entity, and such
23 individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

24 1.30 “Preliminary Approval Order” means an order, providing for, among other things,
25 preliminary approval of the Settlement and dissemination of the Notice to the Class according to the
26 Notice Plan.

1 1.31 “Released Claims” means, the claims released in this Settlement Agreement as set
2 forth in Section 6.1 herein.

3 1.32 “Released Persons” means Defendant, its parent companies, subsidiary companies,
4 affiliated companies, and each of their past, present, and future officers, directors, shareholders,
5 employees, predecessors, joint partners, distributors, principals, insurers, administrators, agents,
6 servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent
7 contractors, attorneys, experts and consultants, and their representatives, heirs, executors,
8 successors, predecessors and assigns of all of the foregoing persons and entities.

9 1.33 “Representative Plaintiff” means Plaintiff Jane Doe.

10 1.34 “Settlement” means the settlement set forth in this Agreement.

11 1.35 “Settling Parties” means, collectively, Defendant, the Representative Plaintiff, and
12 all Class Members.

13 1.36 The plural of any defined term includes the singular, and the singular of any defined
14 term includes the plural, as the case may be.

15 **2. DENIAL OF WRONGDOING AND LIABILITY**

16 2.1 Defendant denies the material factual allegations and legal claims asserted by the
17 Representative Plaintiff in the Litigation, including any and all charges of wrongdoing or liability
18 arising out of any of the conduct, statements, acts or omissions alleged, or that could have been
19 alleged, in the Litigation.

20 **3. THE BENEFITS OF SETTLEMENT**

21 3.1 Class Counsel and the Representative Plaintiff recognize and acknowledge the
22 expense and length of continued proceedings that would be necessary to prosecute the Litigation
23 against Defendant through trial and appeals. Class Counsel also has taken into account the uncertain
24 outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well
25 as the difficulties and delays inherent in such litigation. Class Counsel and Representative Plaintiff
26 believe that the proposed Settlement confers substantial benefits upon the Class. Based on their
27
28

1 evaluation of all of these factors, the Representative Plaintiff and Class Counsel have determined
2 that the Settlement is in the best interests of the Representative Plaintiff and the Class.

3 **4. SETTLEMENT CONSIDERATION**

4 4.1 Non-Monetary Relief

5 4.1.1. In exchange for the releases provided herein, Defendant agrees to the
6 following Modifications with respect to i-Cool for Menopause:

7 4.1.1.1 The 'Clinically proven to safely reduce hot flashes by up to 85
8 percent' claim which was originally included on i-Cool for Menopause's packaging and removed in
9 or around the second quarter of 2011, shall not be placed on any future packaging for the i-Cool for
10 Menopause product and shall not be included on any advertising or marketing material for the i-
11 Cool for Menopause product, including any websites controlled by Defendant that make any
12 statements about the i-Cool for Menopause product, in perpetuity.

13 4.1.1.2 The i-Cool for Menopause website, [http://www.i-](http://www.i-coolformenopause.com/)
14 [coolformenopause.com/](http://www.i-coolformenopause.com/), shall include a statement that says "100% Satisfaction Money-Back
15 Guarantee" for the i-Cool for Menopause product.

16 4.1.1.3 These provisions shall not otherwise prevent Defendant from making
17 any other changes or including or excluding any other information as Defendant sees fit, unless they
18 contradict the terms set forth in Paragraph 4.1.1.1.

19 4.1.2. Defendant shall provide the Modifications provided in Section 4.1.1 within
20 twelve (12) months of execution of Final Approval. However, Defendant will endeavor to expedite
21 this process and take the foregoing action as soon as commercially practicable. i-Cool for
22 Menopause in the stream of commerce, both in inventory and/or already distributed for sale, shall
23 be exempt from this requirement.

