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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ALBA MORALES; LAINIE COHEN; LINDA  
CLAYMAN; and KENNETH DREW, on behalf of  
themselves and others similarly situated,

Plaintiffs,

vs.

CONOPCO, INC., d/b/a UNILEVER,

Defendant.

) CIV. NO. 2:13-cv-2213 WBS EFB  
)  
) **PLAINTIFFS' NOTICE OF**  
) **MOTION AND MOTION FOR**  
) **PRELIMINARY APPROVAL OF**  
) **CLASS ACTION SETTLEMENT**  
) **AND MEMORANDUM OF POINTS**  
) **AND AUTHORITIES IN SUPPORT**  
) **THEREOF**  
)  
) Date: July 11, 2016  
)  
) Time: 1:30 p.m.  
)  
) Courtroom 5, 14<sup>th</sup> Floor  
)  
) Hon. William B. Shubb

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on July 11, 2016 at 1:30 p.m., or as soon thereafter as the matter may be heard by the Court, located at 501 I Street, Sacramento, California, 95814, Courtroom 5, 14<sup>th</sup> Floor, in the courtroom of the Honorable William B. Shubb, Plaintiffs will move pursuant to Fed. R. Civ. P. 23(e) for the Court to: (1) provisionally certify the Class; (2) establish procedures for giving notice to the Class; (3) grant preliminary approval of the parties' Settlement; (4) approve the named Plaintiffs as interim representatives of the provisionally certified class, Izard Nobel LLP ("Izard Nobel") as Interim Class Counsel, and Bramson, Plutzik, Mahler and Birkhaeuser, LLP ("BPM&B") as Interim Liaison counsel for the class; and (5) set a date, time and place for a final approval hearing.

The Motion is made on the grounds that preliminary approval of the proposed Settlement is proper because each requirement of Fed. R. Civ. P. 23(e) has been met, and certification of the proposed Class is proper pursuant to the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3).

The Motion is based on the accompanying Declaration of Mark Kindall ("Kindall Decl.") and the attached Memorandum of Law, the pleadings and papers on file in this case and any other written and oral arguments that may be presented to the Court.

Dated: May 27, 2016

Respectfully submitted,

By: /s/ Mark P. Kindall  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

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## I. INTRODUCTION

Plaintiff Alba Morales, Kenneth Drew, Lainie Cohen and Linda Clayman (“Plaintiffs”) brought this class action in 2013 to challenge the sale of hair care products (the “Products”) that Defendant Conopco, Inc., d/b/a Unilever (“Defendant”) labeled “TRESemmé Naturals” even though they contain numerous synthetic ingredients. Plaintiffs sought injunctive relief and damages for purchasers of the Products. In December of last year, in response to this litigation, Defendant discontinued the sale of the Products. In February of this year, the Parties reached agreement to settle the damages claims on behalf of all purchasers of the Products in the United States for \$3.25 million. As set forth more fully below, this is a very good result for the Class and merits preliminary – and ultimately final – approval.

Plaintiffs ask the Court to preliminarily certify the Class for Settlement purposes only, and to preliminarily approve the Settlement so that the Class as a whole may receive notice of the Settlement and express their views on its merits. Plaintiffs and their counsel believe that the Settlement is the best way to resolve all claims concerning Defendant’s nationwide labeling and sale of the Products as “naturals.”

## II. BACKGROUND FACTS AND DETAILS OF SETTLEMENT

### A. Litigation History

Defendant manufactured and sold the Products across the United States. On October 22, 2013, Plaintiffs filed their Complaint alleging violations of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.* and Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.*, Massachusetts’ Consumer Protection Act, Mass. Gen. Laws Ann. ch. 93A, and various other state consumer protection laws. *See* ECF No. 1. On December 3, 2013, Plaintiffs filed their First Amended Complaint, alleging the same causes of action with minor changes to the various other state consumer protection laws. *See* ECF No. 8. Defendant moved to dismiss on January 14, 2014. *See* ECF No. 14.

On April 9, 2014, the Court granted in part and denied in part Defendant’s Motion to Dismiss, upholding Plaintiffs’ claims under the laws of California and Massachusetts, and dismissing

1 Plaintiffs' claims under the laws of states for which there was no representative named plaintiff. *See*  
 2 ECF No. 27. On April 30, 2014, Plaintiffs filed their Second Amended Complaint, which added  
 3 Linda Clayman and Kenneth Drew as Plaintiffs and added claims under the Florida Deceptive and  
 4 Unfair Trade Practices Act, F.S.A. § 501.201, *et seq.* and the New York General Business Law  
 5 § 349. *See* ECF No. 31. Defendant filed its answer to Plaintiffs' Second Amended Complaint on  
 6 May 29, 2014. *See* ECF No. 37.

7 From June 2014 until May 2015, the Parties engaged in extensive discovery. This included  
 8 Plaintiffs' counsel's review and analysis of nearly a quarter million pages of documents produced by  
 9 the Defendant, the depositions of several key witnesses concerning Defendant's marketing and the  
 10 Products' ingredients, and Defendant's depositions of Mr. Drew, Ms. Cohen and Ms. Morales. *See*  
 11 Kindall Decl. at ¶¶ 6-7. Plaintiffs also retained an expert to develop their damages model. *Id.* at ¶ 9.

12 On June 15, 2015, the Parties participated in a mediation before Jonathan Marks, a nationally  
 13 renowned and respected mediator based in Bethesda, Maryland. The Parties were not able to reach  
 14 an agreement during the first mediation session or during follow-up discussions, and thereafter  
 15 continued to litigate the case. The Parties recommenced settlement discussions in January of 2016  
 16 with Mr. Marks again serving as a mediator. After a month of back-and-forth proposals and counter-  
 17 proposals, Mr. Marks made a mediator's proposal: a \$3.25 million settlement to the Class. Both  
 18 sides accepted Mr. Marks' recommendation on February 5, 2016. *Id.* at ¶¶ 9-11.

## 19 **B. The Proposed Settlement**

20 For purposes of the Settlement only, Defendant has stipulated to certification of a nationwide  
 21 class.<sup>1</sup> *See* Settlement Agreement ("SA"), ¶¶ 1(j) and 44, attached to the Kindall Declaration as  
 22 Exhibit 1. The Settlement defines the Class as:

23 All individuals in the United States who purchased the following TRESemmé  
 24 Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing  
 25 Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume  
 26 Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth  
 Conditioner (collectively, the "Products"). Specifically excluded from the  
 Class are (1) Defendant, (2) the officers, directors, or employees of Defendant

27  
 28 <sup>1</sup> If the Settlement does not receive the Court's preliminary and final approval, this stipulation is  
 voided and the Parties will continue to litigate the case. *See* SA, ¶ 44.

1 and their immediate family members, (3) any entity in which Defendant has a  
2 controlling interest, (4) any affiliate, legal representative, heir, or assign of  
3 Defendant, (5) all federal court judges who have presided over this Action and  
4 their immediate family members (6) all persons who submit a valid request for  
5 exclusion from the Class and (7) those who purchased the Products for the  
6 purpose of resale.

7 *Id.*, ¶1(j).

8 Under the Settlement, Defendant will contribute \$3.25 million to a “Settlement Fund” which  
9 will be used to settle the Class claims. After payment of notice and administration costs and  
10 attorneys’ fees and expenses in an amount to be determined by the Court (both of which will be paid  
11 out of the Settlement Fund), this common Settlement Fund will be used to compensate Class  
12 Members for each of the Products they purchased during the Class Period. Class Members who  
13 properly and timely submit the Claim Form may recover for purchases of up to ten (10) bottles of the  
14 Products per household without the need to submit additional proof of purchase, and for more than  
15 ten bottles if they submit adequate proofs of purchase. In exchange for these benefits, Class  
16 Members will release Defendant from any and all claims “arising out of related to the product  
17 representations complained of in this Action.” *Id.*, ¶ 16. Any amounts remaining in the Settlement  
18 Fund after all fees, expenses and claims have been paid will be distributed to an appropriate non-  
19 profit or civic entity for use in a manner that the Court determines to be appropriate in light of the  
20 nature of the case. *Id.*, ¶ 25(f) and 43. No funds will be returned to Defendant.

21 Notice to the Class of the Settlement will be provided by several methods. First, a notice will  
22 be published nationwide in English and Spanish that provides potential Class Members with basic  
23 information about the Settlement and explains how to object to or opt out of the Settlement, how to  
24 submit a claim and where to obtain additional information. There will also be a Settlement Website  
25 that contains all information about the Settlement and IZARD Nobel LLP will provide a link to the  
26 Settlement Website on its own website. In addition, the Claim Administrator will conduct an  
27 internet-based ad campaign that will alert potential Class Members to the existence of the Settlement  
28 and direct them to the Settlement Website. *Id.*, ¶¶ 46-48. Plaintiffs believe these methods are the  
most effective means of reaching the proposed Class Members.

The Settlement also provides that Plaintiffs' counsel, upon being appointed by this Court as counsel for the Class, may submit an application to the Court for an award of attorneys' fees, not to exceed thirty percent (30%) of the Settlement Fund, as well as reimbursement of costs and expenses incurred in litigating the case. *Id.*, ¶ 56. Additionally, Defendant has agreed in the Settlement to not oppose application of an award to compensate each of the Plaintiffs for their service as a Class Representative in an amount not to exceed \$15,000 collectively, to be determined by the Court. Any amount paid to the Plaintiffs for their service will be paid by the Defendant directly and will be not be paid from the \$3.25 million Settlement Fund. *Id.*, ¶ 60.

### **III. THE COURT SHOULD PRELIMINARILY CERTIFY THE CLASS AND APPROVE THE SETTLEMENT**

Fed. R. Civ. P. 23(e) provides that "[t]he claims, issues, or defense of a certified class may be settled . . . only with the Court's approval." Fed. R. Civ. P. 23(e). Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to Class Members, whether final approval is warranted. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing MANUAL FOR COMPLEX LITIG., THIRD, § 30.41 (1995)).

Strong judicial policy favors settlement of class actions. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Where "the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both (1) the propriety of the certification and (2) the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). As discussed in detail below, the Court should preliminarily certify the Class and approve the Settlement in accordance with the Ninth Circuit's policy.

#### **A. The Court Should Preliminarily Certify the Class**

A class action will only be certified if it meets the four requirements in Rule 23(a) and also fits within one of the three subdivisions in Rule 23(b). *See Omtiveros v. Zamora*, Case No. 2:08-CV-567 WBS, 2014 WL 3057506, at \*4 (E.D. Cal. July 7, 2014) (Shubb, J.); Fed. R. Civ. P. 23(a)-(b). While a court has discretion in determining if the moving party has satisfied each Rule 23

requirements, the court must conduct a rigorous inquiry before certifying the class. *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

### 1. Certification of a Nationwide Class Is Appropriate

The Settlement proposes the certification of a nationwide Class and the application of California law to that Class. *See* SA, ¶ 44. Both are permissible under the Supreme Court’s decision in *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985) (“*Shutts*”).

In *Shutts*, the Supreme Court addressed whether a Kansas state court had the power to certify a nationwide class of plaintiffs. The majority of the Class Members were citizens of other states who had no contact with Kansas relative to the claims asserted in the case. The defendant opposed a nationwide class on due process grounds, claiming the absent plaintiffs did not have “minimum contacts” with Kansas and had not affirmatively consented to the Kansas court’s jurisdiction. The Supreme Court rejected the defendant’s due process argument. It held that for an absent class member’s due process to be satisfied:

[t]he plaintiff must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” . . . The notice should describe the action and the plaintiffs’ rights in it. Additionally, we hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an “opt out” or “request for exclusion” form to the court.

*Id.* at 812.

Here, Notice of the Settlement will be disseminated to Class Members in multiple ways and is “reasonably calculated” to apprise them of this case. *See* SA, ¶¶ 46-48. The Notice will tell Class Members of their rights, including how to “opt out” of the Class or oppose the Settlement. *Id.* The Class Members’ due process rights will be satisfied. *See Shutts*, 472 U.S. at 812.

Applying California law to the Class is also consistent with due process. In *Shutts*, the Supreme Court held that for a state’s substantive law to be applied, that state “must have a significant contact or aggregation of contacts to the claims asserted by each member of the plaintiff class . . . .” *Shutts*, 472 U.S. at 818.

California has the requisite contacts. *See, e.g., Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (quoting *Wash. Mut. Bank v. Superior Court*, 15 P.3d 1071, 1080 (Cal. 2001)). During the Class Period, Defendant manufactured TRESemmé products in California and a substantial portion of the products were sold in California. Kindall Decl. at ¶¶ 20, 21. In the most recent full year for which data are available, 2015, approximately nine percent of Defendant's nationwide sales of the Products were in the San Francisco and Los Angeles markets alone, and more than seventeen percent of Defendant's nationwide sales of the Products were in the California, Oregon and Washington markets. *Id.* at ¶ 21.<sup>2</sup>

The confluence of ties between the Products and California, and its substantial sales in the state, make it appropriate to apply California law to the nationwide class. *See, e.g., Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 589 (C.D. Cal. 2008) (applying California law to nationwide class where defendant had California operations and a significant number of class members resided in California); *see also Norwest Mortgage, Inc. v. Superior Court*, 72 Cal. App. 4th 214 (1999) (upholding certification of nationwide class in a consumer protection action against defendant whose headquarters was outside California for alleged wrongful conduct that occurred in California); *Hendricks v. StarKist Co.*, Case No. 13-CV-00729, 2015 WL 4498083, \*4 (N.D. Cal. July 23, 2015) (approving that California law to nationwide class and finding that Rule 23(b)'s predominance element met where defendant engaged in wrongful actions in Samoa, California); *Keilholtz v. Lennox Hearth Products*, 268 F.R.D. 330, 339-40 (N.D. Cal. 2010) (applying California law to nationwide class where 19% of sales were in California).

California also has an interest in seeing its consumer protection laws applied to the Defendant's actions. *See Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 599 (C.D. Cal. 2008). Defendant is large corporation that operates in California and sells a substantial amount of the Products there. These factors support applying California law to the Class. *See Chavez v. Blue Sky*

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<sup>2</sup> The 2015 units sold data is based on data reported by Nielsen through its RMS (Scanning) Service for the Daily Hair Care Category for the last three years, ending April 9, 2016, for the Total US xAOC (All Outlets Combined) market, as well as the Los Angeles market, San Francisco market, and Pacific Region (California, Oregon and Washington) market. Copyright © 2013-2016 The Nielsen Company.

1 *Nat. Beverage Co.*, 268 F.R.D. 365, 379 (N.D. Cal. 2010) (certifying nationwide class under  
2 California law, stating “with such significant contacts between California and the claims asserted by  
3 the class, application of the California consumer protection laws would not be arbitrary or unfair to  
4 defendants.”).

5 This Court also has the authority to bind absent members of the Class. “[A] federal court  
6 may release not only those claims alleged in the complaint, but also a claim based on the identical  
7 factual predicate as that underlying the claims in the settled class action even though the claim was  
8 not presented and might not have been presentable in the class action.” *In re Wash. Pub. Power*  
9 *Supply Sys. Sec. Litig.*, 955 F.2d 1268, 1287 (9th Cir. 1992) (internal quotations and citations  
10 omitted). All Class Members’ claims share an “identical factual predicate” (*see Reyn’s Pasta Bella,*  
11 *LLC v. Visa USA, Inc.*, 442 F.3d 741, 743 (9th Cir. 2006), as they all relate to paying a price  
12 premium for the Products that were marketed as “Natural.”

13 The Class Members’ due process concerns will be satisfied and, if Class Members do not  
14 agree with the Settlement, they can either opt out of the Settlement or object to it. Accordingly, it is  
15 appropriate to analyze application of the certification requirements of Federal Rules 23(a) and (b) to  
16 a nationwide class.

## 17 **2. Rule 23(a) Requirements are Met**

### 18 **a. Numerosity**

19 A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P.  
20 23(a)(1). Often, a large number of class members by itself establishes the impracticability of joining  
21 them as plaintiffs. *See Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982),  
22 vacated on other grounds, 459 U.S. 810 (1982). “A proposed class of at least forty members  
23 presumptively satisfies the numerosity requirement.” *Avilez v. Pinkerton Gov’t Services*, 286 F.R.D.  
24 450, 456 (C.D. Cal. 2012); *see also Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 300  
25 (E.D. Cal. 2011) (“Courts have routinely found the numerosity requirement satisfied when the class  
26 comprises 40 or more members.”).



1 The numerosity requirement is easily met here. Thousands of people purchased the Products  
 2 and would therefore be members of the Class. *See* Kindall Decl. at ¶ 21. Joinder of everyone who  
 3 purchased the Products is impractical if not impossible. *See, e.g., Kirchner v. Shred-It USA, Inc.*,  
 4 Case No. 2:14-1437 WBS, 2015 WL 1499115, \*3 (E.D. Cal. March 31, 2015) (Shubb, J.).

5 **b. Commonality**

6 Commonality requires that there be common questions of law or fact. *See, e.g., Hanlon v.*  
 7 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). This requirement is construed permissively  
 8 and is “less rigorous than the companion requirements of Rule 23(b)(3).” *Id.* For there to  
 9 commonality, there does not have to be “complete congruence” of common issues – even one is  
 10 sufficient. *See, e.g., Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010); *see also* 4 Albert  
 11 Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS, (“Newberg”) § 3.10 (4th ed. 2002) (the  
 12 commonality standard is “easily met” for most settlement classes).

13 There are many common issues to satisfy this requirement. They include: (1) whether the  
 14 Products labels were likely to deceive reasonable consumers; (2) whether Defendant engaged in  
 15 unfair, deceptive or lawful business practices when marketing the Products; (3) the amount of  
 16 revenue and profit Defendant received as a result of such alleged wrongdoing; (4) the amount of the  
 17 price premium associated with Defendant’s allegedly false advertising; and (5) whether Class  
 18 Members are entitled to damages. *See* ECF No. 31 and Kindall Decl., generally.

19 Courts in the Ninth Circuit have repeatedly found commonality in cases in which deceptive  
 20 advertising on product labels is alleged. *See, e.g., Zeisel v. Diamond Foods, Inc.*, Case No. CV-10-  
 21 01192 JSW, 2011 WL 2221113, at \*7 (N.D. Cal. June 7, 2011) (commonality requirement met  
 22 where “class was exposed to the same misleading and misbranded labels”); *Chavez*, 268 F.R.D. at  
 23 377 (commonality where the issue was “whether the [product] packaging and marketing materials  
 24 are unlawful, unfair, deceptive or misleading to a reasonable consumer”); *Delarosa v. Boiron, Inc.*,  
 25 275 F.R.D. 582, 589 (C.D. Cal. 2011) (commonality where “Plaintiff alleges a single  
 26 misrepresentation [on a product’s packaging] that was made identically to all potential class  
 27 members”). Like the class members in *Zeisel*, *Chavez* and *Delarosa*, the Class was subject to the  
 28



1 same allegedly misleading representations concerning a consumer product. The Defendant's  
2 advertisements and Products' labels create common issues among members of the Class to satisfy  
3 Rule 23(a)(2).

4 **c. Typicality**

5 Typicality requires that named plaintiffs have claims "reasonably co-extensive with those of  
6 absent class members" but their claims do not have to be "substantially identical." *Hanlon*, 150 F.3d  
7 at 1020. The test for typicality "is whether other members have the same or similar injury, whether  
8 the action is based on conduct which is not unique to the named plaintiffs, and whether other class  
9 members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976  
10 F.2d 497, 508 (9th Cir. 1992).

11 Plaintiffs' allegations in their Second Amended Complaint are equally applicable to all Class  
12 Members. Plaintiffs allege that they paid a premium for the Products over comparable shampoos  
13 and conditioners that did not purport to be "natural." See ECF No. 31 at ¶¶ 6-9. Other Class  
14 Members would have paid the same alleged premium. This weighs in favor of the typicality  
15 requirement being met. See, e.g., *Ebarle v. Lifelock, Inc.*, Case No. 15-CV-00258 HSG, 2016 WL  
16 234364 (C.D. Cal. Jan. 20, 2016) (finding named plaintiffs' claims were typical to those of proposed  
17 class because they all purchased defendant's products and subject to the same allegedly false  
18 advertising).

19 **d. Adequacy of Representation**

20 The court makes two inquiries to resolve the question of adequacy: "(1) do the named  
21 plaintiffs and their counsel have any conflicts of interest with other class members; and (2) will the  
22 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*,  
23 150 F.3d at 1020. These questions involve consideration of a number of factors, including "the  
24 qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests  
25 between representatives and absentees and the unlikelihood that the suit is collusive." *Brown v.*  
26 *Ticor Title Ins.*, 982 F.2d 386, 390 (9th Cir. 1992).

Under the first inquiry, Plaintiffs' interests are aligned with those of the Class. The Class includes all individuals in the United States who purchased the Products during a defined period and who, therefore, suffered the same alleged injury as the Plaintiffs. *See* SA, ¶ 1(j). There is no discrimination among members of the Class in the Settlement. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-6 (1997) ("[A] class representative must be part of the class and possess the same interest and suffer the same alleged injury as the class members."). Under the Settlement, payments to members of the Class will be based on how many bottles of the Products they purchased. *See* SA, ¶ 29 and Plan of Allocation, attached to the SA as Exh. A.<sup>3</sup>

In the second prong of the adequacy inquiry, the court examines the vigor in which the named plaintiff and her counsel have pursued the common claims. *Hanlon*, 150 F.3d at 1021. "Although there are no fixed standards by which 'vigor' can be assayed, considerations include the competency of counsel and, in the context of a settlement-only class, an assessment of not pursuing further litigation." *Id.*

Plaintiffs selected experienced counsel who have aggressively litigated the case. *See, e.g.*, ECF No. 19 (Opposition to Defendant's Motion to Dismiss) and Kindall Decl. at ¶¶ 2-14 (detailing the motions practice, discovery, depositions and mediation). There are no adequacy concerns in this case.

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<sup>3</sup> The proposed incentive payments to the Plaintiffs do not create any sort of conflict. First and foremost, they are entirely discretionary with the Court and the settlement is in no way contingent upon Plaintiffs receiving anything. *See* SA, ¶ 61. Moreover, the Settlement caps the total amount of incentive awards that Plaintiffs will request at \$15,000, an average of \$3,750 per Plaintiff, and the amounts – if approved by the Court – will be paid by Defendant and will not reduce the amount of the common Settlement Fund. *Id.* at ¶ 60. Courts have found larger awards to be entirely reasonable and no impediment to approval of a settlement or certification of a settlement class. *See e.g., Hopson v. Hanesbrands, Inc.*, Civ. No. 08-08444 EDL, 2009 WL 928133 at \*10 (N.D. Cal. Apr. 3, 2009) ("In general, courts have found that \$5,000 incentive payments are reasonable."); *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (incentive award of \$50,000 to each plaintiff was found reasonable); *Glass v. UBS Fin. Servs., Inc.*, Civ. No. 04-4068 MMC, 2007 WL 221862 at \*16 (N.D. Cal. Jan. 26, 2007) (approving \$25,000 incentive award for each named plaintiff). In light of the fact that Plaintiffs have spent substantial time and effort prosecuting this case including, in the case of three of the four plaintiffs, sitting for a deposition, the amounts at issue are extremely reasonable compensation for their work on behalf of the class. Thus, nothing in the proposed incentive awards undermines Plaintiffs' adequacy as class representatives in any way.

### 3. Rule 23(b)'s Predominance and Superiority Requirements Are Met

An action that meets the prerequisites of Rule 23(a) may only be certified as a class action if it also satisfies the requirements of one of the three subdivisions in Rule 23(b). *Levy v. Medline Indus., Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). As set forth below, Plaintiffs satisfy Rule 23(b)'s predominance and superiority requirements.

#### a. Predominance

"Because Rule 23(a)(3) already considers commonality, the focus of Rule 23(b)(3) is on the balance between individual and common issues." *Murrillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 476 (E.D. Cal. 2010) (Shubb, J.) (citing *Hanlon*, 150 F.3d at 1022). The Ninth Circuit has explained that "a central concern of the Rule 23(b)(3) predominance test is whether 'adjudication of common issues will achieve judicial economy.'" *Vinole v. Countrywide Home Loans*, 571 F.3d 935, 944 (9th Cir. 2009).

The predominance requirement does not demand that the common issues be identical. There only needs to be an essential common factual link between all class members and the defendant for which the law provides a remedy. *See In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1065 (N.D. Cal. 2007). Predominance is often readily met in consumer cases (*see, e.g., Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 537 (C.D. Cal. 2011)) where there is a common representation made to all members of the class, and is likewise found here. Issues that predominate across the Class include: (a) whether Defendant misrepresented that the Products were "Naturals;" (b) whether Defendant's labeling of the products is likely to deceive a reasonable consumer; (c) whether Defendant's labeling of the Products constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under California law; (d) whether Plaintiffs and members of the Class are entitled to damages.

#### b. Superiority

In addition to there being predominant issues across the Class, a class action is the best method to fairly and efficiently adjudicate this case. Rule 23 sets forth four non-exhaustive factors for a district court to consider when determining if the "superiority" requirement is met: (A) the class

1 members' interest in individually controlling the prosecution or defense of separate actions; (B) the  
2 extent and nature of any litigation concerning the controversy already begun by or against class  
3 members; (C) the desirability or undesirability of concentrating the litigation of claims in the  
4 particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P.(b)(3)(A)  
5 – (D). The fact that the Parties entered into the Settlement prior to class certification makes factors  
6 (C) and (D) inapplicable. *See Murillo*, 266 F.R.D. at 476 (citing *Amchem Products, Inc.*, 521 U.S. at  
7 620).

8 Factor (A) (Class Members' interest in controlling prosecution) weighs in favor of certifying  
9 the Class. "Class certifications to enforce compliance with consumer protection laws are 'desirable  
10 and should be encouraged.'" *Ballard v. Equifax Check Servs. Inc.*, 186 F.R.D. 589, 600 (E.D. Cal.  
11 1999). This is particularly true when the amount in dispute for each class member is small and may  
12 not provide an incentive to pursue individual actions. *Id.*

13 Here, Plaintiffs allege that they paid a price premium due to Defendant's "naturals" labeling  
14 on the Products. *See* ECF No. 31 at ¶¶ 6-9. Given that the *total* cost of each of the Products was  
15 only a few dollars and the alleged "naturals" premium was only a portion of the total cost, damages  
16 for each individual class member will be small, especially compared to the cost of litigation. In  
17 these circumstances, "class treatment is not merely the superior, but the only manner in which to  
18 ensure fair and efficient adjudication of the action." *Bruno*, 280 F.R.D. at 537 (certifying class  
19 where each class member only suffered a nominal amount of damages because it was the best way to  
20 adjudicate the controversy).

21 Indeed, "[w]here it is not economically feasible to obtain relief with the traditional  
22 framework of a multiplicity of small individual suits for damages, aggrieved persons may be without  
23 any effective redress unless they employ the class action device." *Deposit Guar. Nat'l Bank v.*  
24 *Roper*, 445 U.S. 326, 339 (1980); *see also Ballard*, 186 F.R.D. at 600. Furthermore, each member  
25 of the Class pursuing a claim individually would burden the judiciary, which is contrary to the goals  
26 of efficiency and judicial economy advanced by Rule 23. *See Vinole*, 571 F.3d at 946; *see also*  
27 *Delarosa*, 275 F.R.D. at 594-595.

Factor (B) (if there is other litigation) also favors certification of the Class. Plaintiffs are unaware of any other action or potential action that raises allegations similar to those in this case. *See* SA, ¶ 64. If there are competing lawsuits unknown to the Plaintiffs, any objectors may reveal them at the Fairness Hearing. *See Alberto v. GMRI, Inc.*, 252 F.R.D. 652 (E.D. Cal. 2008) (Shubb, J.).

This case – and the Settlement – is the best opportunity for members of the Class to receive redress for the injuries they allegedly suffered. Thus, the proposed Settlement and proposed Class satisfy both the predominance and superiority requirements of Rule 23(b)(3), as well as all requirements of Rule 23(a). Certification of the class is therefore appropriate.

#### **B. The Court Should Appoint Interim Class Representatives and Counsel**

The Court should appoint plaintiffs Lainie Cohen, Alba Morales, Linda Clayman and Kenneth Drew as Interim Class Representatives. They have prosecuted the claims in the Complaint for over 2 years and have represented the Class diligently and well. *See* Kindall Decl., ¶¶ 2-14.

The Court should also appoint Iazard Nobel as Interim Lead Counsel, and BPM&B as Interim Liaison Counsel, for the preliminarily approved Class pursuant to Fed R. Civ. P. 23(g)(3). The 2003 Advisory Committee Notes explain that interim counsel should be appointed “if necessary to protect the interests of the putative class.” *Id.*, 2003 Advisory Committee Notes. In determining whether the proposed Class Counsel will adequately represent the Class, the Court should consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Iazard Nobel and BPM&B meet all of these criteria. Iazard Nobel has done substantial work identifying, prosecuting and settling the claims. *See* ECF Nos. 1 (Complaint), 8 (Amended Complaint), 19 (Opposition to Defendant’s Motion to Dismiss) and 31 (Second Amended Complaint); *see also* Kindall Decl. at ¶¶ 6-12 (describing discovery and settlement efforts), and BPM&B has served as liaison counsel throughout the litigation, providing invaluable assistance at

every step. Plaintiffs' counsel are well-versed in class actions and consumer litigation. *See* Kindall Decl., Exhs. 3 and 4. IZARD Nobel and BPM&B have expended the necessary resources to represent the Class through motions practice, discovery and mediation, and should be approved as Class Counsel pursuant to Rule 23(g).

### C. The Court Should Approve the Notice Plan

If the Court certifies a class under Rule 23(b)(3), it "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *See* Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and content of a proposed notice. *See Ravens v. Iftikar*, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 172, 177 (1974)). Although the notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

Here, as in many similar consumer class actions, actual notice to each class member is not feasible because Defendant does not have records showing the people that purchased the Products, much less their contact information. Plaintiffs have retained KCC to develop and (with the Court's approval) execute a notice plan that is based on the demographics of the Class and is calculated to provide notice of the Settlement to over seventy percent of the members of the Class. *See* SA Exhibit D (the "Notice Plan"); *see also* Declaration of Daniel Burke ("Burke Decl."), Attached to the Kindall Declaration as Exhibit 2.

The Notice Plan proposes placing banner advertisements on general Run of Network websites that individuals who purchased the Products are likely to visit, including, for example: (a) USA Today; (b) Food Network; and (c) CNN. These advertisements will produce over 150 million unique impressions over an approximately one-month period. *See* Burke Decl. at ¶ 20. The Notice Plan also calls for an advertisement to be placed in *People* magazine, which reaches 23.3% of the Class. *Id.*, ¶ 17. Notice of the Settlement will also appear four times in the *Sacramento Bee*. *Id.*, ¶ 22. In addition, KCC will provide a dedicated website where class members can get additional information and fill out online claim forms, as well as toll-free telephone support. *Id.*, ¶ 23-24. The



1 methods set forth in Notice Plan will reach approximately 71.6% of Class Members. *Id.*, ¶ 25. This  
 2 reach is within the range considered “reasonable” in the Federal Judicial Center’s (FJC) *Judges’*  
 3 *Class Action Notice and Claims Process Checklist and Plain Language Guide*. *See id.* at p. 3 (notice  
 4 plan reasonable if it reaches over 70 percent of the class); *see also In re Cathode Ray Tube (Crt)*  
 5 *Antitrust Litig.*, Case No. 3:07-cv-5944 JST, 2016 WL 721680, \* 31 (N.D. Cal. Jan. 28, 2016)  
 6 (relying on FJC’s numerical range when analyzing whether to approve notice plan); *Flynn v. Sony*  
 7 *Electronics*, Case No. 09-cv-2109 BAS, 2015 WL 128039 (S.D. Cal. Jan. 7, 2015) (approving print  
 8 and ad banner aspects of notice plan developed by KCC because it would reach 80% of class  
 9 members, which was within the range developed by the FJC).

10 KCC has successfully served as the notice and claim administrator a number of other  
 11 consumer class action settlements where it has employed similar notice plans, including *Apple*  
 12 *Purchase Litigation*, No. 5:11-cv-01758-EJD (S.D. Cal.), *Zeisel v. Diamond Foods*, No. 3:10-cv-  
 13 1192-JSW (N.D. Cal.), *Pappas v. Naked Juice*, No. 2:11-cv-8276 (C.D. Cal.), and *Schiff Nutrition*  
 14 *Int’l Consumer Settlement*, No. 11-cv-1056-JAH (S.D. Cal.).<sup>4</sup> As a result, KCC is highly confident  
 15 that the proposed Notice Plan will be both effective in reaching the great majority of class members,  
 16 and efficient in terms of cost to the class. *See Burke Decl.*, generally. Accordingly, the Notice Plan  
 17 is “reasonably certain to inform the absent members of the plaintiff class,” and merits approval. *See*  
 18 *Silber*, 18 F.3d at 1454.

19 The content of the Notice also meets the requirements of Rule 23(c)(2)(B) and applicable  
 20 law. *See Churchill Vill. LLC v. General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (“Notice is  
 21 satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert those with  
 22 adverse viewpoints to investigate and to come forward and be heard.’”). The dedicated website will  
 23 give Class Members the ability to review the critical settlement documents, including the operative  
 24

25 <sup>4</sup> Other courts as well have found KCC to be a well-qualified and experienced notice and claim  
 26 administrator. *See, e.g., Hendricks v. Starbucks*, 2008 WL 4196690, at \*9 (“The Court finds that  
 27 KCC is qualified to perform the tasks associated with administering the notice and claims procedures  
 28 outlined in the Settlement Agreement and therefore approves KCC as claims administrator.”); *Donnelly v. EquityExperts.org, LLC*, Case No. 4:13-CV-10017 TGB, 2014 WL 4923081, \*2 (E.D. Mich. Sept. 26, 2014) (appointing KCC as claim administrator); *Rhodes v. Olson Associates, P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015).

complaint. In addition, the website will include a complete Notice that explains the Settlement in detail (including the release), defines the scope of the Class, informs Class Members how to submit a claim and the procedure for opting out of the Class and objecting to the Settlement, and provides the time, date and location of the Fairness Hearing. The internet advertising and publication notices will direct Class Members to the website (as will Class Counsel's own website), but will also indicate that the Claim Administrator will send interested parties a copy of the Notice by U.S. Mail if they request it. *See* SA at ¶¶ 46-48. Notice plans with similar language and procedure have been approved by other courts in California. *See* Burke Decl. at ¶ 8 citing *In re Google Referrer Header Privacy Litig.*, Case No. 10-cv-04809, 2014 WL 1266091, \*6 (N.D. Cal. Mar. 26, 2014).

The Notice and the procedure for distributing it to members of the Class satisfies Rule 23(c)(2)(B). Accordingly, Plaintiffs request that the Court appoint KCC as Notice Administrator, and direct that Notice be provided to the Class in substantially the forms set out in Exhibits C to the Settlement, and in accordance with the Notice Plan developed by KCC and attached to the Settlement as Exhibit D.

#### **D. The Court Should Preliminarily Approve the Settlement**

As this Court very recently held, approval of a Class Action settlement “involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.” *Garnett v. ADT, LLC*, No. 2:14-02851 WBS AC, 2016 WL 1572954, \*1 (E.D. Cal. Apr. 19, 2016) (Shubb, J.) (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 523). At the first, preliminary approval stage – where this case is presently – the goal is to determine whether there are any “glaring deficiencies” in the proposed settlement. *Id.* at \*6. Specifically:

At the preliminary stage, the court need only determine whether the proposed settlement is within the range of possible approval. This generally requires consideration of whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys.

*Id.* (internal quotations and citations omitted). Based on these factors, the proposed settlement merits preliminary approval.



**1. The Settlement was Achieved After Hard-Fought Litigation and Negotiations**

“Preliminary approval of a settlement has both a procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Absent evidence of fraud or collusion, Courts in the Ninth Circuit have “long deferred to the private consensual decision of the parties.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). As the Ninth Circuit has emphasized:

[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

*Id.* A district court is to examine whether the settlement is “the product of arms-length, non-collusive, negotiated resolution.” *Id.* When it is, courts afford the parties a presumption that the settlement is fair and reasonable. *See, e.g., Spann v. J.C. Penney Corporation*, Case No. SACV-12-0215 FMO, 2016 WL 297399, \*8 (C.D. Cal. Jan. 25, 2016); *McCrary v. Elations Company*, Case No. 13-CV-0242 JGB, 2016 WL 769703 (C.D. Cal. Feb. 25, 2016).

The Settlement was the product of long, hard-fought litigation and negotiations. The Parties litigated the case for nearly two years before signing the Settlement, with both sides zealously representing their clients’ interests. *See, e.g.*, ECF No. 31 (Motion to Dismiss) and Kindall Decl. at ¶ 15. The Parties also conducted extensive discovery before the Settlement, with each side serving and responding to written discovery and conducting multiple depositions. *See Id.*, ¶¶ 6, 7. Plaintiffs and Plaintiffs’ Counsel were fully informed of all relevant facts when the Settlement was reached. *Id.* at ¶¶ 6-12, 15; *see, e.g., Lewis v. Starbucks Corp.*, Case No. 2:07-CV-00490 MCE, 2008 WL 4196690, \*6 (E.D. Cal. Sept. 11, 2008) (“approval of a class action settlement as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases.”)

The assistance of a mediator is further evidence the Settlement was reached in a procedurally sound manner and without collusion. *See, e.g., Satchell v. Fed Ex Corp.*, Case Nos. C03-2659 SI, C03-2878 SI, 2007 WL 1114010, \*4 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”); *see also Chun-*

1 *Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010). The Parties employed  
 2 Jonathan Marks, a well-respected mediator in Bethesda, Maryland, to help them reach a resolution.  
 3 In fact, it was only after Mr. Marks made a mediator's proposal of \$3.25 million that the Parties  
 4 were able to reach the Settlement. *See* Kindall Decl. at ¶¶ 8-11.

## 5 **2. The Settlement is Well Within the "Range of Possible Approval"**

6 In determining whether a settlement agreement is substantively fair to the class, the court  
 7 must balance the value of expected recovery against the value of the settlement offer. *See*  
 8 *Tableware*, 484 F. Supp. 2d at 1080. This inquiry may involve consideration of the uncertainty class  
 9 members would face if the case were to go to trial. *See Omtiveros v. Zamora*, 2014 WL 3057506 at  
 10 \*14.

11 The Settlement is well within the "range of possible approval." *Garnett*, 2016 WL 1572954,  
 12 at \*6. The litigation itself achieved a key goal of the case: discontinuance of Defendant's "Naturals"  
 13 line of products, effectively rendering moot Plaintiffs' request for injunctive relief. The Settlement  
 14 also provides that Defendant will pay \$3.25 million into a Settlement Fund for persons who  
 15 purchased the Products while they were still being sold. This amount is more than 25 percent of  
 16 Plaintiffs' "best case" recovery if the case proceeded to trial. *See* Kindall Decl. at ¶ 17.

17 This recovery is reasonable given the significant risks the Plaintiffs faced if they continued  
 18 litigating this case. Plaintiffs would have to prove that Defendant's "Naturals" labeling was likely to  
 19 deceive or confuse reasonable persons, and that those representations were material. *See Id.*, ¶ 18.  
 20 Plaintiffs would also have had to establish that the price premium that Class Members paid was  
 21 attributable to the "Naturals" labeling, and quantify the aggregate amount of damages that resulted  
 22 from the premium. These issues would have involved expert testimony from both sides, creating a  
 23 "battle of experts" and all of the attendant risk such a battle invariably entails. *Id.* Continuing the  
 24 litigation also would have taken considerable time – perhaps years – to complete. *Id.* at ¶ 19.  
 25 Given these risks, Plaintiffs believe that \$3.25 million, which is more than 25% of the best case  
 26 recovery, is an excellent result. *Id.*, ¶¶ 16-17; *see also Schaffer v. Litton Loan Servicing, LP*, Case  
 27 No. 05-CV-07673 MMM, 2012 WL 10274679, \*11 (C.D. Cal. Nov. 13, 2012) (considering risk of  
 28

losing at trial, the expense of litigating the case and the expected delay in recovery when evaluating the settlement on a preliminary approval motion); *see also Jaffe v. Morgan Stanley*, No. 06-CV-3902 TEH, 2008 WL 346417, at \*9 (N.D. Cal. Feb. 7, 2008) (“The settlement amount could undoubtedly be greater, but it is not obviously deficient, and a sizeable discount is to be expected in exchange for avoiding the uncertainties, risks, and costs that come with litigating a case to trial.”).

### 3. The Settlement Treats Class Members Equally

The Settlement does not grant preferential treatment to any members of the Class. Payments to Class members will be based on the number of Products they purchased, subject to a limit of ten Products per household unless the claimants provide valid proofs of purchase. *See* SA, ¶ 29. This method is reasonable and supports preliminary approval of the Settlement. *See, e.g., Ruch v. AM Retail Group, Inc.*, Case No. 14-cv-05352 MEJ, 2016 1161453 (N.D. Cal. Mar. 24, 2016) (granting preliminary approval of settlement where payments would be distributed based on amount of weeks worked). Any funds remaining after all claims have been paid will be distributed to an appropriate non-profit or civic entity selected by the Parties and approved by the Court. *See* SA, ¶¶ 25(f), 43. No money will be returned to Defendant. *Id.*

### 4. The Settlement Will Not Provide Excessive Compensation to Counsel

The Settlement will not provide excessive compensation to Counsel. Any award to counsel from the Settlement Fund will be made at the Court’s discretion, and the Settlement is not in any way contingent upon approval of any particular counsel fee award by the Court. *Id.* at ¶ 58. Thus, the amount that counsel will receive for their services on behalf of the Class will be determined by the Court in accordance with the standards applicable to common fund settlements. Moreover, the Settlement itself provides that counsel will not request fees in excess of 30% of the Settlement Fund. *Id.* at ¶ 56. This amount is in line with what other courts have previously awarded. *See, e.g., Ruch* (approving Class Counsel’s proposed fees of 30% to be reasonable); *Wren v. RGIS Inventory Specialists*, Case No. C-06-05778 JCS, 2011 WL 1230826, \* 29 (N.D. Cal. Apr. 1, 2011) (approving attorneys’ fees of 42%).