24 4.1.3. The Modifications required under this Agreement shall apply only to i-Cool
25 for Menopause. To the extent that any state and/or federal statute, regulation, policies, code, and/or
26 court order may at any time impose other, further, different and/or conflicting obligations or duties
27 on Defendant at any time with respect to i-Cool for Menopause, this Agreement and any Judgment
28 which may be entered pursuant thereto, as well as the Court's continuing jurisdiction with respect to

1 implementation and enforcement of the terms of this Agreement, shall cease as to the Class
2 Members' and Defendant's conduct covered by that statute, regulation and/or code as of the
3 effective date of such statute regulation and/or code. In the event the Parties dispute whether there is
4 such a conflict or inconsistency, if either Party requests mediation, such dispute shall be resolved
5 first by way of non-binding mediation conducted by an independent mediator agreed upon by the
6 Parties. To the extent a dispute is raised by the Parties to this Agreement, Defendant and Class
7 Counsel shall each pay for half of the costs of the mediator, excluding attorneys' fees and expenses
8 related to the mediation itself provided that the dispute is made in good faith.

9 4.1.4. Nothing in this Agreement will prohibit Defendant from making any
10 representation in the labeling, advertising, or marketing of i-Cool for Menopause that is permitted
11 by applicable law, regulations, or policies promulgated by the FDA or other state or federal
12 agencies.

13 4.1.5. Defendant shall be bound by any labeling laws or regulations that restrict or
14 expand the scope of claims for which i-Cool for Menopause is eligible, and any laws or regulations
15 that have a bearing on the labeling or advertising of i-Cool for Menopause shall supersede any
16 terms of this Agreement to the extent they are inconsistent with the terms of this Agreement.

17 4.2 Refunds to Class Members

18 4.2.1. Defendant shall provide a full refund of the purchase price, excluding taxes
19 and any other fees, to those Class Members who provide a proof(s) of purchase to the Defendant's
20 Claims Administrator's (i.e., paper or ecommerce receipt, or open package(s)) and provide a
21 declaration pursuant to California Code of Civil Procedure §2015.5 that they purchased the i-Cool
22 for menopause product, that it did not relieve any of their menopausal symptoms and the Claims
23 Administrator is satisfied as to the genuineness of the declaration.

24 4.2.2. Within thirty (30) days of the Effective Date, the Claims Administrator shall
25 provide Defendant with the total monetary sum required to satisfy payment of all valid claims.
26 Within thirty (30) days of receipt of this report, Defendant shall deposit this sum in escrow with the
27 Class Administrator. The Class Administrator shall then issue payment to the Class Members as
28 outlined below in 4.2.4.

1 4.2.3. Defendant shall provide a one-time, one per Household, \$4.00 payment to
2 those Class Members who do not have the above described proof of purchase, but who have
3 submitted a declaration pursuant to California Code of Civil Procedure § 2015.5 that they purchased
4 the i-Cool for menopause product, that it did not relieve any of their menopausal symptoms and the
5 Claims Administrator is satisfied as to the genuineness of the declaration. Adequate and customary
6 procedures and standards will be used by the Claims Administrator to prevent the payment of
7 fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying
8 purchases with Defendant.

9 4.2.4. Payment will be made by check directly to the Class Member by the Claims
10 Administrator by first class mail after entitlement to payment has been verified, and no sooner than
11 15 days after the Effective Date and in no event more than six (6) months after the Effective Date.
12 To the extent the Claims Administrator is unable to effect delivery of settlement funds to any Class
13 Member, such undeliverable and unclaimed funds shall be delivered to the California State
14 Controller's Office, California State Controller Unclaimed Property Division P.O. Box 942850
15 Sacramento, CA 94250-5873 (Physical Address California State Controller's Office, California
16 State Controller Unclaimed Property Division 10600 White Rock Road, Suite 141 Rancho Cordova,
17 CA 95670) by the Claims Administrator. Funds will be deemed unclaimed for the purposes of
18 transfer to the California State Controller Unclaimed Property Division after one hundred twenty
19 (120) days from the date of issuance by the Claims Administrator and will be voided so the funds
20 can be sent to the California State Controller Unclaimed Property Division to be held for claim by
21 the respective Class Member.

22 4.3 Disputes Arising From Claims Administration

23 4.3.1 The Claims Administrator shall identify any suspected fraudulent claims. Suspected
24 fraudulent claimants shall be notified of the suspected fraud by the Class Administrator by mail.
25 Any claimant disputing the suspected fraud shall submit a written dispute of the suspected fraud to
26 the Claims Administrator. The Claims Administrator shall provide copies of these communications
27 to Class Counsel and Defense counsel. The Claims Administrator shall then make a final
28 determination as to the suspected fraudulent claim.

1 4.3.2 Any dispute regarding the suspected fraudulent claim determination must be
2 resolved by the Claims Administrator within Twenty-One (21) days after the mailing of the
3 suspected fraud. If either of the Parties, or the claimant(s), disagrees with the Claims
4 Administrator's determination, it must file a motion with the Court no later than Thirty (30) days
5 from the mailing of the suspected fraudulent claim notification, requesting that the Court make a
6 final determination. If such a motion is not filed, the Parties and claimant(s) shall be barred from
7 contesting the fraudulent claim determination at any later date. If such a motion is filed, the Claims
8 Administrator's determination shall have no binding effect, and the Court will have sole authority to
9 resolve the matter. All other deadlines prescribed by the Stipulation and timing of Actions to take
10 place pursuant to the Stipulation shall be stayed from the date of filing the motion described herein
11 until the date that the dispute is resolved.

12 **5. ADMINISTRATION AND NOTICE**

13 5.1 All costs and expenses of administering the Settlement and providing reasonable
14 Notice in accordance with the Preliminary Approval Order shall be paid by Defendant.

15 5.2 Appointment and Retention of Claims Administrator

16 5.2.1. ILYM Group, Inc. shall be the Class Administrator.

17 5.2.2. The Claims Administrator will facilitate the notice process by executing the
18 Notice Plan.

19 5.2.3. The Claims Administrator shall be responsible for (1) Publishing the Notice
20 to Class Members; (2) calculating and mailing Individual Settlement Awards to Settlement Class
21 Members; (3) transmitting the Court-approved attorneys' fees and costs to Class Counsel; (4)
22 distributing any remaining portion of unclaimed refunds to the California State Controller
23 Unclaimed Property Division after all payments and distributions are made; (5) initially deciding
24 disputes regarding a suspected fraudulent claim; (6) filing any required reports with the Court; and
25 (7) such other tasks as the Parties mutually agree or the Court orders the Claims Administrator to
26 perform.

27 5.2.4. Not later than twenty (20) days before the Final Approval Hearing, the
28 Claims Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court,

1 and serve it upon Defendant's Counsel, a report stating: (1) the total number of Persons that have
2 submitted timely and valid Requests for Exclusion from the Settlement Class, and the names of
3 such Persons; and (2) the total number of Persons that have submitted timely Valid Claims, and the
4 aggregate value of those Valid Claims. Any Person who has submitted a timely and valid Request
5 for Exclusion will not be entitled to receive any relief under this Settlement Agreement.

6 5.2.5. The Claims Administrator shall prepare declarations attesting to compliance
7 with the Notice requirements set forth below. Such declarations shall be provided to Class Counsel
8 and Defendants' Counsel and filed with the Court no later than ten (10) days prior to the Final
9 Approval Hearing.

10 5.2.6. No later than ten (10) days prior to the Final Approval Hearing, the Claims
11 Administrator shall provide both Parties with a declaration of due diligence to be filed with the
12 Court.