1                   **5. The Settlement was Achieved at an Appropriate Stage of the Proceedings**

2                   “A settlement that occurs in an advanced stage of the proceeding indicates the parties  
3 carefully investigated the claims before reaching a resolution.” *Anderson-Butler v Charming*  
4 *Charlie, Inc.*, Case No. 2:14-CV-01921 WBS, 2015 WL 6703805, \*6 (E.D. Cal. Nov. 3, 2015)  
5 (Shubb, J.) (citing *Alberto v. GMRI, Inc.*, Case No. 07-CV-1895 WBS, 2008 WL 4891201, \*9 (E.D.  
6 Cal. Nov. 12, 2008)). As detailed in § III.C.1, above, the Parties engaged in motion practice,  
7 extensive discovery and multiple mediation sessions before they reached the Settlement. *See* Kindall  
8 Decl. at ¶¶ 6-12. These facts weigh in favor of approving the Settlement. *See, e.g., Anderson-*  
9 *Butler*, at \* 6 (discovery and mediation between the parties supported approval of the settlement).

10                   **6. Plaintiffs and Plaintiffs’ Counsel Support the Settlement**

11                   Each of the Plaintiffs support the Settlement. *See* Kindall Decl., ¶ 22. For Plaintiffs, they  
12 achieved a key goal of the case: the discontinuance of Defendant’s “Naturals” line of Products. *Id.*,  
13 ¶ 16. Plaintiffs will also receive damages to compensate for the premium they allegedly paid over  
14 similar shampoos and conditioners that were not marketed as “natural.”

15                   Plaintiffs’ Counsel also supports the Settlement. Plaintiffs’ Counsel has considerable  
16 experience in litigating consumer class action litigation and believes that the Settlement is fair and  
17 reasonable. *See* Kindall Decl. at Exhibit 3 (firm biography) and ¶ 16.

18                   **IV. CONCLUSION**

19                   For all of the foregoing reasons, Plaintiffs ask the Court to: (1) provisionally certify the  
20 Class; (2) establish procedures for giving notice to the Class; (3) grant preliminary approval of the  
21 parties’ Settlement; (4) approve Izard Nobel LLP as Interim Class Counsel and BPM&B as Interim  
22 Liaison Counsel for the Class; and (5) set a date, time and place for a final approval hearing.

1 Dated: May 27, 2016

Respectfully submitted,

3 By: /s/ Mark P. Kindall  
4 Mark P. Kindall (State Bar No. 138703)  
5 Robert A. IZARD (Admitted *pro hac vice*)  
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25 nveno@venolaw.com

23 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who have consented to electronic service are being served with a copy of the attached **Notice of Motion and Motion for Preliminary Approval** via the CM/ECF system on May 27, 2016.

DATED: May 27, 2016

/s/ Mark P. Kindall  
Mark P. Kindall

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20 *Attorneys for Plaintiffs*

21 *[Additional counsel on signature page]*

22 UNITED STATES DISTRICT COURT  
23 EASTERN DISTRICT OF CALIFORNIA

24 LAINIE COHEN, ALBA MORALES,  
25 LINDA CLAYMAN and KENNETH  
26 DREW, on behalf of themselves and all  
27 others similarly situated,

28 Plaintiffs,

v.

CONOPCO, INC. D/B/A UNILEVER,  
Defendant.

No. 2:13-cv-02213-WBS-EFB

**DECLARATION OF MARK P.  
KINDALL IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL**

Date: July 11, 2016

Time: 1:30 p.m.

Courtroom 5, 14<sup>th</sup> Floor

Hon. William B. Shubb

1 I, Mark P. Kindall, hereby declare as follows:

2 1. I am a partner in the law firm of Izard Nobel LLP, counsel for Plaintiffs in the  
3 above-captioned litigation. I submit this declaration in support of Plaintiffs' Motion for  
4 Preliminary Approval, and have personal knowledge of the facts contained herein.

5 2. Plaintiffs Alba Morales and Lainie Cohen commenced this litigation in October of  
6 2013 by filing a complaint against Defendant in the U.S. District Court for the Eastern District of  
7 California [ECF No. 1]. The Complaint alleged that Defendant manufactured and sold shampoo  
8 and conditioner products under the "TRESemmé Naturals" label that contained numerous  
9 artificial, synthetic ingredients, contrary to the "natural" representations on the labels. Plaintiffs  
10 also sent notice to Defendant of their intent to amend the Complaint to add claims pursuant to the  
11 California Consumers Legal Remedies Act (the "CLRA").

12 3. Defendant's formal response to the CLRA Notice was to deny any liability and to  
13 state that any claim under the CLRA would be sanctionable pursuant to Cal. Civ. Code § 1780(e)  
14 and Fed. R. Civ. P. 11. Plaintiffs nonetheless filed an Amended Complaint adding the CLRA  
15 claims on December 3, 2013 [ECF No. 8].

16 4. Defendant filed a Motion to Dismiss the Amended Complaint on January 14,  
17 2014 [ECF No. 14], which the parties fully briefed. On April 7, 2014, the Court heard Oral  
18 Argument on the motion, and issued a ruling two days later, granting the motion in part and  
19 denying it in part [ECF No. 27].

20 5. As a result of the Court's April 9, 2014 ruling, Plaintiffs filed a Second Amended  
21 Complaint on April 29, 2014 [ECF No. 30], followed by a Corrected Second Amended  
22 Complaint on April 30, 2014 [ECF No. 31]. Defendant answered the complaint on May 29,  
23 2014 [ECF No. 37].

24 6. In accordance with the Court's Pretrial Scheduling Order [ECF No. 34], the  
25 parties exchanged initial disclosures on May 16, 2014. Plaintiffs also sent out initial discovery  
26 requests on April 17, 2014, which Defendant responded to on June 3, 2014. The parties engaged  
27 in a meet and confer process concerning Defendant's objections to Plaintiffs' discovery requests,  
28



1 including conference calls and correspondence that narrowed the differences between the parties  
2 concerning the appropriate scope of the discovery. The parties also negotiated the content of a  
3 stipulated protective order for protecting the confidentiality of documents and information  
4 obtained through the discovery process, which stipulation was submitted to the Court for  
5 approval and was issued on October 7, 2014 [ECF No. 40]. Following the issuance of the  
6 Protective Order, Defendant commenced a rolling production of documents that continued over  
7 the course of ten months and consisted of close to a quarter million pages of documents.  
8 Counsel for Plaintiffs reviewed and analyzed these documents in detail. Plaintiffs also  
9 conducted fact depositions of key witnesses concerning Defendant's marketing of the products at  
10 issue and the origin of each of the ingredients in the products.

11 7. Defendant sent detailed discovery requests to Plaintiffs on August 6, 2014, to  
12 which Plaintiffs provided objections and responses. Defendant deposed Mr. Drew on March 31,  
13 2015, Ms. Cohen on April 9, 2015, and Ms. Morales on April 23, 2015.

14 8. Beginning in December of 2014, counsel for the parties first began to discuss the  
15 possibility of negotiating a settlement to the litigation. In the spring of 2015 the parties agreed to  
16 proceed by mediation, and further agreed to request that Jonathan Marks, a respected  
17 independent mediator based in Bethesda, Maryland, serve as the mediator.

18 9. The mediation was scheduled for June 15, 2015, in New York. In preparation for  
19 that mediation session, the parties exchanged detailed mediation submissions and responses.  
20 Plaintiffs also engaged the services of Dr. Elizabeth Howlett of the University of Arkansas to  
21 conduct a survey and conjoint analysis to assist Plaintiffs in refining a damages model.

22 10. The June 15 mediation session failed to produce agreement between the parties.  
23 Mr. Marks worked hard to continue the dialogue following the face-to-face discussions,  
24 encouraging the parties to provide additional information and analysis of other recent cases and  
25 settlements for consideration, which they did over a period of several weeks. Although the  
26 parties were able to reach agreement on many contentious elements – most especially,  
27  
28

1 Defendant's willingness to discontinue the "TRESemmé Naturals" line – agreement on damages  
2 remained out of reach. In September, the Parties agreed to put settlement discussions on hold.

3 11. The parties recommenced settlement discussions in January of 2016, again with  
4 the assistance of Mr. Marks acting as mediator. After a month of back-and-forth proposals and  
5 counter-proposals, Mr. Marks made a mediator's proposal to both sides for a \$3.25 million  
6 settlement to the Class. The mediator further proposed that Defendant would pay any court-  
7 awarded case contribution awards to the named plaintiffs, in a total amount not to exceed  
8 \$15,000. Both parties accepted the proposal on February 5, 2016.

9 12. As part of the agreement reached on February 5, the parties agreed to work in  
10 good faith to negotiate the details of a written settlement agreement that would be submitted to  
11 the Court for approval pursuant to Federal Rule 23. The parties began these negotiations shortly  
12 thereafter and exchanged a series of drafts over a period of several weeks.

13 13. While the parties were working on the final terms of the settlement stipulation,  
14 Plaintiffs' counsel sought proposals from firms to perform notice and claim administration under  
15 the terms of the Settlement. After careful review of the proposals of several highly qualified  
16 firms and after consultation with counsel for Defendant, Plaintiffs' counsel selected KCC Class  
17 Action Services LLC. Counsel then worked with representatives of KCC on the Notice Plan and  
18 other aspects of the settlement relevant to claims processing and administration.

19 14. The Stipulation of Settlement, including all exhibits thereto, was finally approved  
20 by all parties and signed on May 27, 2016.

21 15. As the above description demonstrates, this case was hard-fought and contentious  
22 from the very beginning. The settlement was not concluded until the parties had conducted  
23 substantial discovery and had tested their legal theories in motions practice before the Court and  
24 through an extensive and contentious mediation process before a highly experienced and well-  
25 regarded mediator. Counsel for both parties unequivocally had full knowledge of the strengths  
26 and weaknesses of the parties' claims.

1           16. IZARD Nobel LLP has substantial experience prosecuting class action cases (a copy  
2 of the firm resume is attached as Exhibit 3). Based on our experience and judgment, the  
3 proposed Settlement is a very good result for the Class. First and foremost, a key goal of the  
4 litigation was achieved: discontinuance of the “naturals” line of products. Furthermore, the  
5 \$3.25 million settlement is extremely reasonable based on the total damages at issue and the risks  
6 involved in continued litigation.

7           17. Based on Plaintiffs’ analysis, augmented by the conjoint analysis done by Dr.  
8 Howlett, the damages sustained by the class as a whole as a result of the premium attributable to  
9 Defendant’s representations that the Products were “naturals” was approximately \$12.65 million.  
10 The \$3.25 million is more than 25 percent of this total.

11           18. There were also significant risks to continuing with the litigation. First, Plaintiffs  
12 would have been required to prove that the “naturals” labeling was likely to deceive or confuse  
13 reasonable persons, or that those representations are material to reasonable persons. Defendant  
14 disputed that consumers would interpret “naturals” to mean that all of the ingredients in the  
15 products were “natural” and non-synthetic. Establishing that all class members paid a price  
16 premium that was directly related to the “naturals” claim would have involved a battle of experts,  
17 as would any effort to quantify the amount of the premium.

18           19. It is also apparent that continuing litigation would take considerable time.  
19 Although fact discovery was close to complete, expert discovery had not commenced, after  
20 which the parties would have engaged in further motions practice, likely including cross-motions  
21 for summary judgment, *Daubert* motions and (necessarily) class certification. In all likelihood,  
22 the case would have gone to trial. Whichever party did not prevail would likely have appealed  
23 the judgment. Even if Plaintiffs had prevailed in each of these challenges, it might have taken  
24 years for the class members to obtain relief.

25           20. While Defendant’s U.S. headquarters are in New Jersey, based on Plaintiffs’  
26 investigation, it has operated various locations in California over the years. During parts of the  
27 Class Period, Defendant had manufacturing facilities in California in which TRESemme  
28

1 products were manufactured. Defendant also employed salespeople in the field. While  
2 Defendant no longer has any manufacturing plants in California, it currently utilizes two third-  
3 party distribution centers there and salespeople remain in the field.

4 21. Based on the sales data that Defendant produced in discovery, there are thousands  
5 of individuals across the United States that purchased the Products. Defendant's sales data also  
6 indicated that approximately 9% of its nationwide sales of the Products were in the San  
7 Francisco and Los Angeles markets in 2015. And in 2015, more than 17% of Defendant's  
8 nationwide sales of the Products were in California, Oregon and Washington.<sup>1</sup>

9 22. All of the named Plaintiffs, Lainie Cohen, Alba Morales, Linda Clayman and  
10 Kenneth Drew, support the approval of the proposed Settlement.

11 23. True and accurate copies of the Settlement Agreement and exhibits A-G thereto  
12 are attached as Exhibit 1 to this Declaration.

13 24. A true and accurate copy of the Declaration of Daniel Burke, Executive Vice  
14 President, Kurtzman Carson Consultants LLC, is attached as Exhibit 2 to this Declaration.

15 25. A true and accurate copy of the Firm Resume of Iazard Nobel LLP is attached as  
16 Exhibit 3 to this Declaration.

17 26. A true and accurate copy of the Firm Resume of Bramson, Plutzik, Mahler &  
18 Birkhaeuser, LLP, is attached as Exhibit 4 to this Declaration.

19  
20 This Declaration was executed on the 27th day of May in West Hartford, Connecticut.

21  
22 DATED: May 27, 2016

Respectfully submitted

23 By: \s\ Mark P. Kindall

24 Mark P. Kindall

25  
26 <sup>1</sup> The 2015 units sold data is based on data reported by Nielsen through its RMS (Scanning) Service for the Daily  
27 Hair Care Category for the last three years, ending April 9, 2016, for the Total US xAOC (All Outlets Combined)  
28 market, as well as the Los Angeles market, San Francisco market, and Pacific Region (California, Oregon and  
Washington) market. Copyright © 2013-2016 The Nielsen Company.

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Kindall Declaration In Support of Plaintiffs' Motion  
for Preliminary Approval

# EXHIBIT 1

Settlement Agreement

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAINIE COHEN, ALBA  
MORALES, LINDA CLAYMAN  
and KENNETH DREW, on behalf  
of themselves and all others  
similarly situated,

*Plaintiffs*

*v.*

CONOPCO, INC. d/b/a  
UNILEVER,

*Defendant.*

No. 2:13-cv-02213

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (“Stipulation”) is made and entered into by Plaintiffs Lainie Cohen, Alba Morales, Linda Clayman and Kenneth Drew, on behalf of themselves and all others similarly situated, and defendant Conopco, Inc. d/b/a Unilever. The Stipulation is intended by the Parties (defined *infra*) to fully, finally and forever resolve, discharge and settle the Action (defined *infra*) and the claims asserted therein, upon and subject to the terms and conditions hereof, including but not limited to the approval of the Court.

**I. DEFINITIONS**

1. As used in this Stipulation, the following capitalized terms have the meanings specified below:

- a. **“Action”** means the case entitled *Morales, et al. v. Unilever United States, Inc.* filed on October 10, 2013, in the U.S. District Court for the Eastern District of California and assigned Case No. 2:13-cv-02213.
- b. **“Approved Claim(s)”** means the claims approved by the Claim Administrator according to the claims criteria set forth in the Plan of Allocation.
- c. **“Attorneys’ Fees, Costs and Expenses”** means fees, costs and expenses incurred by all Plaintiffs’ Counsel in this Action.
- d. **“Authorized Claimants”** means Class Members with claims approved by the Claim Administrator according to the claims criteria set forth in the Plan of Allocation.

- e. ***“Claim Administrator”*** means the independent company agreed upon by the Parties to provide the Class and Publication Notice and administer the claims process. The Parties agree that KCC Class Action Services LLC will be retained as the Claim Administrator.
- f. ***“Claims Cost Estimate”*** is the Claim Administrator’s good faith best estimate of all the expenses to be incurred in the claims process.
- g. ***“Claim Form”*** means the form that is substantially in the form attached hereto as Exhibit F.
- h. ***“Claim Review Period”*** means the three-month period beginning no later than 10 days after the Effective Date.
- i. ***“Claim Submission Period”*** means the period beginning on the date notice to the Class is first published, and continuing until 5 days after the date of the Final Approval Hearing.
- j. ***“Class”*** and/or ***“Class Members”*** means all individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the “Products”). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members, (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Products for the purpose of resale.
- k. ***“Class Notice”*** means the “Notice of Class Action Settlement” substantially in the same form as Exhibit E attached hereto.
- l. ***“Class Notice Package”*** means the information as approved in form and content by Plaintiffs’ Counsel and Defendant’s Counsel and to be approved by the Court. Class Notice Packages will include (a) the Class Notice, and (b) the Claim Form. The Class Notice Package will be available in English and in Spanish.
- m. ***“Class Representative Awards”*** means cash awards to be paid by Defendant to Plaintiffs for their work as representatives of the Class, in an aggregate amount not to exceed fifteen thousand dollars (which amount is apart from and in addition to the Settlement Fund), subject to approval by the Court and pursuant to the Court’s discretion.
- n. ***“Court”*** means the U.S. District Court for the Eastern District of California.



- 1 o. ***“Defendant”*** means Conopco, Inc. d/b/a Unilever, also referred to herein as  
2 ***“Unilever.”***
- 3 p. ***“Defendant’s Counsel”*** means the law firm of Kirkland & Ellis LLP.
- 4 q. ***“Distribution Plan”*** means a written final accounting and plan of distribution prepared  
5 by the Claim Administrator, identifying (a) each claimant whose claim was approved,  
6 including the dollar amount of the payment to be awarded to each such claimant, and  
7 the dollar amount of any pro rata reduction required by ¶ 26(g); (b) each claimant whose  
8 claim was rejected; (c) the dollar amount of the Net Settlement Fund to be disbursed to  
9 each recipient(s); and (d) a final accounting of all administration fees and expenses  
10 incurred by the Claim Administrator.
- 11 r. ***“Effective Date”*** means the date described in ¶ 53.
- 12 s. ***“Escrow Account”*** means the account established in accordance with Paragraph 20 of  
13 this Stipulation where the Settlement Fund will be deposited and held.
- 14 t. ***“Final Approval Hearing”*** means the hearing to be held by the Court to consider and  
15 determine whether the proposed settlement of the Action as contained in this  
16 Stipulation should be approved as fair, reasonable, and adequate, and whether the Final  
17 Settlement Order and Judgment approving the settlement contained in this Stipulation  
18 should be entered.
- 19 u. ***“Final Settlement Order and Judgment”*** means an order and judgment entered by the  
20 Court:
- 21 i. Giving final approval to the terms of this Stipulation as fair, adequate, and  
22 reasonable;
- 23 ii. Providing for the orderly performance and enforcement of the terms and  
24 conditions of the Stipulation;
- 25 iii. Dismissing the Action with prejudice;
- 26 iv. Discharging the Released Parties of and from all further liability for the  
27 Released Claims to the Releasing Parties; and
- 28 v. Permanently barring and enjoining the Releasing Parties from instituting, filing,  
commencing, prosecuting, maintaining, continuing to prosecute, directly or  
indirectly, as an individual or collectively, representatively, derivatively, or on  
behalf of them, or in any other capacity of any kind whatsoever, any action in  
the California Superior Courts, any other state court, any federal court, before  
any regulatory authority, or in any other tribunal, forum, or proceeding of any  
kind, against the Released Parties that asserts any Released Claims that would

1 be released and discharged upon final approval of the Settlement as provided in  
2 ¶¶ 16-17 of this Stipulation.

3 vi. The actual form of the Final Settlement Order and Judgment entered by the  
4 Court may include additional provisions as the Court may direct that are not  
5 inconsistent with this Stipulation, and will be substantially in the form attached  
6 hereto as Exhibit G.

7 v. ***“Net Settlement Fund”*** means the amount of the \$3.25 million Settlement Fund  
8 available to pay Approved Claims after deductions for the cost of notice and claims  
9 administration, expenses associated with maintaining the Settlement Fund (including  
10 taxes that may be owed by the Settlement Fund), and Attorneys’ Fees, Costs and  
11 Expenses.

12 w. ***“Notice Plan”*** or ***“Notice Program”*** means the plan for dissemination of the  
13 Publication Notice and Class Notice Package as described in ¶¶ 46-48.

14 x. ***“Fund Institution”*** means a third-party institution which the Parties will approve and  
15 to which Unilever shall pay \$3.25 million in trust to a fund to be administered by the  
16 Claim Administrator as described herein.

17 y. ***“Parties”*** means the Plaintiffs and the Defendant.

18 z. ***“Plaintiff”*** or ***“Plaintiffs”*** means Alba Morales, Lainie Cohen, Kenneth Drew and  
19 Linda Clayman.

20 aa. ***“Plaintiffs’ Counsel”*** means Iazard Nobel LLP.

21 bb. ***“Plan of Allocation”*** means the approved methodology for apportioning the Net  
22 Settlement Fund amongst Class Members who have filed Approved Claims. The Plan  
23 of Allocation shall be submitted to the Court for approval in substantially the form  
24 shown in Exhibit A.

25 cc. ***“Preliminary Approval Order”*** means the “Order re: Preliminary Approval of Class  
26 Action Settlement,” substantially in the form attached hereto as Exhibit B.

27 dd. ***“Publication Notice”*** means information as approved in form and content by Plaintiffs’  
28 Counsel and Defendant’s Counsel and to be approved by the Court, substantially in the  
same form as Exhibit C attached hereto. The Publication Notice will be translated into  
Spanish for dissemination pursuant to the Notice Plan.

ee. ***“Rejected Claims”*** means all claims rejected according to the claims criteria set forth  
in the Plan of Allocation.

ff. ***“Released Claims”*** means those claims released pursuant to ¶¶ 16-17 of this  
Stipulation.