13 5.3 Class Settlement Website

14 5.3.1. The Claims Administrator will create and maintain the Class Settlement
15 Website: www.i-coolclassaction.com, to be activated within 15 days of Preliminary Approval. The
16 Class Settlement Website will post the settlement documents and case-related documents such as
17 the Settlement Agreement, the Long-Form Notice, the Claim Form (in English and Spanish
18 versions), and the Preliminary Approval Order. Class Members shall have the option to prepare a
19 Claim Form electronically by using the Class Settlement Website. The web site shall include (in
20 writable PDF format) the Claim Form which can be completed online, printed, and mailed to the
21 Claims Administrator along with, if applicable, a copy of any receipts.

22 5.3.2. In addition, the Class Settlement Website will include procedural information
23 regarding the status of the Court-approval process, such as an announcement of the Final Approval
24 Hearing Date, when the Final Approval Order and Judgment has been entered, and when the
25 Effective Date has been reached.

26 5.3.3. The Class Settlement Website will terminate (be removed from the
27 internet) and no longer be maintained by the Claims Administrator thirty (30) days after either (a)
28

1 the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not
2 approved by a court, whichever is later. The Claims Administrator will then transfer ownership of
3 the URL to Defendant.

4 5.3.4. All costs and expenses related to the Class Settlement Website shall be paid
5 by Defendant.

6 5.4 Notice Plan

7 5.4.1. The Notice shall conform to all applicable requirements of the California
8 Rule of Civil Procedure, specifically section 1781, the U.S. Constitution (including the Due Process
9 Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon
10 by the Parties and approved by the Court.

11 5.4.2. Notice shall consist of the Summary Notice attached hereto as Exhibit C.
12 The Summary Notice shall be included once a week, for four consecutive weeks (on Thursdays), in
13 the Los Angeles Times in the legal notices section or such other notice as the Parties and Court may
14 otherwise agree. The Summary Notice shall be a 1/8th page advertisement.

15 5.4.3. Defendant did not sell i-Cool directly to consumers; therefore, Defendants
16 have no records that identify purchasers of the i-Cool product nor has Plaintiff shown any evidence
17 that retailers have those records. Thus, notice cannot be mailed directly to any class members;
18 However, to the extent that Defendant possesses, or comes to possess, the name and contact
19 information for any person it believes to be a Class Member, Defendant shall provide that
20 information to the Claims Administrator within fourteen (14) calendar days after the Court enters
21 the Preliminary Approval Order.

22 5.4.4. Within thirty (30) days after the Court enters the Preliminary Approval
23 Order, the Claims Administrator shall begin implementing the Notice Plan as attached in Exhibit D
24 or as otherwise approved by the Court and disseminating, as provided for therein, the Notice and
25 Summary Notice.

26 5.4.5. The first date on which the Summary Notice is published in a publication of
27 general circulation in California under the Notice Plan shall be no later than thirty (30) days after
28 the Preliminary Approval Order is entered by the Court.

1 **6. RELEASES**

2 6.1 Upon the Effective Date and in exchange for the monetary and non-monetary
3 consideration provided for under this Agreement, the Representative Plaintiff and each Class
4 Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and
5 forever released, relinquished, and discharged the Released Persons from all Released Claims,
6 meaning, with the exception of claims for personal injury, any and all claims, demands, rights, suits,
7 liabilities, and causes of action of every nature and description whatsoever, known or unknown,
8 matured or unmatured, at law or in equity, existing under federal and/or state law, that any
9 Representative Plaintiff and/or Class Member has or may have against the Released Persons,
10 without limitation to those that have been brought, could have been brought, or are currently
11 pending, arising out of or related to any allegation or relief sought in the First Amended Complaint,
12 including but not limited to claims for violation of the Consumer Legal Remedies Act, Business &
13 Professions Code §§ 17200 and 17500, attorneys' fees and restitution. The Release includes claims
14 arising out of statements made in or in connection with Defendant's advertising, marketing,
15 packaging, labeling, promotion, manufacture, sale and distribution of the i-Cool for Menopause, at
16 any time between September 23, 2008 and the Opt-Out Date in California. This Release is a
17 material term of the Settlement Agreement.

18 6.2 After entering into this Settlement Agreement, Plaintiff or Class Members
19 may discover facts other than, different from, or in addition to, those that they know or believe to be
20 true with respect to the Released Claims. Plaintiff and Class Members expressly waive and fully,
21 finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent
22 or non-contingent equitable Claim, whether or not concealed or hidden, without regard to the
23 subsequent discovery or existence of such other, different, or additional facts.

24 6.3 With respect to the Released Claims, all Parties to this Settlement Agreement,
25 including Class Members, expressly waive and relinquish any rights or benefits available to them
26 under California Civil Code § 1542 provides:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal or state statute or rule of law of similar effect, this Settlement Agreement shall be given full force and effect according to each and all of its expressed terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from or are in any way connected with the Litigation.

6.5 Upon entrance of the Final Approval Order, Representative Plaintiff, and any Class Member who does not Opt Out as set forth in Paragraph 7.4 is hereby barred against bringing any action against any of the Released Parties for any of the Released Claims.

7. APPROVAL PROCESS

7.1 Court Approval

7.1.1. Class Counsel shall submit this Agreement together with its Exhibits to the Court and request that the Court grant preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval (collectively, "Motion for Preliminary Approval").

7.1.2. In the Motion for Preliminary Approval, Class Counsel shall request that the Court allow for a period of at least one hundred (100) days between entry of the Preliminary Approval Order and the Final Approval Hearing.

7.1.3. The date the Motion for Preliminary Approval is filed is the date by which the Settlement shall be deemed "filed".

7.1.4. If the Motion for Preliminary Approval is granted, Class Counsel shall be responsible for asking the Court to grant final approval of the Settlement and to enter a Final Approval Order and Judgment, in accordance with the date set by the Court for the Final Approval Hearing.

7.1.5. If the Court does not enter a Preliminary Approval Order or a Final Approval Order and Judgment or if Final Approval is overturned on appeal, this Agreement shall terminate

1 and be of no force or effect, except as set forth in Sections 8 and 9 of this Agreement, unless the
2 Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court
3 approval.

4 7.2 Objections to Settlement

5 7.2.1. The Notice shall provide that members of the Plaintiff Class who wish to
6 object to the Settlement and/or the Fee and Cost Application must file with the Clerk of the Superior
7 Court for the State of California, County of Orange County, with copies mailed to Plaintiff's
8 Counsel and Defendant's counsel a written statement objecting to the settlement setting forth the
9 objecting Class Member's reasons for objecting. The written statement must be filed with the Court
10 and served on Plaintiff's Counsel and Defendant's counsel no later than twenty-one (21) days after
11 the date the Notice is first mailed (the "Objection Deadline Date"). No member of the Plaintiff Class
12 shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate
13 counsel) or to object to the settlement, and no written objections or briefs submitted by any member
14 of the Plaintiff Class shall be received or considered by the Court at the Final Approval Hearing,
15 unless written notice of the Plaintiff Class member's intention to appear at the Final Approval
16 Hearing, and copies of any written objections or briefs, shall have been filed with the Court and
17 served on Plaintiff's Counsel and Defendants' counsel on or before the Objection Deadline Date. A
18 written objection mailed to the Parties shall be treated as timely if it is postmarked on or before
19 twenty-one (21) days before the date of the Final Approval Hearing. The written statement must set
20 forth the objecting Class Member's full name and address. Members of the Plaintiff Class who fail
21 to file and serve timely written objections in the manner specified above shall be deemed to have
22 waived any objections and shall be foreclosed from making any objection (whether by appeal or
23 otherwise) to the Settlement, or any aspect of the Settlement. Any Settlement Class Member who
24 fails to comply with the requirements for filing and mailing a timely written objection to the
25 Settlement shall be foreclosed from making such objection or opposition. No person seeking to
26 object to the Settlement shall be permitted to be heard at the Final Approval Hearing on the
27 Settlement without timely filing and mailing a written objection. Any Settlement Class Member
28

1 who fails to file a timely written objection shall have no right to file an appeal relating to the
2 approval of this Settlement.