- 1 gg. ***“Released Parties”*** means Defendant and each of its parent, affiliated and subsidiary  
2 corporations and all of their agents, employees, partners, predecessors, successors,  
3 assigns, insurers, attorneys, officers and directors.
- 4 hh. ***“Releasing Parties”*** means the Plaintiffs, individually and as representatives of all  
5 those similarly situated, and the Class Members who do not exclude themselves.
- 6 ii. ***“Settlement Fund”*** means the sum of three million, two hundred fifty thousand dollars  
7 (\$3,250,000), to be paid into the Escrow Account and administered in accordance with  
8 the terms of this Stipulation, for payment of Class Members’ claims, notice and  
9 administration costs, Attorneys’ Fees, Costs and Expenses, and expenses related to  
10 maintaining the fund (including taxes that may be owed by the Settlement Fund), if  
11 any.
- 12 jj. ***“Settlement Fund Balance”*** means the balance at the end of the Claim Review Period,  
13 consisting of the Net Settlement Fund minus the total amount paid to Class Members  
14 who submit Approved Claims.
- 15 kk. ***“Settlement Website”*** means the website established by the Claim Administrator that  
16 will contain documents relevant to the settlement, including the Class Notice Package.  
17 Claim Forms may be submitted by Class Members via the Settlement Website.
- 18 ll. ***“Stipulation of Settlement”*** and/or ***“Stipulation”*** and/or ***“Settlement”*** means this  
19 Stipulation of Settlement, including its attached exhibits (which are incorporated herein  
20 by reference), duly executed by Counsel for the Parties.

21 2. Capitalized terms used in this Stipulation, but not defined above, shall have the  
22 meaning ascribed to them in this Stipulation and the exhibits attached hereto.

## 23 II. RECITALS

24 3. On October 22, 2013, Plaintiffs Alba Morales and Lainie Cohen filed a complaint  
25 against Defendant in the U.S. District Court for the Eastern District of California. The Complaint  
26 alleged violations of (1) California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code  
27 § 17200 *et seq.*; (2) California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et*  
28 *seq.*; (3) Massachusetts’ Consumer Protection Act, Mass. Gen. Laws Ann. ch. 93A; and (4) various  
other state consumer protection laws, all of which were related to the labeling, advertising, and  
marketing of Unilever’s “TRESemmé Naturals” line of products.

1           4.       On December 3, 2013, Plaintiffs filed their First Amended Complaint, alleging the  
2 same causes of action with minor changes to the various other state consumer protection laws alleged,  
3 which Defendant moved to dismiss on January 14, 2014.

4           5.       On April 9, 2014, the Court granted in part and denied in part Defendant's Motion to  
5 Dismiss, upholding Plaintiffs' claims under the laws of California and Massachusetts, and dismissing  
6 Plaintiffs' claims under the other state laws alleged for which there was no representative named  
7 plaintiff.

8           6.       On April 30, 2014 Plaintiffs filed their Second Amended Class Action Complaint,  
9 which added Linda Clayman and Kenneth Drew as Plaintiffs, and added claims under the Florida  
10 Deceptive and Unfair Trade Practices Act, F.S.A. § 501.201, *et seq.* and New York General Business  
11 Law § 349.

12           7.       Defendant filed its answer to Plaintiffs' Second Amended Complaint on May 29, 2014.

13           8.       The parties conducted extensive pretrial discovery. This included (a) Defendant's  
14 production of over 150,000 pages of documents; (b) Defendant deposing three of the named Plaintiffs;  
15 and (c) Plaintiffs deposing two Unilever witnesses.

16           9.       On June 15, 2015, the Parties participated in a mediation before mediator Jonathan  
17 Marks. Following this mediation session, the Parties continued to litigate the case. In September 2015,  
18 the Parties requested that the Court suspend the litigation schedule to enable the Parties to engage in  
19 further settlement discussions.

20           10.      After further discussions concerning settlement, the Parties, with the aid of Jonathan  
21 Marks, reached an agreement in principle concerning the settlement of this action on February 5, 2016.

22           11.      Unilever has denied and continues to deny each and all of the claims alleged by  
23 Plaintiffs. Unilever has expressly denied and continues to deny all allegations of wrongdoing or  
24 liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could  
25 have been alleged, in the Action and states that its advertising and marketing of the Products was not  
26 false or misleading. Unilever's willingness to resolve the Action in the manner and upon the terms  
27 and conditions set forth in the Stipulation is based on, among other things: (a) the time and expense  
28 associated with litigating this Action through trial and any appeals; (b) the benefits of resolving the

1 Action, including limiting further inconvenience and distraction, disposing of burdensome litigation,  
2 and permitting Unilever to conduct its business unhampered by the distractions of continued litigation;  
3 and (c) the uncertainty and risks inherent in any litigation, regardless of legal merit.

4 12. Plaintiffs believe that their claims have merit and would ultimately prevail in Court.  
5 Plaintiffs recognize, however, that litigation entails significant risks, and that even meritorious claims  
6 may prove unsuccessful in whole or in part. Moreover, Plaintiffs recognize the considerable value of  
7 a sure and certain payment now, compared to the possibility of achieving a better result after years of  
8 additional litigation, including appeals.

9 **III. SETTLEMENT RELIEF**

10 13. In consideration of the covenants set forth herein, the Parties agree that all Settled  
11 Claims shall be fully, finally and forever compromised, settled, released, and discharged and the  
12 Action shall be dismissed with prejudice, upon and subject to the following terms and conditions:

13 **A. Defendant Agrees to Discontinue the Challenged Label**

14 14. In their Prayer for Relief, Plaintiffs requested that the Court issue an injunction  
15 prohibiting Defendant from continuing to represent that the Products were “naturals.” As a result of  
16 the Action, Unilever has discontinued producing the Products. Thus, no injunctive relief is necessary.

17 **B. Monetary Relief**

18 15. In Consideration of the Settlement, Defendant shall pay or cause to be paid into the  
19 Escrow Account the sum of \$3,250,000, in accordance with the terms set forth herein. This is an all-  
20 in settlement number, meaning that it includes all attorneys’ fees, Litigation Expenses, and costs of  
21 Notice and Administration. Upon the Effective Date of the Settlement, Defendant will not have any  
22 right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims  
23 filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses or  
24 the amounts to be paid to Authorized Claimants from the Net Settlement Fund, or for any other reason.

25 **IV. RELEASES**

26 16. As of the Effective Date, in consideration of the settlement obligations set forth herein,  
27 any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages of any kind,  
28 liabilities, debts, punitive or statutory damages, penalties, losses and issues of any kind or nature

1 whatsoever, asserted or unasserted, known or unknown (including, but not limited to, any and all  
 2 claims relating to or alleging deceptive or unfair business practices, false or misleading advertising,  
 3 intentional or negligent misrepresentation, negligence, concealment, omission, unfair competition,  
 4 promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes  
 5 of action arising under or based upon any statute, act, ordinance, or regulation governing or applying  
 6 to business practices generally, including, but not limited to, any and all claims relating to or alleging  
 7 violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*; California's  
 8 Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*; Massachusetts' Consumer Protection  
 9 Act, Mass. Gen. Laws Ann. ch. 93A; Florida Deceptive and Unfair Trade Practices Act, F.S.A.  
 10 § 501.201, *et seq.* and New York General Business Law § 349 (or any and all other federal, state,  
 11 and/or local statutes analogous or similar to the statutes cited herein)), arising out of or related to the  
 12 product representations complained of in this Action, whether legal, equitable, administrative, direct  
 13 or indirect, or any other type or in any other capacity, against any Released Party ("Released Claims")  
 14 shall be finally and irrevocably compromised, settled, released, and discharged with prejudice.

15 17. Each of the Releasing Parties hereby waives any and all rights and benefits arising out  
 16 of the facts alleged in the Action by virtue of the provisions of Civil Code § 1542, or any other  
 17 provision in the law of the United States, or any state or territory of the United States, or principle of  
 18 common law or equity that is similar, comparable or equivalent to Civil Code § 1542, with respect to  
 19 this release. The Releasing Parties are aware that Civil Code § 1542 provides as follows:

20 **A general release does not extend to claims which the creditor does not**  
 21 **know or suspect to exist in his favor at the time of executing the release,**  
 22 **which if known by him must have materially affected his settlement with**  
 23 **the debtor.**

24 The Releasing Parties expressly acknowledge that they may hereafter discover facts in addition to or  
 25 different from those which they now know or believe to be true with respect to the subject matter of  
 26 the Released Claims, but the Releasing Parties, upon the Effective Date, shall be deemed to have, and  
 27 by operation of law shall have, fully, finally and forever settled, released, and discharged any and all  
 28 Released Claims, known or unknown, suspected or unsuspected, whether or not concealed or hidden,  
 that now exist or heretofore have existed upon any theory of law or equity, including, but not limited  
 to, Released Claims based on conduct that is negligent, reckless, intentional, with or without malice,

1 or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such  
2 different or additional facts. The Parties agree that the Released Claims constitute a specific and not a  
3 general release.

4 18. The Releasing Parties shall be deemed to have agreed that the release set forth in ¶¶ 16-  
5 17 (the “Release”) will be and may be raised as a complete defense to and will preclude any action or  
6 proceeding based on the Released Claims.

7 19. As of the Effective Date, by operation of entry of judgment, the Released Parties shall  
8 be deemed to have fully released and forever discharged Plaintiffs, all other Class Members and  
9 Plaintiffs’ Counsel from any and all claims of abuse of process, malicious prosecution, or any other  
10 claims arising out of the initiation, prosecution or resolution of the Action, including, but not limited  
11 to, claims for attorneys’ fees, costs of suit or sanctions of any kind, or any claims arising out of the  
12 allocation or distribution of any of the consideration distributed pursuant to this Stipulation of  
13 Settlement.

14 **V. THE SETTLEMENT FUND**

15 **A. Creation of Settlement Fund and Escrow Account**

16 20. Plaintiffs’ Counsel shall direct the Claim Administrator to open an escrow account (the  
17 “Escrow Account”) at the Fund Institution following Preliminary Approval and act as the escrow agent  
18 (the “Escrow Agent”) for the Escrow Account.

19 21. Defendant shall deposit the full amount of the Settlement Fund into the Escrow  
20 Account on or before twenty (20) business days after the later of (a) entry of the Preliminary Approval  
21 Order, or (b) Plaintiffs’ Counsel providing to Defendant’s counsel all information necessary to  
22 effectuate a transfer of funds, including without limitation, wiring instructions on appropriate  
23 letterhead to include the bank name and address, ABA routing number, account name and number,  
24 and a signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in  
25 which the Escrow Account has been established.

26 22. Except as provided herein or pursuant to orders of the Court, the Settlement Fund shall  
27 remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall  
28 be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court



1 until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation  
2 and/or further order of the Court. The Escrow Agent shall invest any funds in excess of amounts likely  
3 to be needed to pay for costs of Notice in United States Treasury Bills having maturities of ninety (90)  
4 days or less, or money market mutual funds comprised of investments secured by the full faith and  
5 credit of the United States Government, or an account fully insured by the United States Government  
6 Federal Deposit Insurance Corporation (FDIC). Any other funds held in escrow may be held in an  
7 interest-bearing account insured by the FDIC or money market mutual funds comprised of investments  
8 secured by the full faith and credit of the United States Government or fully insured by the United  
9 States Government. All risks related to the investment of the Settlement Fund shall be borne by the  
10 Settlement Fund.

11 23. The Parties agree that the Settlement Fund is intended to be a qualified settlement fund  
12 within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiffs' Counsel, as administrator  
13 of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be  
14 responsible for filing or causing to be filed all informational and other tax returns as may be necessary  
15 or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-  
16 2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events  
17 shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the  
18 Settlement Fund as provided by paragraph 24 below. Plaintiffs' Counsel shall also be solely  
19 responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect  
20 to the Settlement Fund. Plaintiffs' Counsel shall timely make such elections as are necessary or  
21 advisable to carry out this paragraph, including, as necessary, making a "relation back election," as  
22 described in Treasury Regulation § 1.468B-1(j), to cause the qualified settlement fund to come into  
23 existence at the earliest allowable date, and shall take or cause to be taken all actions as may be  
24 necessary or appropriate in connection therewith.

25 24. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid without  
26 prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set  
27 forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all  
28 Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid

1 out of the Settlement Fund as provided herein. The Settlement Fund shall indemnify and hold  
2 Defendant harmless for any Taxes and related expenses of any kind whatsoever (including without  
3 limitation, taxes payable by reason of any such indemnification). Defendant shall notify Plaintiffs'  
4 Counsel promptly if it receives any notice of any claim for Taxes relating to the Settlement Fund.

5 25. Defendant shall have no responsibility for, interest in, or liability whatsoever with  
6 respect to the maintenance, investment or distribution of the Settlement Fund, the establishment or  
7 maintenance of the Escrow Account, the terms or administration of the Plan of Allocation or of any  
8 plan of allocation, the determination, administration, or calculation of Claims, the payment or  
9 withholding of Taxes, the distribution or disbursement of the Net Settlement Fund, the administration  
10 of the Settlement, or any other expenses or losses in connection with such matters. Without limiting  
11 the foregoing, the Settlement Fund shall be the sole source of Taxes, Notice and Administration Costs,  
12 Attorneys' Fees, Costs and Expenses, and there shall be no recourse against Defendant for any such  
13 expenses.

14 **B. Disbursements from the Settlement Fund**

15 26. The Settlement Fund shall be applied as follows:

- 16 (a) To reimburse or pay the costs reasonably and actually incurred by the Claim  
17 Administrator in connection with providing notice to the Class in accordance with the  
18 Notice Plan to be approved by the Court.
- 19 (b) To pay Attorneys' Fees, Costs and Expenses for Plaintiffs' Counsel in amounts to be  
20 determined by the Court.
- 21 (c) To reimburse or pay the costs reasonably and actually incurred by the Claim  
22 Administrator in connection with processing and paying Claims filed pursuant to the  
23 Settlement and otherwise assisting with administration of the Agreement.
- 24 (d) To pay costs and expenses associated with maintaining the Settlement Fund, including  
25 any taxes that may be owed by the Settlement Fund.
- 26 (e) To distribute to Class Members who submit Approved Claims to the Claim  
27 Administrator;
- 28 (f) If the amounts to be paid from the Settlement Fund do not equal or exceed \$3.25  
million, the remainder of the Settlement Fund (the "Settlement Fund Balance") shall  
be distributed in accordance with the provisions of Paragraph 43.

(g) If the amount to be paid from the Settlement Fund exceeds the amount remaining in the Settlement Fund after payment of all items set forth in subparagraphs (a)-(d) of this paragraph 26, all approved Class Member claims will be reduced pro rata, based on the respective dollar amounts of the Approved Claims, until the actual dollar amount paid from the Settlement Fund for all items in subparagraphs (a)-(e) of this paragraph 26 is equal to \$3.25 million.

**C. Payment of Notice Costs following Preliminary Approval**

27. Following entry of the Preliminary Approval Order, Plaintiffs' Counsel may direct that payment be made from the Escrow Account for reasonable and necessary costs of Notice in accordance with Paragraphs 46-48 without further approval from Defendant or further order of the Court. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice Costs actually paid or incurred will not be returned or repaid to Defendant.

**D. Claims Administration**

28. The Claim Administrator shall administer the Settlement under Plaintiffs' Counsels' supervision in accordance with this Stipulation and subject to the jurisdiction of the Court.

29. Class Members shall have the opportunity to submit a claim to the Claim Administrator during the Claim Submission Period. Class Members must fill out a Claim Form substantially in the form of Exhibit F and submit it as described in Exhibits C and F attached hereto. Class Members who properly and timely submit the Claim Form may recover for purchases of up to ten (10) bottles of the Products per household without the need to submit additional proof of purchase, and for more than ten bottles if they submit adequate proofs of purchase.

30. The claim process will be administered by a Claim Administrator according to the criteria set forth in the Plan of Allocation, and neither Plaintiffs' Counsel nor Defendant's Counsel shall participate in resolution of such claims.

31. The Claim Administrator shall approve or reject all claims according to the claims criteria set forth in the Plan of Allocation. The determination of claims shall occur during the Claim Review Period. The decision of the Claim Administrator shall be final and binding on Unilever and all Class Members submitting Claims, and neither Unilever nor such Class Members shall have the right to challenge or appeal the Claim Administrator's decision.

1           32.     The Claim Administrator shall provide periodic reports to Plaintiffs' Counsel and  
2 Defendant's Counsel regarding the progress of the claim process.

3           33.     The Claim Administrator shall exercise, in his or her discretion, all usual and customary  
4 steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the claims  
5 process. The Claim Administrator may, in his or her discretion, deny in whole or in part, any claim to  
6 prevent actual or possible fraud or abuse.

7           34.     Within 15 days after conclusion of the Claim Review Period, the Claim Administrator  
8 shall provide to Plaintiffs' Counsel and Defendant's Counsel a written final accounting and  
9 distribution plan identifying (a) each claimant whose claim was approved, including the dollar amount  
10 of and pro rata reduction required by ¶ 26(g) if required; (b) each claimant whose claim was rejected;  
11 (c) the dollar amount of the Net Settlement Fund to be disbursed to each recipient; and (d) a final  
12 accounting of all administration fees and expenses incurred by the Claim Administrator. No sooner  
13 than 20 days, but not later than 45 days after delivering the Distribution Plan, the Claim Administrator  
14 shall disclose the remaining amounts in the Settlement Fund according to the Distribution Plan and  
15 mail letters to all claimants with Rejected Claims explaining the rejection. In no event shall a Class  
16 Member's claim be paid until the conclusion of the Claim Review Period.

17           35.     If any distribution checks mailed to Class Members are returned as non-deliverable, or  
18 are not cashed within 90 days, or are otherwise not payable, any such funds shall be disbursed to the  
19 recipients in accordance with the provisions of Paragraph 43.

20           36.     The Net Settlement Fund shall be distributed to Authorized Claimants according to the  
21 Plan of Allocation or according to such other plan of allocation as the Court approves. Unilever shall  
22 have no responsibility or liability whatsoever for allocation of the Net Settlement Fund.

23           37.     The allocation of the Net Settlement Fund among Authorized Claimants is a matter  
24 separate and apart from the proposed Settlement between the Settling Parties, and any decision by the  
25 Court concerning the Plan of Allocation shall not affect the validity or finality of the Settlement.  
26 Plaintiffs may not terminate the Stipulation based on the Court's or any court's ruling with respect to  
27 the Plan of Allocation or any plan of allocation in the Action.  
28

1           38. All claims must be submitted by the date set by the Court in the Preliminary Approval  
2 Order and specified in the Notice, unless such deadline is extended by Order of the Court; provided,  
3 however, that, with the consent of Plaintiffs' Counsel, an otherwise valid claim may be considered  
4 timely if it is submitted no later than thirty (30) days after the Court enters Judgment. Any Class  
5 Member who fails to submit a timely claim shall be forever barred from receiving any distribution  
6 from the Net Settlement Fund or payment pursuant to this Stipulation, but shall in all other respects  
7 be bound by all of the terms of this Stipulation, including the terms of the Judgment and the releases  
8 provided for herein. Any Claim submitted by a Class Member will not be deemed to bar, waive or  
9 otherwise affect that Class Member's ability to object to all or any aspect of the Settlement.

10           39. All Requests for Exclusion must be submitted by the date set by the Court in the  
11 Preliminary Approval Order and specified in the Notice.

12           40. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with  
13 respect to the Claimant's Claim, including, but not limited to, the releases provided for herein and in  
14 the Judgment.

15           41. Payment pursuant to the Class Distribution Order shall be final and conclusive against  
16 any and all Class Members. All Class Members whose Claims are not approved by the Court shall be  
17 barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound  
18 by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the  
19 releases provided for herein and therein.

20           42. The actual and reasonable costs associated with the administration of the claim process  
21 shall be paid from the Settlement Fund as described in ¶¶ 25 and 26(c). Such amounts shall not be  
22 refunded to Unilever in the event the settlement is terminated pursuant to ¶ 54.

23           43. Any and all amounts remaining in the Settlement Fund after payment of all claims and  
24 liabilities shall be disbursed to an appropriate non-profit or civic entity agreed to by the Parties and  
25 approved by the Court for use in a manner that the Court shall determine will be an appropriate vehicle  
26 to provide the next best use of compensation to Class Members arising out of claims that have been  
27 made by Plaintiffs in this Action and as consideration for the extinguishment of those claims.

**VI. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

44. Solely for the purposes of the settlement of this Action, the Parties agree to the certification of a Class of all persons or entities in the United States who purchased the Products. Plaintiffs shall make this request for certification to the U.S. District Court for the Eastern District of California, assigned to the Honorable William B. Shubb; and Plaintiffs' Counsel shall request the Court to enter an order, which, among other things, certifies the Class for settlement purposes, as set forth in this paragraph. In the event this Stipulation of Settlement and the settlement proposed herein is not finally approved, or is terminated, canceled, or fails to become effective for any reason whatsoever, this class certification, to which the parties have stipulated solely for the purpose of the settlement of the Action, shall be null and void and the Parties will revert to their respective positions immediately prior to the execution of this Stipulation of Settlement. Under no circumstances may this Stipulation of Settlement be used as an admission or as evidence concerning the appropriateness of class certification in these or any other actions against Unilever.