3 7.2.2. Class Counsel and Defendants' counsel shall be entitled to file and serve a
4 response to any such objection(s) no later than seven (7) days before the Final Approval Hearing. If
5 the Court rejects the Class Member's objection, the Class Member will still be bound by the terms
6 of this Settlement and the Court's Final Approval Order. If a Class Member objects to the
7 Settlement and said objection is denied, that Class Member will have fourteen (14) days following
8 the denial of the objection to file a request to be excluded from the Settlement.

9 7.3 Right to Respond to Objections

10 7.3.1. Defense Counsel and the Parties shall have the right, but not the obligation, to
11 respond to any objection no later than ten (10) days prior to the Final Approval Hearing. The
12 Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy,
13 hand, or overnight delivery, to the objector (or counsel for the objector). Excepting adequacy of
14 Class Counsel or of the Class Representative, Defense Counsel shall be responsible for determining
15 the course of action taken regarding any Objections to the Settlement. Class Counsel and Class
16 Representative shall cooperate in good faith with Defendant in any written response to any
17 Objection.

18 7.4 Right To Be Excluded From Class And Settlement

19 7.4.1. Other than the Class Representative, any Class Member who does not wish to
20 participate in this Settlement must write to the Claims Administrator stating an intention to be
21 "excluded" or "Opt-Out" from this Settlement. This written Request for Exclusion must be sent via
22 first class United States mail to the Claims Administrator at the address set forth in the Notice and
23 postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed
24 by the Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

25 7.4.2. Any Class Member who does not request exclusion from the Settlement has
26 the right to object to the Settlement as set forth in Paragraph 7.2 above. If a Class Member submits a
27 written Request for Exclusion, he or she shall be deemed to have complied with the terms of the
28 opt-out procedure and shall not be bound by the Agreement if approved by the Court. However, any

objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement and by all proceedings, orders and judgments in the Litigation.

7.4.3. Claim Form Invalidates Request for Exclusion. If a Class Member submits both a timely and valid Claim Form and a valid and timely Request for Exclusion, the latter shall be deemed invalid and the Class Member shall be bound by and have the right to participate in the Settlement.

8. REPRESENTATIVE PLAINTIFF SERVICE AWARD

8.1 Class Counsel, on behalf of the Representative Plaintiff, shall petition the Court for, and Defendant shall not oppose, a Representative Plaintiff service award in an amount up to \$4,000, in recognition of her efforts on behalf of the Class. The Court's award of a Representative Plaintiff service award shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award a Representative Plaintiff service award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties and all Class Members.

8.2 To the extent awarded by the Court, Defendant shall pay the Representative Plaintiff service award, through Class Counsel, within thirty (30) days of the Effective Date.

8.3 Defendant shall have no liability to the Representative Plaintiff arising from any claim regarding payment of any award of the Representative Plaintiff service award, so long as Defendant complies with its obligations under this Agreement.

8.4 Payment by Defendant of a Representative Plaintiff service award is separate from, and in addition to, the other relief afforded to the Class Members in this Agreement.

9. ATTORNEYS' FEES, EXPENSES, AND COSTS

9.1 Subject to entry of the Final Approval Order and Judgment, the Parties will not oppose Plaintiff's application for up to \$275,000 for attorneys' fees, expenses, and costs. Class Counsel agrees not to seek, and Defendant shall not be obligated to pay, any fees, expenses, and costs in excess of \$275,000. In the event that the Court approves less than \$275,000 in fees, expenses, and costs, Defendant shall have no obligation to pay more than the amount ordered by the Court.

1 9.2 The payment by Defendant of any Class Counsel's fees, expenses, and costs is
2 separate from and in addition to the other relief afforded the Class Members in this Agreement. The
3 Court's award of any Class Counsel's fees, expenses, and costs shall be separate from its
4 determination of whether to approve the Settlement. In the event the Court approves the Settlement,
5 but declines to award Class Counsel's fees, expenses, and costs in the amount requested by Class
6 Counsel, the Settlement will nevertheless be binding on the Parties and the Class Members.

7 9.3 Defendant will pay Class Counsel the attorneys' fees, expenses and costs awarded by
8 the Court thirty (30) days after the Effective Date.

9 9.4 If the Judgment or Final Approval Order is reversed, vacated, modified, and/or
10 remanded for further proceedings or otherwise disposed of in any manner other than one resulting in
11 affirmance of the Judgment and as to any matter other than solely a reduction of the amount of
12 attorneys' fees, expenses, and costs, or if Defendant properly or timely terminates this Agreement,
13 then Class Counsel shall within fourteen (14) business days return to Defendant the amount of
14 attorneys' fees, expenses, and costs in its entirety.

15 9.5 The Court shall retain jurisdiction of any dispute regarding any award of attorneys'
16 fees, expenses, and costs.

17 **10. TAXES**

18 10.1 Class Members, Representative Plaintiff, and Class Counsel shall be responsible for
19 paying any and all federal, state, and local taxes due on any payments made to them pursuant to the
20 Settlement Agreement.

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

22 11.1 The Effective Date of this Agreement shall be the date the Judgment has become
23 Final, as defined in Paragraphs 1.16, 1.18, and 1.20.

24 11.2 If this Agreement is not approved by the Court or the Settlement is terminated or
25 fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be
26 restored to their respective positions in the Litigation as of the date the Motion for Preliminary
27 Approval is filed. In such event, the terms and provisions of this Agreement will have no further
28 force and effect with respect to the Settling Parties and will not be used in this Litigation or in any

1 other proceeding for any purpose, and any Judgment or order entered by the Court in accordance
2 with the terms of this Agreement will be treated as vacated.

3 11.3 No order of the Court or modification or reversal on appeal of any order of the Court
4 concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds
5 for cancellation or termination of this Agreement.

6 11.4 No order of the Court or modification or reversal on appeal of any order of the Court
7 concerning any award of a Representative Plaintiff service award will constitute grounds for
8 cancellation or termination of this Agreement.

9 **12. MISCELLANEOUS PROVISIONS**

10 12.1 Maximum Monetary Obligation: The Parties agree Defendant's maximum monetary
11 obligation under this Agreement shall not exceed the aggregate value of the total valid claim forms
12 timely submitted to the Claims Administrator, any approved attorneys' fees, expenses, and costs up
13 to \$275,000, any approved service awards for the Representatives Plaintiff up to \$4,000, and costs
14 of reasonable notice and administration.

15 12.2 Cooperation of the Parties: The Parties acknowledge that it is their intent to
16 consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to
17 effectuate and implement all terms and conditions of this Agreement and to exercise their best
18 efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that
19 they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by putative
20 or actual Class Members. Class Counsel recognizes that it has an obligation to support the
21 Settlement and to seek the Court's approval of its terms. Class Counsel will abide by all applicable
22 and governing ethical rules, opinions, and obligations precluding their representation of opt-outs.

23 12.3 Resolution of Dispute without Admission: The Parties intend the Settlement to be a
24 final and complete resolution of all disputes between them with respect to the Litigation. The
25 Settlement compromises claims that are contested and will not be deemed an admission by any
26 Settling Party as to the merits of any claim or defense.

27 12.4 Use In Subsequent Proceedings: Neither this Agreement nor the Settlement, nor any
28 act performed or document executed pursuant to or in furtherance of this Agreement or the

1 Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the
2 validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be
3 deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant
4 in any civil, criminal, or administrative proceeding in any court, administrative agency or other
5 tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any action that
6 may be brought against it in order to support any defense or counterclaim, including without
7 limitation those based on principles of *res judicata*, collateral estoppel, release, good faith
8 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or
9 similar defense or counterclaim.