**VII. CLASS NOTICE AND COURT APPROVAL**

**A. Notice Order; Preliminary Approval**

45. Within 30 days after the execution of the Stipulation of Settlement, Plaintiffs shall apply to the Court for a Preliminary Approval Order substantially in the form and content of Exhibit B, preliminarily approving the settlement, scheduling a final approval hearing, approving the contents and method of dissemination of the proposed Publication Notice and Class Notice Package, and conditionally certifying the Class for settlement purposes as defined in ¶ 44.

**B. The Notice Program**

46. Plaintiffs' Counsel shall arrange a notice program that consists of notice by publication (the Publication Notice, attached hereto as Exhibit C) which generally describes the settlement and directs all interested parties to a detailed Class Notice available on the Settlement Website and, at the request of interested parties, by U.S. Mail. Plaintiffs' Counsel shall also place a link to the Settlement Website on the website of Iazard Nobel LLP for a period starting from the date the Publication Notice is published, and continuing no longer than the end of the Claim Submission Period. The cost

1 associated with the Publication Notice and Class Notice Package shall be paid from the Settlement  
2 Fund as described in ¶¶ 25 and 26(a) except those costs associated with posting and maintaining notice  
3 on Plaintiffs' Counsel's Internet website.

4 47. **Publication Notice:** Commencing at least 90 days before the Final Approval Hearing  
5 or some other date as set by the Court, the Claim Administrator shall cause to be published the  
6 Publication Notice substantially in the form and content of Exhibit C pursuant to the Notice Plan  
7 described in Exhibit D.

8 48. **Class Notice Package:** The Class Notice Package shall be available in electronic format  
9 on the Settlement Website and mailed as a hard copy by the Claim Administrator upon request. The  
10 Parties are not currently aware of any other litigation involving the same claims as the Action.  
11 However, should any of the parties become aware, within the Claim Submission Period, of pending  
12 litigation that concerns false advertising claims related to the Products, they will notify the other  
13 Parties and Defendant's Counsel shall direct the Claim Administrator to mail the Class Notice Package  
14 to counsel for the plaintiff(s) in such pending litigation. Each Class Notice Package shall contain a  
15 Class Notice substantially in the form of Exhibit E and the Claim Form substantially in the form of  
16 Exhibit F.

17 49. **Notice of Deadlines:** Both the Publication Notice and the Class Notice shall inform  
18 Class Members of the dates by which they must file any objections, requests for exclusions, and submit  
19 a Claim Form. Class Members will have the opportunity to submit a Claim Form during the period  
20 beginning on the date notice to the Class is first published, and continuing until 5 days after the date  
21 of the Final Approval Hearing.

22 50. **Final Approval Hearing:** No later than twenty-eight (28) calendar days prior to the  
23 Final Approval Hearing, and unless the Settlement has otherwise been terminated pursuant to this  
24 Stipulation, Plaintiffs shall move for (a) final approval of the Settlement pursuant to Rule 23(e) of the  
25 Federal Rules of Civil Procedure; (b) entry of a Judgment substantially in the form annexed as Exhibit  
26 G; (c) approval of the Plan of Allocation; and (d) an award of attorneys' fees, expenses and Class  
27 Representative Awards for the Plaintiffs.  
28



1           51. The Parties shall request that after notice is given, the Court hold a Final Approval  
2 Hearing for the purpose of determining whether final approval of the settlement of the Action as set  
3 forth herein is fair, adequate, and reasonable to the Class Members, and enter a Final Settlement Order  
4 and Judgment dismissing the Action with prejudice substantially in the form and content of Exhibit  
5 G.

6 **VIII. CONDITIONS; TERMINATION**

7           52. Within ten (10) business days of: (a) the Court's entry of an order expressly declining  
8 to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this  
9 Stipulation or any material part of it; (c) the Court's declining to enter the Judgment in any material  
10 respect; or (d) the date upon which the Judgment is modified or reversed in any material respect and  
11 such modification or reversal becomes final, the Parties shall each have the right to terminate the  
12 Settlement and this Stipulation, by providing written notice to the other of an election to do so;  
13 *provided, however*, that any decision, ruling, or order solely with respect to an application for  
14 attorneys' fees, litigation costs and expenses or incentive awards, or to any plan of allocation, shall  
15 not be grounds for termination.

16           53. This Settlement shall become final on the first date after which all of the following  
17 events and conditions have occurred or been waived (the "Effective Date"):

- 18           a. The Court has preliminarily approved this Stipulation (including all attachments),  
19 the settlement set forth herein, and the method for providing notice to the Class; the  
20 Court has entered a Final Settlement Order and Judgment in the Action; and
- 21           b. One of the following has occurred:
- 22               i. The time to appeal from such orders has expired and no appeals have been  
23 timely filed;
- 24               ii. If any such appeal has been filed, it has finally been resolved and the appeal has  
25 resulted in an affirmation of the Final Settlement Order and Judgment; or
- 26               iii. The Court, following the resolution of any such appeals, has entered a further  
27 order or orders approving the Settlement of the Action on the terms set forth in  
28 this Stipulation of Settlement, and either no further appeal has been taken from  
such order(s) or any such appeal has resulted in affirmation of the settlement  
order.



1           54. If the Settlement is not made final (per the provisions of ¶ 53) this entire Stipulation  
2 shall become null and void, except that the Parties shall have the option to agree in writing to waive  
3 the event or condition and proceed with this Settlement, in which event the Stipulation of Settlement  
4 shall be deemed to have become final on the date of such written agreement.

5           55. If the Settlement is not made final, any balance remaining in the Escrow Account will  
6 be returned to Defendant.

7 **IX. COSTS, FEES AND EXPENSES**

8 **A. Attorneys' Fees, Costs and Expenses**

9           56. No later than twenty-eight (28) calendar days prior to the Final Approval Hearing,  
10 Plaintiffs' Counsel may apply to the Court for an award of attorneys' fees in an amount not to exceed  
11 thirty percent (30%) of the value of the Settlement Fund as well as for reimbursement of litigation  
12 costs and expenses actually incurred ("Attorneys' Fees, Costs and Expenses"). Unilever will not  
13 oppose Plaintiff's Counsel's application, so long as it does not ask for more than thirty percent (30%)  
14 of the Settlement Fund. Unilever shall have no responsibility for and shall take no position with  
15 respect to the allocation among Plaintiffs' Counsel, and/or any other person or entity who may assert  
16 some claim thereto, of any award of Attorneys' Fees, Costs and Expenses that the Court may make in  
17 the Action.

18           57. Attorneys' Fees, Costs and Expenses awarded by the Court shall be payable as set forth  
19 above, notwithstanding the existence of appeal therefrom, or collateral attack on the settlement or any  
20 part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to  
21 Unilever, if and when, as a result of any appeal and/or further proceedings on remand, or successful  
22 collateral attack, the fee or award of expenses is reduced or reversed. Any Attorneys' Fees, Costs and  
23 Expenses that are awarded by the Court shall be paid to Plaintiffs' Counsel with the Court's approval  
24 from the Escrow Account, immediately upon award (but in no event before the entry of the Judgment),  
25 notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom,  
26 or collateral attack on the Settlement or any part thereof; provided, however, that Plaintiffs' Counsel  
27 shall make appropriate refunds or repayments into the Escrow Account, plus accrued interest at the  
28 same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms

1 of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful  
2 collateral attack, the award of Attorneys' Fees, Costs and Expenses is reduced or reversed. Plaintiffs'  
3 Counsel shall make the appropriate refund or repayment in full no later than seven (7) business days  
4 after receiving notice of the termination of the Settlement or notice of any reduction of the award of  
5 Attorneys' Fees, Costs and Expenses.

6 58. An award of Attorneys' Fees, Costs and Expenses is not a necessary term of this  
7 Stipulation and is not a condition of this Stipulation. No decision by the Court or any court on any  
8 application for an award of attorneys' fees, litigation costs or expenses shall affect the validity or  
9 finality of the Settlement. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Stipulation  
10 or the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees,  
11 litigation costs or expenses, although Plaintiffs and Plaintiffs' Counsel reserve the right to appeal a  
12 ruling concerning such fees and expenses without such appeal affecting the validity of the Settlement.

13 59. Plaintiffs' Counsel, in their sole discretion, shall allocate and distribute the award of  
14 Attorneys' Fees, Costs and Expenses among Plaintiffs' Counsel. In the event that any Class Members  
15 object to any aspect of this Stipulation of Settlement, under no circumstances shall Unilever shall be  
16 obligated or required to pay Attorneys' Fees, Costs and Expenses claimed by or associated with such  
17 objectors (if any).

18 **B. Class Representative Awards**

19 60. Plaintiffs intend to apply to the Court for discretionary Class Representative Awards for  
20 their work on behalf of the Class in this litigation. Plaintiffs expressly recognize that their approval  
21 of this Settlement is not in any way contingent upon the Court approving their application for payment  
22 of Class Representative Awards in any amount. Unilever agrees not to oppose Plaintiffs' application  
23 for Class Representative Awards so long as the application does not ask for Class Representative  
24 Awards in an aggregate amount that exceeds \$15,000 for all Plaintiffs, and agrees further that it will  
25 pay any such Class Representative Awards, in an aggregate amount not to exceed \$15,000 for all  
26 Plaintiffs, separate and apart from the \$3,250,000 payment to the Settlement Fund. Such awards shall  
27 be paid within 30 days after the Effective Date or within 30 days after the issuance of an order awarding  
28

1 such amount, whichever is later. In the event that a Class Member appeals the award of Class  
2 Representative Awards, Unilever shall not take a position contrary to this Stipulation.

3 61. Class Representative Awards are not a necessary term of this Stipulation and are not a  
4 condition of this Stipulation. No decision by the Court or any court on any application for Class  
5 Representative Awards shall affect the validity or finality of the Settlement. Plaintiffs and Plaintiffs'  
6 Counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any  
7 appellate court's ruling with respect to Class Representative Awards, although Plaintiffs reserve the  
8 right to appeal a ruling concerning Class Representative Awards without such appeal affecting the  
9 validity of the Settlement.

10 **X. COVENANTS AND WARRANTIES**

11 **A. Authority to Enter Agreement**

12 62. Plaintiffs and Defendant each covenant and warrant that they have the full power and  
13 authority to enter into this Stipulation of Settlement and to carry out its terms, and that they have not  
14 previously assigned, sold, or otherwise pledged or encumbered any right, title or interest in the claims  
15 released herein or their right, power and authority to enter into this Stipulation of Settlement. Any  
16 person signing this Stipulation of Settlement on behalf of any other person or entity represents and  
17 warrants that he or she has full power and authority to do so and that said other person or entity is  
18 bound hereby.

19 **B. Represented by Counsel**

20 63. In entering into this Stipulation of Settlement, the Parties represent they have relied upon  
21 the advice of attorneys, who are the attorneys of their own choice, concerning the legal consequences  
22 of this Stipulation of Settlement; that the terms of this Stipulation of Settlement have been explained  
23 to them by their attorneys; and that the terms of this Stipulation of Settlement are fully understood and  
24 voluntarily accepted by the Parties.

25 **C. No Other Actions**

26 64. As of the date of executing this Stipulation, Plaintiffs and Plaintiffs' Counsel represent  
27 and warrant that they are not aware of any action or potential action other than the Action that (1)  
28 raises allegations similar to those asserted in the Action, and (2) is pending or is expected to be filed

1 in any forum by any person or entity against Unilever. Until the Effective Date, Plaintiffs and  
2 Plaintiffs' Counsel shall have a continuing duty to notify Defendant's Counsel if Plaintiffs or  
3 Plaintiffs' Counsel become aware of any such action.

4 **XI. MISCELLANEOUS**

5 **A. Governing Law**

6 65. The interpretation and construction of this Stipulation of Settlement shall be governed  
7 by the laws of the State of California.

8 **B. Counterparts**

9 66. This Stipulation of Settlement may be executed in counterparts. All counterparts so  
10 executed shall constitute one agreement binding on all of the Parties hereto, notwithstanding that all  
11 Parties are not signatories to the original or the same counterpart.

12 **C. No Drafting Party**

13 67. Any statute or rule of construction stating that ambiguities are to be resolved against the  
14 drafting party shall not be employed in the interpretation of this Stipulation of Settlement, and the  
15 Parties agree that the drafting of this Stipulation has been a mutual undertaking.

16 **D. Entire Agreement**

17 68. This Stipulation and its exhibits constitute the entire agreement among the Parties  
18 concerning this Settlement, and no representations, warranties or inducements have been made by any  
19 Settling Party concerning this Settlement or the Action other than those contained and memorialized  
20 in this Stipulation and the exhibits hereto. Without limiting the foregoing, Unilever and Plaintiffs each  
21 expressly acknowledge that in entering into the Settlement they are relying solely on their own  
22 investigation and analysis, and are not relying on any statements or representations made, or  
23 information provided, by the other Party (whether in connection with the negotiation of the Settlement  
24 or otherwise) other than those expressly set forth in this Stipulation. All of the following exhibits  
25 attached hereto are hereby incorporated by reference as though fully set forth herein:

26 **Exhibit A:** Plan of Allocation

27 **Exhibit B:** Preliminary Approval Order

28 **Exhibit C:** Publication Notice

**Exhibit D:** Notice Plan

**Exhibit E:** Class Notice

**Exhibit F:** Claim Form

**Exhibit G:** Judgment & Final Approval Order

**E. Good Faith**

69. The Parties agree not to assert in any forum that the Action was brought by Plaintiffs or Plaintiffs' Counsel, or defended by Unilever or Unilever's Counsel, in bad faith or without a reasonable basis. The Parties agree that the amount paid and the other terms of this Settlement were negotiated at arm's length and in good faith and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel. The Parties shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure, or any other law or rule governing litigation conduct, relating to the maintenance, defense or settlement of the Action.

**F. Headings**

70. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

**G. Stay of Litigation**

71. The parties stipulate and agree, subject to the Court's approval, that all litigation activity in the Action, except that contemplated herein and in the Preliminary Approval Order, the Notice, and the Judgment, shall be stayed, and all hearings, deadlines, and, other proceedings in the Action, except a preliminary approval hearing (if any) and the Final Approval Hearing, shall be taken off calendar.

**H. Retained Jurisdiction**

72. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

**I. Cooperation**

73. Each of the Parties hereto shall execute such additional pleadings and other documents and take such additional actions as are reasonably necessary to effectuate the purposes of this Stipulation of Settlement.

**J. Amendments in Writing**

74. This Stipulation of Settlement may only be amended in writing signed by Plaintiffs' Counsel and Defendant's Counsel.

**K. Binding Effect; Successors and Assigns**

75. This Stipulation of Settlement shall inure to the benefit of, and shall be binding upon, the Parties hereto as well as the legal successors and assigns of the Parties hereto and each of them.

**L. Construction**

76. As used in this Stipulation of Settlement, the terms "herein" and "hereof" shall refer to this Stipulation in its entirety, including all exhibits and attachments, and not limited to any specific sections. Whenever appropriate in this Stipulation of Settlement, the singular shall be deemed to refer to the plural, and the plural to the singular, and pronouns of any gender shall be deemed to include both genders.

**M. Waiver in Writing**

77. No waiver of any right under this Stipulation of Settlement shall be valid unless in writing. Any condition in this Stipulation may be waived by the party entitled to enforce the condition in a writing signed by that party or its counsel. The waiver by any party of any breach of this Stipulation by any other party shall not be deemed a waiver of the breach by any other party, or a waiver of any other prior or subsequent breach of this Stipulation by that party or any other party. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

**N. Computation of Time**

78. All time periods set forth herein shall be computed in business days, if seven days or fewer, and calendar days, if eight days or more, unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal or court holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the office of the clerk of the Court inaccessible, in which event the period

shall run until the end of the next day as not one of the aforementioned days. As used in this subsection, “legal or court holiday” includes New Year’s Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the State of California.

**O. No Admission of Liability**

79. Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Stipulation, including exhibits, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof; and

(b) is not, and shall not be deemed, described, construed, offered or received as evidence of any presumption, concession, or admission by any person or entity of the truth of any fact alleged in the Action; the validity or invalidity of any claim or defense that was or could have been asserted in the Action or in any litigation; the amount of damages, if any, that would have been recoverable in the Action; or any liability, negligence, fault, or wrongdoing of any person or entity.

**P. Notice**

80. Any notice to the Parties required by this Stipulation of Settlement shall be given in writing by certified mail, return receipt requested to:

Mark P. Kindall  
**IZARD NOBEL LLP**  
29 South Main Street, Suite 305  
West Hartford, CT 06107  
Telephone: (860) 493-6292  
Facsimile: (860) 493-6290

Jay P. Lefkowitz, P.C.  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, N.Y. 10022

Clerk of Court  
Eastern District of California  
Robert T. Matsui United States Courthouse  
501 I Street  
Sacramento, 95814

1           **Q. CAFA Notice**

2           81. The Class Action Fairness Act of 2005 (“CAFA”) requires Unilever to inform certain  
3 federal and state officials about this Settlement. *See* 28 U.S.C. § 1715.1. The Parties will direct the  
4 Claim Administrator, on behalf of Unilever, to serve notice upon the appropriate officials within ten  
5 (10) calendar days after the Parties file the proposed Settlement with the Court in accordance with 28  
6 U.S.C. § 1715(b).

7           **R. Confidentiality**

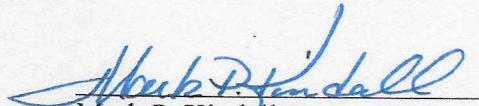
8           82. The Stipulated Protective Order ordered by the Court on October 7, 2014 [ECF No. 41]  
9 shall continue in effect after the Effective Date. Without limiting the forgoing, Plaintiffs and their  
10 Counsel agree (a) not to disclose to a non-party any “Confidential” information learned from Unilever  
11 during the course of discovery in this Action; (b) not to use any information learned from Unilever  
12 during discovery in this action in any other litigation or proceeding; and (c) to destroy documents  
13 designated as “Confidential” in accordance with the Confidentiality Stipulation and Protective Order.



1 IN WITNESS WHEREOF, the parties have executed this Stipulation of Settlement as of the  
2 dates set forth below.

3  
4 *On behalf of Plaintiffs Lainie Cohen, Alba Morales, Linda Clayman and Kenneth Drew:*

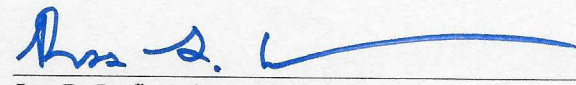
5  
6  
7 DATED: May 27, 2016

  
Mark P. Kindall  
IZARD NOBEL LLP  
29 South Main Street, Suite 350  
West Hartford, CT 06107

*Counsel for Plaintiffs*

11  
12 *On behalf of Defendant Conopco, Inc. d/b/a Unilever:*

13  
14  
15 DATED: May 27, 2016

  
Jay P. Lefkowitz, P.C.  
Ross L. Weiner  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022

*Counsel for Defendant*

# EXHIBIT A

### **PLAN OF ALLOCATION**

The Net Settlement Fund<sup>1</sup> will be distributed to Authorized Claimants who timely file a Claim Form. Each Authorized Claimant will receive a maximum of five (5) dollars for each bottle of any of the Products purchased, subject to the following limitations:

1. Authorized Claimants may recover for purchases of up to ten (10) bottles of the Products *per household* by submitting a Claim Form that attests to their purchases, without the need to submit additional proof of purchase. If multiple claims are filed per household that exceed this maximum, the first claim or group of claims received that reach this maximum will receive payment for that household.
2. Authorized Claimants may recover for the purchase of more than ten (10) bottles of the Products per household if they submit adequate proof of a greater number of purchases along with their Claim Forms. Valid proof will be receipts or printed statements from store loyalty programs showing the location, date, quantity and cost of purchase of each Product. The Claim Administrator will review the validity of the proof to ensure the purchases are eligible per the class definition. If the supporting documentation is deemed valid, the Claim Administrator will also check to ensure the same proof is not being utilized by additional Claimants.
3. The Claim Administrator shall approve or reject all claims according to the criteria set forth above. The Claim Administrator's determination shall be final and binding on Unilever and all Class Members submitting Claims, and neither Unilever nor such Class Members shall have the right to challenge or appeal the Claim Administrator's decision.
4. The actual amount available for each Authorized Claimant, whether or not proof of purchase is submitted with a Claim Form, will not be determined until after the Settlement has become final and all Claims Forms have been received and processed. When the Claim Administrator has completed its review of all timely-filed Claims, the Claim Administrator will apportion the Net Settlement Fund among Approved Claimants on the following basis, and pay each Approved Claim accordingly.
  - a. If the aggregate amount of all Approved Claims is *less than or equal to* the total amount of the Net Settlement Fund, the Claim Administrator shall pay each Approved Claim at the full value the Claim Administrator has approved (*i.e.* \$5 per bottle, subject to the limitations described above).
  - b. If the aggregate amount of all Approved Claims is *greater than* the total amount of the Net Settlement Fund, the Claim Administrator shall reduce all Approved Claims *pro rata* until they are equal to the total amount of the Net Settlement fund.
5. All checks issued to Authorized Claimants must be cashed within ninety (90) days.
6. If any funds remain in the Settlement Fund after 90 days have passed from the time that the Claim Administrator issues the last check to an Authorized Claimant, the remainder of the Fund shall be distributed to an appropriate non-profit or civic entity agreed to by the Parties and approved by the Court for use in a manner that the Court shall determine

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<sup>1</sup> Capitalized terms are defined in the Settlement Agreement.

will be an appropriate vehicle to provide the next best use of compensation to Class Members arising out of claims that have been made by Plaintiffs in this Action and as consideration for the extinguishment of those claims, in accordance with the terms of the Settlement. No remaining funds will be returned to Defendant.

### ***Illustrations***

The following illustration shows what six hypothetical claimants, Alana, Bob, Charlene, Dylan, Eileen and Fernando would receive, depending on how many purchases of Products meeting the criteria set out in Paragraph 1 and 2 above were made by Approved Claimants.

- Alana's household purchased four bottles of TRESemmé Naturals Radiant Volume Shampoo. All four purchases would qualify, regardless of whether she submits any proof of purchase.
- Bob's household purchased eight bottles of TRESemmé Naturals Nourishing Moisture Shampoo and eight bottles of TRESemmé Naturals Nourishing Moisture Conditioner, but Bob did not submit any proof of purchase. Ten of the 16 total purchases would qualify.
- Charlene's household purchased 16 bottles of the Products, but she only submitted valid proofs of purchase for two bottles of each of the six different Products, covering a total of 12 purchases. Twelve of Charlene's 16 purchases would qualify.
- Dylan's household purchased two bottles of each of the six Products (for a total of 12 purchases), and he submitted proof of purchase for all 12, but four of the proofs of purchase did not contain information as to quantity, cost or date of purchase. Ten of the 12 purchases would qualify (because, while only eight of Dylan's proofs of purchase meet the requirements of paragraph 2, 10 of the 12 purchases are reimbursable under paragraph 1).
- Eileen submitted a Claim Form showing four purchases of TRESemmé Naturals Vibrantly Smooth Shampoo and four purchases of TRESemmé Naturals Vibrantly Smooth Conditioner, for a total of eight purchases. Fernando submitted a Claim Form for four purchases of TRESemmé Naturals Radiant Volume Shampoo and four purchases of TRESemmé Naturals Radiant Volume Conditioner, also for a total of eight purchases. Neither Eileen nor Fernando submitted any proofs of purchase. Upon review, the Claim Administrator determines that Eileen and Fernando are in the same household. Eileen submitted her claim first. Eileen's eight purchases would qualify and two of Fernando's would as well.

If the total value of the Net Settlement Fund for distribution was \$2,000,000, and the Claim Administrator approved claims on the purchase of fewer than 400,000 Products in total, Alana would receive \$20, Charlene would receive \$60, Fernando would receive \$10, and Bob, Dylan and Eileen would each receive \$50. On the other hand, if the total value of the Net Settlement Fund for distribution was \$2,000,000, and the Claim Administrator approved claims on the purchase of 1,000,000 Products in total, Alana would receive \$8, Charlene would receive \$24, Fernando would receive \$4, and Bob, Dylan and Eileen would each receive \$20.

# EXHIBIT B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAINIE COHEN, ALBA MORALES, LINDA  
CLAYMAN and KENNETH DREW, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CONOPCO, INC. D/B/A UNILEVER,

Defendant.

Case No. 2:13-cv-02213-WBS

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT,  
CONDITIONALLY CERTIFYING THE  
CLASS, PROVIDING FOR NOTICE  
AND SCHEDULING ORDER**

WHEREAS, Plaintiffs in the action *Morales, et al. v. Conopco, Inc.*, filed on October 10, 2013, in the U.S. District Court for the Eastern District of California and assigned Case No. 2:13-cv-02213, and Defendant Conopco, Inc. d/b/a Unilever have entered into a Stipulation of Settlement, filed May 27, 2016 after arm's-length settlement discussions (the "Settlement" or "Stipulation");

AND, WHEREAS, the Court has received and considered the Stipulation, including the accompanying exhibits;

AND, WHEREAS, the Parties have made an application for an order preliminarily approving the settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set forth in the Stipulation;

AND, WHEREAS, the Court has reviewed the Parties' application for such order, and has found good cause for same.

NOW, THEREFORE, IT IS HEREBY ORDERED:



**A. The Class Is Provisionally Certified**

1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only, the Court hereby provisionally certifies the following Class:<sup>1</sup>

All individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the “Products”). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members, (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Products for the purpose of resale.

2. With respect to the Class and for settlement purposes only, the Court preliminarily finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representatives and Class Counsel; (e) predominance of common questions of fact and law among the Class; and (f) superiority. Provisional certification of a Class pursuant to the terms of the Settlement shall not constitute and does not constitute, and shall not be construed or used as, an admission, concession, or declaration by or against Defendant that (except for the purposes of the Settlement) this action or any other action is appropriate for class treatment under Fed. R. Civ. P. 23, or any similar federal or state class action statute or rule, for litigation purposes.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints the Plaintiffs in the Action Alba Morales, Lainie Cohen, Linda Clayman and Kenneth Drew, as class representatives.

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<sup>1</sup> All capitalized terms in this Order shall have the same meaning as the defined terms in the Stipulation.

4. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court hereby appoints the law firm of IZARD NOBEL LLP as class counsel and the law firm of BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER, LLP as liaison counsel for the Class.

**B. The Settlement Is Preliminarily Approved and Final Approval Schedule Set**

5. The Court preliminarily finds that (a) the proposed Settlement resulted from extensive arm's-length negotiations with the assistance of an experienced mediator, (b) the Settlement was executed only after Class Counsel had conducted appropriate investigation and discovery regarding the strengths and weaknesses of Plaintiffs' claims, (c) Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate, and (d) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Class. Having considered the essential terms of the Settlement under the recommended standards for preliminary approval of settlements as set forth in relevant jurisprudence, the Court finds that those whose claims would be settled, compromised, dismissed, and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters. Accordingly, the Court preliminarily approves the Stipulation and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval Hearing on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., at the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA, in the Courtroom of the Honorable William B. Shubb, for the following purposes:

- a. making a final determination as to whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, the Class should be certified for purposes of effectuating the Settlement;
- b. making a final determination as to whether Plaintiffs should be appointed Class Representatives, IZARD NOBEL LLP should be appointed as class counsel under Rule 23(g) and BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER, LLP as liaison counsel for the Class;



- c. making a final determination as to whether Notice provided in accordance with the Notice Plan and preliminarily approved herein (a) constitutes the best practicable notice; (b) constitutes notice reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- d. making a final determination as to whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. making a final determination as to whether the proposed Plan of Allocation should be approved;
- f. considering the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as provided for under the Stipulation;
- g. considering the applications of Plaintiffs for class representative incentive awards, as provided for under the Stipulation;
- h. considering whether the Court should enter the [Proposed] Final Settlement, Order and Judgment;
- i. considering whether the release of the Released Claims as set forth in the Stipulation should be provided; and
- j. ruling upon such other matters as the Court may deem just and appropriate.

6. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Class Members.

7. The Parties may further modify the Stipulation prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the Settlement provided thereunder. The Court may approve the Stipulation with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

8. All papers in support of the Settlement and any application for an award of Attorneys' Fees, Costs and Expenses and/or Class Representative Awards must be filed with the Court and served at least thirty-five (35) days prior to the Final Approval Hearing.

**C. The Court Approves the Form and Method of Class Notice**

9. The Court approves, as to form and content, the proposed Publication Notice and Class Notice (collectively the “Notice”), which are Exhibits C and E, respectively, to the Stipulation.

10. The Court finds that the proposed Publication Notice and Class Notice fairly and adequately: (a) describe the terms and effects of the Settlement and the Plan of Allocation; (b) notify the Class that Class Counsel will seek Attorneys’ Fees, Costs and Expenses from the Settlement Fund; (c) notify the Class that the four (4) Named Plaintiffs will request that the Court approve Class Representative Awards, not to exceed a total amount of \$15,000 for all Class Representatives, for their services in such capacity, to be paid by Defendant separate and apart from Defendant’s payment of \$3.25 million to the Settlement Fund; (d) give notice to the Class of the time and place of the Final Approval Hearing; and (d) describe how the recipients of the Class Notice may object to any of the relief requested, opt out of the Settlement, and/or file claims.

11. The Court finds that the distribution of Notice substantially in the manner and form set forth in the Notice Plan attached to the Stipulation as Exhibit D meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

12. The Court approves the designation of KCC Class Action Services LLC to serve as the Court-appointed Claim Administrator for the Settlement. The Claim Administrator shall cause the Publication Notice to be published, disseminate Class Notice, and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Stipulation and this Order under the direction and supervision of the Court.

13. The Court directs the Claim Administrator to establish a Settlement Website, on which it will make available copies of this Order, Class Notice, Claim Forms (that may be downloaded and submitted online, by mail, or by facsimile), the Stipulation and all Exhibits

thereto. The Settlement Website will list a toll-free hotline, as well as other information that may be of assistance to Class Members or required under the Stipulation. The Class Notice and Claim Forms shall be made available to Class Members through the Settlement Website on the date notice is first published and continuously thereafter through the Effective Date (and on the websites of Class Counsel at their options during the same period).

14. The Claim Administrator is ordered to complete publication of the Publication Notice on or about ninety (90) days before the Final Approval Hearing.

15. The costs of Notice, processing of Class Members' claims, creating and maintaining the Settlement Website, and all other Claim Administrator and Notice expenses shall be paid from the Settlement Fund in accordance with the applicable provisions of the Stipulation. In the event that the Settlement is not finally approved, or is terminated pursuant to the terms of this Stipulation, all Notice Costs actually paid or incurred will not be returned or repaid to Defendant.

**D. Procedure for Class Members to Participate in the Settlement**

16. The Court approves the Parties' proposed Claim Form. Any Class Member who wishes to participate in the Settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claim Administrator no later than five (5) days after the date of the Final Approval Hearing, which date will be specifically identified in the Claim Form. Such deadline may be further extended without notice to the Class by written agreement of the Parties.

17. The Claim Administrator shall have the authority to accept or reject claims in accordance with the Stipulation, including the Claims Administration Protocols.

18. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class Members who do not enter an appearance will be represented by Class Counsel.

**E. Procedure for Requesting Exclusion from the Class**

19. All Class Members who do not timely exclude themselves from the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

20. Any person or entity falling within the definition of the Class may, upon his, her or its request, be excluded from the Class. Any such person or entity must submit a request for exclusion to the Clerk of the Court c/o the Class Action Administrator, postmarked or delivered no later than twenty-one (21) days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. Requests for exclusion purportedly filed on behalf of groups of persons/or entities are prohibited and will be deemed to be void.

21. Any Class Member who does not send a signed request for exclusion postmarked or delivered on or before the time period described above will be deemed to be a Class Member for all purposes and will be bound by all judgments and further orders of this Court related to the Settlement of this Action and by the terms of the Settlement, if finally approved by the Court. The written request for exclusion must request exclusion from the Class, must be signed by the potential Class Member and include a statement indicating that the person or entity is a member of the Class. All persons or entities who submit valid and timely requests for exclusion in the manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound by the Stipulation or the Final Judgment and Order.

22. A list reflecting all requests for exclusions shall be filed with the Court by the parties at or before the Final Approval Hearing.

**F. Procedure for Objecting to the Settlement**

23. Any Class Member who desires to object either to the Settlement, application for attorneys' fees and expenses, or Class Representative Awards must timely file with the Clerk of this Court and timely serve on the Parties' counsel by hand or first-class mail a notice of the

1 objection(s) and the grounds for such objections, together with all papers that the Class Member  
2 desires to submit to the Court no later than twenty-one (21) days prior to the date of the Final  
3 Approval Hearing, the date for which will be specifically identified in the Publication Notice and  
4 Class Notice. The Court will consider such objection(s) and papers only if such papers are timely  
5 received by the Clerk of the Court and by Class Counsel and by Defendant's Counsel. Such papers  
6 must be sent to each of the following persons:

7  
8 Mark P. Kindall  
**IZARD NOBEL LLP**  
29 South Main Street, Suite 305  
9 West Hartford, CT 06107  
Telephone: (860) 493-6292  
10 Facsimile: (860) 493-6290

11 Jay P. Lefkowitz, P.C.  
**KIRKLAND & ELLIS LLP**  
12 601 Lexington Avenue  
New York, N.Y. 10022

13 Clerk of Court  
14 Eastern District of California  
Robert T. Matsui United States Courthouse  
15 501 I Street  
Sacramento, 95814

16 24. All objections must include the name, address, and telephone number of the  
17 objecting Class Member, an affirmation that they purchased one of the Products, and the  
18 submitting party's signature. All objections must also include a reference to *Morales, et al. v.*  
19 *Conopco, Inc. d/b/a Unilever*, No. 2:13-cv-02213 (E.D. Cal.). Each Class Member submitting an  
20 objection must state whether he or she (or his or her attorney) intends to appear at the Final  
21 Approval Hearing.

22 25. Attendance at the Final Approval Hearing is not necessary; however, any Class  
23 Member wishing to be heard orally with respect to approval of the Settlement, the applications for  
24 attorneys' fees and reimbursement of expenses, or the application for Class Representative Awards  
25 are required to provide written notice of their intention to appear at the Final Approval Hearing no  
26 later than twenty-one (21) days prior to the date of the Final Approval Hearing, which date will be  
27

specifically identified in the Class Notice. Class Members who do not oppose the Settlement, the applications for attorneys' fees and expenses, or class representative incentive awards need not take any action to indicate their approval. A Class Member's failure to submit a written objection in accordance with the procedure set forth in the Class Notice waives any right the Class Member may have to object to the Settlement, attorneys' fees and expenses, or class representative incentive awards, to appear at the Final Approval Hearing, or to appeal or seek other review of the Final Judgment and Order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable William B. Shubb  
United States District Court Judge

# EXHIBIT C

LEGAL NOTICE

## **If you Purchased TRESemmé Naturals brand Shampoo or Conditioner You May be Entitled to Cash from a Class Action Settlement**

A proposed settlement has been reached in a class action lawsuit about the packaging of TRESemmé Naturals brand shampoo and conditioner products. The plaintiffs in the lawsuit claim that these products falsely claimed they were natural. Conopco, Inc. d/b/a Unilever, the company that makes these products, denies all the plaintiffs' allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing.

**Am I a Class Member?** You may be a Class Member if you bought at least one of the following TRESemmé Naturals brand products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner.

**What Can I Get From the Settlement?** A fund of \$3.25 million will be created to pay Class Members for a portion of the cost of products they purchased and to pay for attorneys' fees (up to \$975,000 plus expenses) and notice and claim administration costs. The TRESemmé Naturals line has been discontinued as a result of this litigation.

If you are a Class Member, you may return a Claim Form to receive a partial refund for each purchase.

**What are My Options?** To ask for a cash payment and stay in the Class, you must submit a Claim Form by **[month day, 2016]**. If you do not wish to participate in the settlement, you may exclude yourself from the Class by **[month day, 2016]**. If you exclude yourself, you can't get money from this settlement if it is approved. If you wish to object to the settlement, you must stay in the Class and object to it by **[month day, 2016]**. This is only a summary. Visit the website for important information about these options.

A Court authorized this notice. Before any money is paid, the Court will have a hearing on **[month day, 2016]** to decide whether to approve the settlement and Class Counsel's request for attorney fees and expenses. The motion(s) by Class Counsel for attorneys' fees will be available for viewing on the settlement website after they are filed. You don't have to attend the hearing.

**CLAIM FORMS MUST BE RETURNED BY [MONTH DAY, 2016]**

**QUESTIONS? VISIT [WEBSITE] OR CALL 1-800-XXX-XXXX**



# EXHIBIT D



## **Legal Notification Services**

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### **Settlement Notice Plan**

*Morales, et al.*

*v. Conopco, Inc. d/b/a Unilever*

**Case No. 2:13-cv-02213-WBS-EFB**

**United States District Court**

**Eastern District of California**

**Prepared: May 27, 2016**

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## Media Terms

The following provides the meaning of media terms highlighted throughout the Notice Plan:

**Audience:** Net number of persons or different persons exposed to a media vehicle. It is larger than a publication's circulation because it includes pass-along readers who may obtain the publication second hand (e.g., from a reception room, neighbor, friend).

**Circulation:** Total number of publication copies sold through all channels of distribution (e.g., subscriptions, newsstand, bulk).

**Frequency:** Estimated average number of times a population group is exposed to a media vehicle or combination of media vehicles containing a notice within a given period of time.

**Impressions or Exposures:** Total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. It is a gross or cumulative number that may include the same person more than once. Impressions can exceed the population size.

**Reach or Coverage:** Net percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once within a given period of time. Reach factors out duplication, representing the total different/net persons.

**Selectivity Index:** Shows the concentration of a specific population group relative to the general adult population. For example, a publication selectivity index of 175 among men indicates that the publication's readers are 75% more likely to be men as compared to the general adult population.

## Media Resources

The resources we use to quantify our plan approach include the same resources used by media professionals to guide the billions of dollars of advertising we see today:

### **Alliance for Audited Media (AAM)**

AAM is a nonprofit organization that connects North America's leading media companies, advertisers and ad agencies. Founded in 1914 as the Audit Bureau of Circulations, the AAM is the preeminent source of cross-media verification and information services, providing standards, audit services and data critical to the advertising industry. The organization independently verifies print and digital circulation, mobile apps, website analytics, social media, technology platforms and audience information for newspapers, magazines and digital media companies in the U.S. and Canada.

### **GfK Mediamark Research & Intelligence, LLC (MRI)**

MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with the readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's *Survey of the American Consumer*™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

### **Telmar**

Telmar is the world-leading supplier of computer based advertising media information services. Its software provides for survey analysis, data integration, media planning and optimization. With over 5,000 users in 85 countries, Telmar's clients include many of the world's leading advertising agencies, publishers, broadcasters and advertisers.

## Program Overview

### **Objective**

To design a notice program that will effectively reach Class members and capture their attention with notices communicated in clear, concise, plain language so that their rights and options may be fully understood. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers 70-95% reach among class members reasonable.

### **Class Definition**

The "Class" (or "Class Members") includes all individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the "Challenged Products"). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members, (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Challenged Products for the purpose of resale.

### **Case Analysis**

The Plaintiffs allege violations of California's Unfair Competition Law (UCL), California's Consumer Legal Remedies Act (CLRA), Massachusetts's Consumer Protection Act, and various other state consumer protection laws, all which were related to the labeling, advertising, and marketing of Defendant Unilever's "TRESemmé Naturals" line of products.

Defendant Unilever has discontinued producing the Challenged Products. Additionally, under the proposed settlement, eligible Class Members who properly and timely submit a Claim Form are eligible to receive compensation for each of the Products purchased.

The following known factors were considered when determining our recommendation:

1. Class Members are located throughout the U.S., including large cities and rural areas.
2. Class Members are unknown; therefore, Class Members must be reached through a consumer media campaign.
3. The class action alleges violations of California's CLRA; therefore, CLRA notice requirements must be fulfilled.
4. Effective reach and notice content is vital to convey the importance of the information affecting Class Members' rights, as well as to withstand challenge and collateral review.

### **Target Audience**

MRI data does not separately analyze the TRESemmé Naturals product line; therefore, to verify the program's effectiveness, MRI data was studied among adults who use TRESemmé shampoo or hair conditioner at home and who buy natural products because they are concerned about their health and their family's ("TRESemmé Naturals Shampoo and Conditioner Consumers"), because this broad, and over-inclusive target group best represents the Class.

**Strategies**

A schedule of paid notices in *People* magazine and on a variety of websites will provide the necessary reach among the Class. To fulfill the CLRA notice requirement, the Notice Plan also includes four placements, once a week for four consecutive weeks, in the *Sacramento Bee* newspaper.

**Plan Delivery**

The media effort will reach approximately 71.6% of likely Class Members on average 1.2 times each. Coverage will be further enhanced by the CLRA notice placements.<sup>1</sup>

**Notice Design**

The Notices will be designed to provide a clear, concise, plain language statement of Class Members' legal rights and options. To ease response, the toll-free number and website address will be provided in all printed notice documents, and the website will be accessible through an embedded hyperlink in the internet banner notices.

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<sup>1</sup> The reach stated here does not factor in the potential impact of cookie deletion.

## Notice Schedule

The schedule below is a hypothetical schedule based on preliminary approval (PA) and final approval (FA) dates.

- Media funding and final ad approval = PA + 7 days
- Media campaign start = PA + 30 days
- Media campaign end = PA + 60 days
- Exclusion and objection deadline = FA – 21 days (but no earlier than 30 days from the last notice appearance)

Notice Tactic	Issued	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8
<i>People</i>	Weekly								
<i>Sacramento Bee</i>	Daily								
Internet Banner Notices	Monthly								
Case Website	Constant								

Blocks indicate when readers first receive publications (the on-sale date, not the issue/cover date). All media subject to change based on availability at the time of placement.



## Target Analysis

Knowing the characteristics, interests, and habits of a target group aids in the media selection process.