10 12.5 Confidential Information: All agreements made and orders entered during the course
11 of the Litigation relating to the confidentiality of information will survive this Agreement.

12 12.6 Destruction of Discovery: Within sixty (60) days after (a) Judgment or (b) the last
13 day to appeal the Judgment expires, whichever day is earlier, the Parties, Class Counsel, and
14 Counsel for the Defense must either return all confidential information to the producing party or,
15 alternatively, destroy all confidential information, including all copies, abstracts, compilations,
16 analyses, summaries or any other form of reproducing or capturing any of the confidential
17 information. Notwithstanding this provision, Class Counsel and Counsel for the Defense are
18 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
19 correspondence or attorney work product, even if such materials contain confidential information.

20 12.7 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and
21 integral parts hereof and are fully incorporated herein by this reference.

22 12.8 Modification: This Agreement may be amended or modified only by a written
23 instrument signed by or on behalf of all Parties or their respective successors-in-interest.

24 12.9 Integration: This Agreement and any Exhibits attached hereto constitute the entire
25 agreement among the Parties, and no representations, warranties, or inducements have been made to
26 any Party concerning this Agreement or its Exhibits other than the representations, warranties, and
27 covenants covered and memorialized in such documents. Except as otherwise provided herein, the
28 Parties will bear their own respective costs.

1 12.10 Class Counsel's Authority: Class Counsel, on behalf of the Class, are expressly
2 authorized by the Representative Plaintiff to take all appropriate action required or permitted to be
3 taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized
4 to enter into any modifications or amendments to this Agreement on behalf of the Class that Class
5 Counsel deem appropriate.

6 12.11 Parties' Authority: Each counsel or other Person executing this Agreement or any of
7 its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

8 12.12 Counterparts: This Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them will be deemed to be one and the same instrument. A
10 complete set of original counterparts will be filed with the Court.

11 12.13 No Prior Assignments. Representative Plaintiff and Class Counsel represent,
12 covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or
13 purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
14 demand, action, cause of action or rights herein released and discharged except as set forth herein.

15 12.14 Binding on Assigns: This Agreement will be binding upon, and inure to the benefit
16 of, the successors and assigns of the Parties and the Class Members.

17 12.15 Interpretation: None of the Parties, or their respective counsel, will be deemed the
18 drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The
19 language in all parts of this Agreement and its Exhibits will be interpreted according to its fair
20 meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

21 12.16 Voiding the Agreement: If 2,500 or more of potential Class Members opt out of the
22 Settlement, Defendant may, at its option, elect to withdraw from the Settlement and void this
23 Agreement. There is no limit as to claims made with receipt(s). This provision is made pursuant to
24 discussions with the Claims Administrator and the Parties experience in an effort to avoid
25 fraudulent claims.

26 12.17 Governing Law: This Agreement and any Exhibits hereto will be construed and
27 enforced in accordance with, and governed by, the internal, substantive laws of the State of
28 California without giving effect to that State's choice-of-law principles.

1 Dated: 10/13/15
2
3

4 By: Jane Doe
5 Plaintiff, Jane Doe

6 Dated: October 13, 2015
7

8 By: Jason Stephans
9 Jason Stephans, Senior Counsel
10 On behalf of DSM Nutritional Products, LLC

11 APPROVED AS TO FORM:

12 Dated: 10/13/15
13

14 NEWPORT TRIAL GROUP, APC

15 By: Scott J. Ferrell
16 Attorneys for Plaintiff Jane Doe and the Class

17 Dated: 10/13/2015
18

19 EPSTEIN, BECKER & GREEN, P.C.

20 By: David Jacobs
21 Attorneys for DSM Nutritional Products,
22 LLC