### **Demographic Highlights**

Demographic highlights of TRESemmé Naturals Shampoo and Conditioner Consumers likely include the following:

- 97.3% speak English most often;
- 89.3% live in a household consisting of two or more people, 67.5% live in a household consisting of two to four people, and 62.4% live in a household consisting of three or more people;
- 85.9% have graduated from high school and 56.2% have attended college or beyond;
- 84.3% live in a Metropolitan CBSA;<sup>2</sup>
- 81.2% are 25 years of age or older, 74.3% are 18-54 years of age, and 56.0% are 18-44 years of age;
- 75.2% have a household income of \$30,000 or more, 64.7% have a household income of \$40,000 or more, and 55.0% have a household income of \$50,000 or more;
- 73.6% are white;
- 71.4% are women;
- 70.2% live in County Size A or B, with 43.2% living in County Size A;<sup>3</sup>
- 62.8% own a home;
- 56.4% own a home valued at less than \$500,000; and
- 50.2% are married.

On average, TRESemmé Naturals Shampoo and Conditioner Consumers:<sup>4</sup>

- are 43 years of age;
- have a household income of \$73,475; and

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<sup>2</sup> Core Based Statistical Areas (CBSAs) consist of the county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. The general concept of a CBSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. CBSAs are defined by the U.S. Office of Management and Budget to provide a nationally consistent set of geographic entities for the United States and Puerto Rico for use in tabulating and presenting statistical data. Metropolitan Statistical Areas are CBSAs associated with at least one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting. Micropolitan Statistical Areas are CBSAs associated with at least one urban cluster that has a population of at least 10,000 but less than 50,000. The micropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

<sup>3</sup> Nielsen County Size classifications are based on Census household counts and metropolitan proximity. "A" counties are highly urbanized areas and belong to the 21 largest Metropolitan Statistical Areas. The combined counties contain 40% of United States households. "B" counties are counties not defined as A counties that have more than 85,000 households. The combined counties contain 30% of United States households. "C" counties are counties not defined as A or B counties that have more than 20,000 households or are in Consolidated Metropolitan Areas or Metropolitan Statistical Areas with more than 20,000 households. The combined counties contain 15% of United States households. "D" counties are all counties not classified as A, B, or C counties. They are considered very rural. The combined counties contain 15% of United States households.

<sup>4</sup> The average age for U.S. adults is 47, the average household income is \$77,026, and the average home value is \$253,020.

- own a home valued at \$245,480.

Compared to the general adult population, TRESemmé Naturals Shampoo and Conditioner Consumers are:

- 70.7% more likely to be American Indian or Alaska Native, 45.7% more likely to be of Spanish, Hispanic or Latino origin or descent, and 18.8% more likely to be Asian;
- 47.9% more likely to be 18-24 years of age and 22.1% more likely to be 25-34 years of age;
- 37.9% more likely to be women;
- 37.0% more likely to speak Spanish most often;
- 36.0% more likely to be working women;
- 27.8% more likely to live in a household consisting of five or more people and 9.2% more likely to live in a household consisting of three or four people;
- 25.9% more likely to be working part time and 8.3% more likely to be unemployed;
- 23.8% more likely to have a household income between \$10,000-\$19,999, 12.4% more likely to have a household income under \$10,000, and 11.9% more likely to have a household income between \$30,000-\$39,999;
- 19.3% more likely to have lived at their current address for less than one year and 12.3% more likely to have lived at their current address for one to four years;
- 16.3% more likely to be parents;
- 14.9% more likely to have never married;
- 11.4% more likely to have attended college and 10.4% more likely to have not graduated high school;
- 11.1% more likely to rent their home;
- 7.6% more likely to live in the South Census Region and 5.9% more likely to live in the North East Census Region; and
- 5.3% more likely to own a home valued less than \$100,000.

*Source: 2015 MRI Doublebase Study*

## Media Selection

To create the optimal notice program, we evaluated the strengths and weaknesses of the various media, as well as their reach and frequency potential, composition, format/content and efficiencies. Our recommended media mix provides:

- Broad national coverage into the largest cities as well as the smallest towns throughout the nation;
- A large percentage of likely Class Members to be reached via the measurable paid print and internet media alone (approximately 71.6% of TRESemmé Naturals Shampoo and Conditioner Consumers);
- Repeat notice exposures as a result of the overlapping media audiences;
- A written summary of key information that may be easily referred to or passed on to others as a result of placement in one of the largest and most well-read publications in the country;
- A direct link to the case website through the internet banner notices; and
- Easy access to the notice documents through an established case website.

## Consumer Magazine

To establish a reach base, a third-page Summary Notice will be placed in *People* magazine.



- Circulation: 3,486,478
- Adult Audience: 42,089,000
- Reaches 23.3% of TRESemmé Naturals Shampoo and Conditioner Consumers
- Readers are 31.7% more likely to be TRESemmé Naturals Shampoo and Conditioner Consumers, as compared to the general adult population
- Weekly entertainment magazine featuring celebrity news, biographies and gossip
- Provides a large number of pass along readers

## Internet Banners

86.5% of TRESemmé Naturals Shampoo and Conditioner Consumers have access to the internet at home using a computer and 85.9% have looked at or used the internet in the last 30 days. Compared to the general adult population, TRESemmé Naturals Shampoo and Conditioner Consumers are 1.1% more likely to have access to the internet from home using a computer and 3.3% more likely to have looked at or used the internet in the last 30 days.

As a result, to extend reach among the Class, we recommend purchasing 150 million banner impressions over a one-month period. The impressions will be targeted to adults 18 years of age or older (Adults 18+), of which 105 million will be targeted to women 18 years of age or older (Women 18+). The banners will include an embedded link to the case website.

## CLRA Newspaper

To fulfill the CLRA notice requirement, four eighth-page notices will appear once a week for four consecutive weeks in the *Sacramento Bee*.



## Response Mechanisms

### **Case Website**

- Provides an easy to remember domain
- Allows Class Members the ability to obtain additional information and documents including the Detailed Notice, Claim Form, Settlement Agreement, Complaint, and any other information that the parties may agree to provide or that the Court may require
- Prominently displayed in all printed notice materials and accessible through a hyperlink embedded in the internet banner ads

### **Toll-Free Telephone Support**

- Provides a simple way for Class Members to obtain additional information about the settlement
- Allows Class Members the opportunity to learn more about the case in the form of frequently asked questions and answers
- Allows Class Members to request to have more information mailed directly to them
- Prominently displayed in all printed notice materials

# EXHIBIT E



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**IF YOU PURCHASED TRESEMMÉ NATURALS NOURISHING MOISTURE SHAMPOO, NOURISHING MOISTURE CONDITIONER, RADIANT VOLUME SHAMPOO, RADIANT VOLUME CONDITIONER, VIBRANTLY SMOOTH SHAMPOO, OR VIBRANTLY SMOOTH CONDITIONER YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT**

*A Federal Court authorized this notice.  
This is not a solicitation from a lawyer.*

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to be eligible for a cash payment.
EXCLUDE YOURSELF	Get no settlement benefits. Remove yourself from both the settlement and the lawsuit.
OBJECT	Write to the Court about why you don't like the settlement.
DO NOTHING	Get no cash payment. Give up your rights.

Please read this entire Class Notice carefully.

Your rights and options – **and the deadlines by which you must exercise them** – are explained in this notice.

**WHAT IS THIS LAWSUIT ABOUT?**

A proposed settlement has been reached in a class action lawsuit about the packaging of the following TRESemmé Naturals products: Nourishing Moisture Shampoo, Nourishing Moisture Conditioner, Radiant Volume Shampoo, Radiant Volume Conditioner, Vibrantly Smooth Shampoo, and Vibrantly Smooth Conditioner (collectively, the “Products”). The plaintiffs in the lawsuit assert that the Products’ packaging falsely indicated they were natural. Defendant Conopco, Inc. d/b/a Unilever (“Unilever” or “Defendant”) denies all the plaintiffs’ allegations and is entering into this settlement, among other reasons, to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing.

**WHO IS INCLUDED IN THE CLASS?**

You are a member of the Class if you purchased at least one of the following TRESemmé Naturals products: Nourishing Moisture Shampoo, Nourishing Moisture Conditioner, Radiant Volume Shampoo, Radiant Volume Conditioner, Vibrantly Smooth Shampoo, or Vibrantly Smooth Conditioner.

The following persons are excluded from the Class: (a) Defendant, (b) the officers, directors, or employees of Defendant, (c) any entity in which Defendant has a controlling interest, (d) any affiliate, legal representative, heir, or assign of Defendant, and (e) the judge to whom this case is assigned and any member of the judge’s immediate family; (f) all persons who submit a valid request for exclusion from the Class; and (g) those who purchased the Products for the purpose of resale.

**THE SETTLEMENT BENEFITS – WHAT YOU MAY GET****CASH FROM THE CLAIM PROCESS**

Unilever will create a fund of \$3.25 million to pay Class Members’ claims, attorneys’ fees, costs and expenses and certain administrative costs. You may obtain a cash payment from the fund if you purchased one of the Products. The amount of your payment will depend on the statements in your Claim Form and the support you may provide, as well as on the total volume of valid claims received. Details are provided below.

**WHAT ELSE DOES THE SETTLEMENT PROVIDE?**

Unilever has agreed to discontinue sale of the Products under the “TRESemmé Naturals” label as a result of this litigation.

**HOW YOU GET A CASH PAYMENT – SUBMITTING A CLAIM FORM****HOW CAN I GET A PAYMENT?**

You must return a Claim Form to get a cash payment. A copy of the Claim Form is included in this Notice Package. Claim Forms are also available at [WEBSITE] or by calling 1-800-xxx xxxx.

The Claim Forms are simple and easy to complete. The Claim Form requires that you provide:

1. Your mailing address;
2. The number of each of the Products you purchased; and
3. Your signature under penalty of perjury, confirming that the information provided is true and

correct.

Claim forms may be filled out and submitted online or they may be mailed to the Claim Administrator.

***Please submit a Claim Form if you think that you have a claim. Submitting a Claim Form is the only way to receive a cash payment from this settlement. No claimant may submit more than one Claim Form, and two or more claimants may not submit Claim Forms for the same alleged damage.***

You may claim up to ten Products per household without submitting any proof of purchase, but you may claim more than ten Products per household if you submit valid proof of your purchases along with your Claim Form. The Claim Administrator may request additional information if the Claim Form is insufficient to process your claim. Failure to provide any requested documentation may result in the denial of your claim and may limit the type of remedy you receive.

#### **WHEN IS THE CLAIM FORM DUE?**

If you mail or fax your Claim Form, it must be postmarked or faxed no later than **[DATE]**.

Online submission of Claim Forms must be done by no later than **[DATE]**.

#### **WHO DECIDES MY CLAIM?**

The Claim Forms will be reviewed by an independent Claim Administrator according to criteria agreed to by the parties.

The Claim Administrator may contact you or other persons listed in your Claim Form if he or she needs additional information or otherwise wants to verify information in your Claim Form.

The Claim Administrator's determination is final. Neither you, nor Plaintiffs' Counsel, nor Unilever can appeal or contest the decision of the Claim Administrator.

#### **WHEN WOULD I GET MY PAYMENT?**

The Court will hold a hearing on **[DATE]** to decide whether to approve the settlement. If the Court approves the settlement, after that there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

#### **HOW WILL THE SETTLEMENT BE ALLOCATED?**

After payment of court-approved Attorneys' Fees, Costs and Expenses and certain administration costs related to maintenance of the Settlement Fund and payment of the costs of notice and claims administration, the balance of the Settlement Fund will be distributed to Class Members who have filed Claims on the basis of the number of Products that they purchased, verified as necessary by the Claim Administrator. Class members may receive a maximum of \$5 for each Product purchased. Class Members may recover for up to ten Products purchased per household without submitting proofs of purchase, and may recover for more than ten Products per household by submitting valid proofs of purchase along with their Claim Forms. If there are insufficient funds in the Settlement Fund to pay all claims in full, every claim will be reduced pro rata. Further details on allocation are in Exhibit A to the Settlement Agreement.

#### **WHAT HAPPENS IF I DO NOTHING AT ALL?**

You must submit a Claim Form to receive a cash payment. If you do nothing, you will get no money from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a

lawsuit or be part of any other lawsuit against Unilever about the legal issues in this case.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **HOW DO I GET OUT OF THE SETTLEMENT?**

If you do not wish to be included in the Class and receive settlement benefits, you must send a letter stating that you want to be excluded from this lawsuit. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request post-marked no later than **[INSERT DATE]** to:

**[INSERT CLAIM ADMINISTRATOR INFO]**

If you asked to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Unilever in the future.

If you have a pending lawsuit against Unilever, speak to your lawyer immediately. You may need to exclude yourself from this lawsuit in order to continue your own lawsuit. Remember, the exclusion date is **[DATE]**.

## **THE LAWYERS REPRESENTING YOU**

### **DO I HAVE LAWYERS IN THIS CASE?**

The Court appointed the law firm of Iazard Nobel LLP to represent you and other class members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **HOW WILL THE LAWYERS BE PAID?**

Class Counsel will ask the Court to award them attorneys' fees from the Settlement Fund established as a result of this Litigation, in an amount not to exceed 30% of the Settlement Amount, together with payment of litigation costs and expenses.

The four named plaintiffs will also ask the Court for an award for their time and effort acting as plaintiffs and for their willingness to bring this litigation and act on behalf of consumers. These amounts, if approved by the Court, will be paid by the Defendant separate and apart from the Settlement Fund, and will not exceed \$15,000 in the aggregate for all named plaintiffs.

The costs to administer the settlement, to review Claim Forms, and notify Class Members about this settlement will be paid out of the Claim Fund.

## **OBJECTING TO THE SETTLEMENT**

### **HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?**

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. To object, you must send a letter to the Court and the parties saying that you object to the settlement. Be sure to include your name, address, telephone number, your signature, and a

*statement under penalty of perjury that you purchased one of the Products during the Class Period*, as well as the reasons you object to the settlement. This objection ***must be postmarked*** no later than **[DATE]**. Send your objection to:

Mark P. Kindall  
**IZARD NOBEL LLP**  
29 South Main Street, Suite 305  
West Hartford, CT 06107  
Telephone: (860) 493-6292  
Facsimile: (860) 493-6290

Jay P. Lefkowitz, P.C.  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, N.Y. 10022

Clerk of Court  
Eastern District of California  
Robert T. Matsui United States Courthouse  
501 I Street  
Sacramento, 95814

#### **WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?**

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

#### **RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF LAWSUIT**

#### **IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?**

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you are releasing (giving up) all claims that are subject to the Release, and the case will be dismissed on the merits and with prejudice. **If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.**

The text of the Release is reprinted in full at Appendix A to this notice.

#### **THE FINAL APPROVAL HEARING**

#### **WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Judge will hold a Final Approval Hearing at **[TIME]** on **[DATE]** at the United States District Court for the Eastern District of California, Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA

95814. At this hearing, the Judge will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Judge will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Judge will decide whether to approve the settlement. We do not know how long this decision will take.

#### **DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

#### **MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a “Notice of Intention to Appear” in *Morales, et al. v. Conopco, Inc. d/b/a Unilever*, 2:13-cv-02213 (E.D. Cal.) Be sure to include your name, address, telephone number, your signature and *a statement under penalty of perjury that you are a member of the Class*, i.e. that you purchased one of the Products). Your Notice of Intention to Appear must be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the three addresses listed above, post-marked no later than **[DATE]**.

#### **GETTING MORE INFORMATION**

#### **ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This notice summarizes the proposed settlement. More details are in the Stipulation of Settlement. You can get a copy of the Stipulation of Settlement at **[WEBSITE]** or by asking the Claim Administrator to send you a copy through the mail. The Claim Administrator may be reached by **[Address]**, or through the dedicated toll-free hotline, **[number]**. The Claim Administrator can also assist you with any questions about how to complete a claim form. You can also contact attorneys for the class at (860) 493-6292.

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.**

DATED:

BY ORDER OF THE U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

## APPENDIX A - RELEASE

The Releasing Parties agree to release all claims against the Released Parties as set forth below:

1. As of the Effective Date, in consideration of the settlement obligations set forth herein, any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages of any kind, liabilities, debts, punitive or statutory damages, penalties, losses and issues of any kind or nature whatsoever, asserted or unasserted, known or unknown (including, but not limited to, any and all claims relating to or alleging deceptive or unfair business practices, false or misleading advertising, intentional or negligent misrepresentation, negligence, concealment, omission, unfair competition, promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes of action arising under or based upon any statute, act, ordinance, or regulation governing or applying to business practices generally, including, but not limited to, any and all claims relating to or alleging violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.; California's Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq.; Massachusetts' Consumer Protection Act, Mass. Gen. Laws Ann. ch. 93A; Florida Deceptive and Unfair Trade Practices Act, F.S.A. § 501.201, et seq. and New York General Business Law § 349 (or any and all other federal, state, and/or local statutes analogous or similar to the statutes cited herein)), arising out of or related to the product representations complained of in this Action, whether legal, equitable, administrative, direct or indirect, or any other type or in any other capacity, against any Released Party ("Released Claims") shall be finally and irrevocably compromised, settled, released, and discharged with prejudice.

2. Each of the Releasing Parties hereby waives any and all rights and benefits arising out of the facts alleged in the Action by virtue of the provisions of Civil Code § 1542, or any other provision in the law of the United States, or any state or territory of the United States, or principle of common law or equity that is similar, comparable or equivalent to Civil Code § 1542, with respect to this release. The Releasing Parties are aware that Civil Code § 1542 provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

The Releasing Parties expressly acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties, upon the Effective Date, shall be deemed to have, and by operation of law shall have, fully, finally and forever settled, released, and discharged any and all Released Claims, known or unknown, suspected or unsuspected, whether or not concealed or hidden, that now exist or heretofore have existed upon any theory of law or equity, including, but not limited to, Released Claims based on conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties agree that the Released Claims constitute a specific and not a general release.

3. The Releasing Parties shall be deemed to have agreed that the release set forth in ¶¶ 1 and 2 above (the "Release") will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims.

4. As of the Effective Date, by operation of entry of judgment, the Released Parties shall be deemed to have fully released and forever discharged Plaintiffs, all other Class Members and Plaintiffs' Counsel from any and all claims of abuse of process, malicious prosecution, or any other claims arising out of the initiation, prosecution or resolution of the Action, including, but not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims arising out of the allocation or distribution of any of the consideration distributed pursuant to this Stipulation of Settlement.



**DEFINED TERMS USED IN THE RELEASE**

1. “Action” means the case entitled Morales, et al. v. Conopco, Inc. d/b/a Unilever, filed on October 10, 2013, in the U.S. District Court for the Eastern District of California and assigned Case No. 2:13-cv-02213.

2. “Class” and/or “Class Members” means all individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the “Products”). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Products for the purpose of resale.

3. “Class Counsel” means Izard Nobel LLP.

4. “Effective Date” means the date that the Settlement becomes final, as described more full in the Stipulation at ¶ 53.

5. “Released Claims” means those claims released pursuant to ¶¶ 16 and 17 of the Stipulation (reprinted above as paragraphs 1 and 2 of Appendix A).

6. “Releasing Parties” means Defendant and each of its parent, affiliated and subsidiary corporations and all of their agents, employees, partners, predecessors, successors, assigns, insurers, attorneys, officers and directors.



# EXHIBIT F

## CASE

<b>Eligible Product</b>	<b>Total Number of Bottles Purchased</b>
TRESemmé Naturals Nourishing Moisture Shampoo	<input type="text"/>
TRESemmé Naturals Nourishing Moisture Conditioner	<input type="text"/>
TRESemmé Naturals Radiant Volume Shampoo	<input type="text"/>
TRESemmé Naturals Radiant Volume Conditioner	<input type="text"/>
TRESemmé Naturals Vibrantly Smooth Shampoo	<input type="text"/>
TRESemmé Naturals Vibrantly Smooth Conditioner	<input type="text"/>

### C. SIGN AND DATE YOUR CLAIM FORM

I declare or affirm, under penalty of perjury, that the information in this Claim Form is true and correct to the best of my knowledge and that I purchased the Eligible Product(s) claimed above from **Month DD, 2016** to **Month DD, 2016**.

I understand that my Claim Form may be subject to audit, verification, and Court review. Also, I agree to be bound by the provisions of the Stipulation of Settlement, including granting to Unilever and other Released Parties a release of all Released Claims as defined and set forth in the Stipulation of Settlement and in any Final Order of the Court that may be entered pursuant to the Settlement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

**Claim Forms must be electronically submitted no later than **Month DD, 2016** or postmarked no later than **Month DD, 2016**.**

**Questions? Visit [www.CaseWebsite.com](http://www.CaseWebsite.com) or call, toll-free, (888) XXX-XXXX**



# EXHIBIT G

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAINIE COHEN, ALBA MORALES, LINDA  
CLAYMAN and KENNETH DREW, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CONOPCO, INC. D/B/A UNILEVER,

Defendant.

Case No. 2:13-cv-02213-WBS

**[PROPOSED] ORDER AND FINAL  
JUDGMENT**

On the \_\_\_\_ day of \_\_\_\_\_, 2016, this Court held a hearing to determine (1) whether the terms and conditions of the Class Action Stipulation of Settlement dated May 27, 2016 (the “Stipulation” or “Settlement”) are fair, reasonable and adequate for the settlement of all claims asserted by all members of the Class against Defendants in the class action captioned *Morales, et al. v. Conopco, Inc.*, Civil Action No. 2:13-cv-02213 (the “Action”), including the release of Defendant from the Plaintiffs’ Claims, and should be approved; (2) whether to certify a Class for settlement purposes only, and whether to appoint Plaintiffs Alba Morales, Lainie Cohen, Linda Clayman and Kenneth Drew as class representatives, Izard Nobel LLP as Class Counsel and Bramson, Plutzik, Mahler & Birkhaeuser LLP as liaison counsel for the Class; (3) whether final judgment should be entered dismissing the Plaintiffs’ complaint against Defendant with prejudice; (4) whether to approve the proposed Plan of Allocation as a fair and equitable method to allocate the Settlement Fund among all Class members; (5) whether and in what amount to award Plaintiffs’ Counsel’s fees and expenses; and (6) whether and in what amount to award Plaintiffs Class Representative Awards in recognition of the time and effort they contributed while representing the members of the Class.

The Court having considered all matters submitted to it at the hearing and otherwise, and it appearing that a notice of the settlement and the hearing was published to the Class in the form approved by the Court and in accordance with a Notice Plan approved by the Court; and the Court having considered and determined the fairness, reasonableness and adequacy of the Settlement, the proposed Plan of Allocation, the fairness and reasonableness of the award of attorneys' fees and expenses requested, and the fairness and reasonableness of the Class Representative Awards ; and all initial capitalized terms used herein having the meanings set forth in the Stipulation,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Court has jurisdiction over the subject matter of the Action and over all parties to it, including all members of the Class.

2. The Court finds for the purposes of the Settlement only that the prerequisites for certification of this Action as a class action under Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied in this Action: (a) the number of Class members herein is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the members of the Class herein; (c) the claims of the Plaintiffs designated herein are typical of the claims of the Class sought to be represented; (d) Plaintiffs have fairly and adequately represented, and will fairly and adequately represent, the interests of the Class herein. The Court also finds for purposes of settlement only, as required by Rule 23(b)(3) of the Federal Rules of Civil Procedure, that the common issues predominate over individual issues and that a class action is superior to other methods of adjudicating the issues involved in the litigation.

3. Accordingly, pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of the Settlement only, the Court hereby finally certifies this Action as a class action, with the Class being defined as follows:

All individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the "Products"). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a

1 controlling interest, (4) any affiliate, legal representative, heir, or assign of  
2 Defendant, (5) all federal court judges who have presided over this Action and  
3 their immediate family members, (6) all persons who submit a valid request  
for exclusion from the Class and (7) those who purchased the Products for the  
purpose of resale..

4 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for the purposes of  
5 the Settlement only, the Court appoints Plaintiffs Alba Morales, Lainie Cohen, Linda Clayman and  
6 Kenneth Drew as representatives for the Class (“Class Representatives”).

7 5. The Court further finds, pursuant to Rule 23(g), that Iazard Nobel LLP and Bramson,  
8 Plutzik, Mahler & Birkhaeuser LLP have done sufficient work and are sufficiently experienced in  
9 class action litigation to represent the interests of the Class, and thereby appoints Iazard Nobel LLP  
10 as Class Counsel and Bramson, Plutzik, Mahler & Birkhaeuser LLP as liaison counsel for the Class,  
11 respectively.

12 6. The Court determines that the Class Notice provided to the Class in accordance with  
13 the Notice Plan approved in this Court’s Preliminary Approval Order was the best notice practicable  
14 under the circumstances. Such Notice provided valid, due, and sufficient notice of these proceedings  
15 and of the matters set forth therein, including the Settlement described in the Stipulation of  
16 Settlement and the Plan of Allocation, to all persons entitled to such notice, and such Notice has fully  
17 satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements  
18 of due process.

19 7. The Court determines that the Stipulation was negotiated vigorously and at arm’s-  
20 length by Plaintiffs’ Counsel, on behalf of the Class, and Defendant’s Counsel, on behalf of  
21 Defendant, and further finds that, at all times, Plaintiffs have acted independently and that their  
22 interests are identical to the interests of the Class. If settlement of Plaintiffs’ claims had not been  
23 achieved, both Plaintiffs and Defendant faced the expense, risk, and uncertainty of extended  
24 litigation.

25 8. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby  
26 approves and confirms the Settlement embodied in the Stipulation of Settlement as being a fair,  
27 reasonable, and adequate settlement and compromise of the Action and in the best interests of the  
28

1 Class. The Court orders that the Stipulation of Settlement shall be consummated and implemented  
2 in accordance with its terms and conditions.

3 9. The Court hereby finds that the Plan of Allocation provides a fair and equitable basis  
4 upon which to allocate the proceeds of the Settlement Fund among the Class members. A full and  
5 fair opportunity was accorded to all Class members to be heard with respect to the Plan of Allocation.  
6 Accordingly, the Court hereby approves the Plan of Allocation.

7 10. The Action is hereby dismissed with prejudice, each party to bear its own costs, except  
8 as provided herein.

9 11. Upon the Effective Date of the Settlement, Plaintiffs and the Class, absolutely and  
10 unconditionally release and forever discharge each and all of the Released Parties from the Released  
11 Claims, and the Released Parties fully released and forever discharged Plaintiffs, all other Class  
12 Members and Plaintiffs' Counsel from any and all claims of abuse of process, malicious prosecution,  
13 or any other claims arising out of the initiation, prosecution or resolution of the Action, including,  
14 but not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims  
15 arising out of the allocation or distribution of any of the consideration distributed pursuant to this  
16 Stipulation of Settlement. Nothing herein, however, shall preclude any action or claim related to the  
17 implementation and/or enforcement of the Stipulation.

18 12. In the event that the Settlement does not become effective in accordance with the  
19 terms of the Stipulation, the Final Order shall be rendered null and void and shall be vacated *nunc*  
20 *pro tunc*, and the Action shall proceed in the manner provided in the Stipulation and the Order of  
21 Preliminary Approval.

22 13. The Stipulation and this Final Order, whether or not consummated, do not and shall  
23 not be construed, argued or deemed in any way to be (a) an admission or concession by Defendant  
24 with respect to any of the Released Claims or evidence of any violation of any statute or law or other  
25 wrongdoing, fault, or liability by Defendant, or (b) an admission or concession by Plaintiffs or any  
26 member of the Class that their claims lack merit or that the defenses that have been or may have been  
27 asserted by Defendant have merit. Absent written agreement of the parties, in the event the final  
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1 judgment approving the Settlement is reversed, vacated, or modified in any respect by the Court or  
2 any other court, the certification of the Class shall be vacated, the Action shall proceed as though the  
3 Class had never been certified, and no reference to the prior Class or any documents related thereto  
4 shall be made for any purpose. Nothing herein shall be deemed to preclude Defendant from  
5 contesting class certification for any other purpose.

6 14. The Stipulation and the Final Order shall not be offered or received in evidence by  
7 any class member or party to this action in any civil or administrative action or proceeding other than  
8 proceedings necessary to approve or enforce the terms of the Stipulation and this Order and Final  
9 Judgment.

10 15. In recognition of their contributions to this action and their efforts in furtherance of  
11 the litigation as evidence by their submitted declarations, Lead Plaintiffs are awarded the following  
12 amounts as Class Representative Awards: Alba Morales: \_\_\_\_\_; Lainie Cohen: \_\_\_\_\_;  
13 Kenneth Drew: \_\_\_\_\_; and Linda Clayman: \_\_\_\_\_. In accordance with the Stipulation,  
14 these awards will be paid by Defendant separate and apart from Defendant's payment of \$3.25  
15 million for the Settlement Fund.

16 16. The attorneys' fees sought by Plaintiffs' Counsel are fair and reasonable in light of  
17 the successful results achieved by Plaintiffs' Counsel, the monetary benefits obtained in this Action,  
18 the substantial risks associated with the Action, Plaintiffs' Counsel's skill and experience in class  
19 action litigation of this type, and the fee awards in comparable cases. Accordingly, attorneys' fees  
20 are awarded in the amount of \_\_\_\_\_% of the Settlement Fund to be paid in accordance with the  
21 Stipulation.

22 17. The litigation expenses incurred by Plaintiffs' Counsel in the course of prosecuting  
23 this action are fair and reasonable. Accordingly expenses are awarded in the amount of  
24 \$\_\_\_\_\_, to be paid from the Settlement Fund in accordance with the Stipulation.

25 18. As required by Rule 23(h)(3) of the Federal Rules of Civil Procedure, the Court has  
26 considered and finds as follows in making this award of attorneys' fees and expenses:  
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- a. The Settlement created a Settlement Fund fund of \$3.25 million in cash, plus interest, for distribution to the Class, and numerous Class members will benefit from the Settlement pursuant to the Plan of Allocation;
- b. As a result of the litigation, the TRESemmé “Naturals” product line was discontinued;
- c. In accordance with the Notice Plan, the Class was advised that Plaintiffs’ Counsel would be applying to the Court for up to thirty (30) percent of the Settlement Fund in attorneys’ fees and approximately \$\_\_\_\_\_ in expenses;
- d. Pursuant to the Preliminary Approval Order, Plaintiffs’ Counsel’s filing in support of final approval of the Stipulation, the proposed Plan of Allocation, and the applications for attorneys’ fees, expenses, and Class Representative Awards was posted to the Settlement Website at least two (2) weeks prior to the deadline for Class members to review and serve objections thereto;
- e. \_\_\_\_\_ objections were filed against the terms of the Stipulation of Settlement, the proposed Plan of Allocation, or Plaintiffs’ Counsel’s applications for attorneys’ fees, expenses and Class Representative Awards;
- f. The Action involved complex factual and legal issues, was actively prosecuted for more than three years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;
- g. Had Plaintiffs’ Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the class they sought to represent would recover less or nothing from Defendant;
- h. Plaintiffs’ Counsel’s fee and expense application indicates that they devoted over \_\_\_\_\_ hours, with a lodestar value of approximately \$\_\_\_\_\_, to achieve the Settlement; and

- 1 i. The amount of attorneys' fees and expenses awarded by the Court is fair and  
2 reasonable and consistent with such awards in similar cases.

3 19. Without affecting the finality of this Judgment, the Court retains jurisdiction for  
4 purposes of implementing the Stipulation and reserves the power to enter additional orders to  
5 effectuate the fair and orderly administration and consummation of the Stipulation, as may from time  
6 to time be appropriate, and resolution of any and all disputes arising thereunder.

7  
8 SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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The Honorable William B. Shubb  
United States District Court Judge  
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Kindall Declaration In Support of Plaintiffs' Motion  
for Preliminary Approval

# EXHIBIT 2

Declaration of Daniel Burke

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ALBA MORALES, LAINIE COHEN, LINDA  
CLAYMAN and KENNETH DREW on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CONOPCO INC. d/b/a UNILEVER,

Defendant.

No. 2:13-cv-02213-WBS-EFB

DECLARATION OF DANIEL BURKE  
RE SETTLEMENT NOTICE PLAN

I, Daniel Burke, declare as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

**INTRODUCTION**

2. I am the Executive Vice President at Kurtzman Carson Consultants LLC (“KCC”). KCC is one of the largest full-service class action notice and claims administrators in the country. Before my arrival at KCC, I was the Executive Vice President at Gilardi, a class action

1 administration company that was acquired by KCC in 2015.<sup>1</sup> I also served as a Deputy District  
2 Attorney in Alameda County for 14 years. I received my B.S. in Marketing from Santa Clara  
3 University and J.D. from Golden Gate University. I am also a member of the California State Bar.

4 3. The purpose of this Declaration is to provide the Court with my and KCC's  
5 qualifications and experience regarding the development of class action notice plans and to  
6 provide information regarding the Notice Plan in this case. This Declaration was prepared based  
7 on information provided by counsel or otherwise obtained by KCC staff based on industry-  
8 accepted resources and methodologies.

9 **EXPERIENCE RELEVANT TO THE CASE**

10 4. KCC is a leading class action administrator that provides comprehensive class  
11 action services, including legal notification, email and postal mailing campaign implementation,  
12 website design, call center support, class member data management, claims processing, check and  
13 voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related  
14 services critical to the effective administration of class action settlements. With more than thirty  
15 years of industry experience, KCC has developed efficient, secure and cost-effective methods to  
16 properly handle the voluminous data and mailings associated with the noticing, claims processing  
17 and disbursement requirements of these matters to ensure the orderly and fair treatment of class  
18 members and all parties in interest. Since 1984, KCC has administered more than 6,000 matters  
19 and distributed settlement payments totaling well over \$20 billion in assets.

20 5. Some consumer case examples in which KCC has been involved with include: *In re*  
21 *Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability*  
22 *Litigation*, No. 8:10-ml-02151 (C.D. Cal.); *Edwards v. National Milk Producers Federation*, No.  
23 11-cv-04766 (N.D. Cal.); *In re Mattel, Inc., Toy Lead Paint Products Liability Litigation*, No.  
24 2:07-ml-01897 (C.D. Cal.); *Pappas v. Naked Juice Co.*, No. 2:11-cv-08276 (C.D. Cal.); *Lavender*  
25 *v. Skilled Healthcare Group, Inc.*, No. DR060264 (Cal. Super. Ct.); *Utility Consumers' Action*  
26 *Network and Eric Taylor v. Sprint Solutions, Inc.*, No. 3:2007cv02231 (S.D. Cal.); *In re Bank of*

27 <sup>1</sup> This declaration combines the class action notice and administration experience of both firms.

1 *America Credit Protection Marketing and Sales Practices Litigation*, No. 11-md-02269 (N.D.  
 2 Cal.); *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, No. 08-  
 3 md-01907 (E.D. Mo.); “*American Idol*”/“*Deal or No Deal*” *Litigation—Couch v. Telescope*  
 4 *Inc./Herbert v. Endemol USA, Inc.*, No. 2:07-cv-03916 (C.D. Cal.); *In re Bayer Corp.*  
 5 *Combination Aspirin Products Marketing and Sales Practices Litigation*, No. 1:09-md-02023  
 6 E.D.N.Y.); *Benware v. Hugo Boss, U.S.A.*, No. 12-cv-01527 (S.D. Cal.); *Lerma v. Schiff Nutrition*  
 7 *International, Inc.*, No. 1:13-CV-07747 (N.D. Ill.); *Cobb v. BSH Home Appliances Corp.*, No.  
 8 8:10-CV-0711 (C.D. Cal.); *Roberts v. Electrolux Home Products, Inc.*, No. 8:12-CV-01644 (C.D.  
 9 Cal.); *Cappalli v. BJ’s Wholesale Club, Inc.*, No. 1:10-CV-00407 (D. R.I.); *Stroud v. eMachines,*  
 10 *Inc.*, No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.); *In re Nissan Radiator/Transmission*  
 11 *Cooler Litig.*, No. 10-CV-07493 (S.D.N.Y.); and *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-  
 12 CV-04846 (N.D. Cal.).

13           6.       KCC’s Legal Notification Services department specializes in designing, developing,  
 14 analyzing and implementing legal notification plans that comply with due process. These notice  
 15 campaigns have involved a wide range of industries and substantive issues, including apparel,  
 16 automotive, computers, consumer packaged goods, communications, entertainment, environment,  
 17 financial services, food, healthcare, insurance, internet shopping, labor, product liability, railroad,  
 18 real estate, restaurants, securities, technology, tobacco, and utilities. We have experience designing  
 19 and implementing notice programs that incorporate media such as newspapers, magazines, trade  
 20 journals, radio, television, social media and the internet to meet due process requirements. We also  
 21 develop press releases, social media enhancements, and broadcast public service announcements  
 22 (PSAs).

23           7.       In my role, I oversee all department activity as it relates to these services and am  
 24 familiar with, or have been directly responsible for, large class action notice programs involving  
 25 all aspects of notice dissemination. Since 2007, I have personally overseen thousands of matters  
 26 requiring notice, hundreds of which have involved the design and implementation of court-  
 27 approved publication notice programs.

8. Notice Plans similar to the one proposed here have been approved in other California court cases. For example, *Edwards v. National Milk Producers Federation*, N.D. Cal., Case No. 11-cv-04766; *In re Google Referrer Header Privacy Litig.*, N.D. Cal., Case No. 10-cv-04809; and *Pappas v. Naked Juice Co. of Glendora, Inc.*, C.D. Cal., Case No. 11-cv-08276.

## OVERVIEW

9. It is our understanding that the parties have represented that contact information is not available for individual Class members. Therefore, KCC's proposed Notice Plan relies on notice placements in leading consumer magazines and internet banners on a variety of websites to effectively reach the Class. The Notice Plan will reach approximately 71.6% of likely Class members.<sup>23</sup>

10. We understand the Corrected Second Amended Class Action Complaint alleges violations of California's Consumer Legal Remedies Act ("CLRA"). Accordingly, CLRA notice requirements must be fulfilled.

## PROPOSED NOTICE PLAN

### *Class Target*

11. The "Class" (or "Class Members") includes all individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the "Challenged Products"). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members, (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Challenged Products for the purpose of resale.

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<sup>2</sup> The reach or net reach of a notice program is defined as the percentage of a class that was exposed to a notice net of any duplication among people who may have been exposed more than once.

<sup>3</sup> The reach stated here does not factor in the potential impact of cookie deletion.



12. The parties have represented that the exact class size is unknown. We are informed that approximately 23 million units of the Products were sold between 2010 and 2015.<sup>4</sup>

13. To develop the proposed Notice Plan, GfK MediaMark Research & Intelligence, LLC (“MRI”)<sup>5</sup> data was studied among adults who use TRESemmé shampoo or hair conditioner at home and who buy natural products because they are concerned about their health and their family’s health (“TRESemmé Naturals Shampoo and Conditioner Consumers”). This broad and over-inclusive target group best represents the Class.<sup>6</sup>

14. Knowing the characteristics, interests, and habits of a target group aids in the media selection process. Demographic highlights of TRESemmé Naturals Shampoo and Conditioner Consumers likely include the following: 97.3% speak English most often; 89.3% live in a household consisting of two or more people, 67.6% live in a household consisting of two to four people, and 62.4% live in a household consisting of three or more people; 85.9% have graduated from high school and 56.2% have attended college or beyond; 84.3% live in a Metropolitan CBSA;<sup>7</sup> 81.2% are 25 years of age or older, 74.3% are 18-54 years of age and 56.0% are 18-44

<sup>4</sup> The 2010 through 2015 units sold data is based on data reported by Nielsen through its RMS (Scanning) Service for the Daily Hair Care Category for the 2010 through 2015 period, for the Total US xAOC (All Outlets Combined) market. Copyright © 2010-2015 The Nielsen Company.

<sup>5</sup> GfK MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI’s Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

<sup>6</sup> MRI’s data do not separately analyze the TRESemmé Naturals product line.

<sup>7</sup> Core Based Statistical Areas (CBSAs) consist of the county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. The general concept of a CBSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. CBSAs are defined by the U.S. Office of Management and Budget to provide a nationally consistent set of geographic entities for the United States and Puerto Rico for use in tabulating and presenting statistical data. Metropolitan Statistical Areas are CBSAs associated with at least one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting. Micropolitan Statistical Areas are CBSAs associated with at least one urban cluster that has a

1 years of age; 75.2% have a household income of \$30,000 or more, 64.7% have a household  
 2 income of \$40,000 or more, and 55.0% have a household income of \$50,000 or more; 73.6% are  
 3 white; 71.4% are women; 70.2% live in County Size A or B, with 43.2% living in County Size A;<sup>8</sup>  
 4 62.8% own a home; 56.4% own a home valued at less than \$500,000; and 50.2% are married.

5 15. On average, TRESemmé Naturals Shampoo and Conditioner Consumers are 43  
 6 years of age; have a household income of \$73,475; and own a home valued at \$245,480.<sup>9</sup>

7 16. Compared to the general adult population, TRESemmé Naturals Shampoo and  
 8 Conditioner Consumers are 70.7% more likely to be American Indian or Alaska Native, 45.7%  
 9 more likely to be of Spanish, Hispanic or Latino origin or descent, and 18.8% more likely to be  
 10 Asian; 47.9% more likely to be 18-24 years of age and 22.1% more likely to be 25-34 years of age;  
 11 37.9% more likely to be women; 37.0% more likely to speak Spanish most often; 36.0% more  
 12 likely to be working women; 27.8% more likely to live in a household consisting of five or more  
 13 people and 9.2% more likely to live in a household consisting of three or four people; 25.9% more  
 14 likely to be working part time and 8.3% more likely to be unemployed; 23.8% more likely to have  
 15 a household income between \$10,000-\$19,999, 12.4% more likely to have a household income  
 16 under \$10,000, and 11.9% more likely to have a household income between \$30,000-\$39,999;  
 17 19.3% more likely to have lived at their current address for less than one year and 12.3% more  
 18 likely to have lived at their current address for one to four years; 16.3% more likely to be parents;

19  
 20 population of at least 10,000 but less than 50,000. The micropolitan statistical area comprises the central  
 21 county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high  
 22 degree of social and economic integration with the central county or counties as measured through  
 23 commuting.

24 <sup>8</sup> Nielsen County Size classifications are based on Census household counts and metropolitan proximity.  
 25 "A" counties are highly urbanized areas and belong to the 21 largest Metropolitan Statistical Areas. The  
 26 combined counties contain 40% of United States households. "B" counties are counties not defined as A  
 27 counties that have more than 85,000 households. The combined counties contain 30% of United States  
 28 households. "C" counties are counties not defined as A or B counties that have more than 20,000  
 households or are in Consolidated Metropolitan Areas or Metropolitan Statistical Areas with more than  
 20,000 households. The combined counties contain 15% of United States households. "D" counties are all  
 counties not classified as A, B, or C counties. They are considered very rural. The combined counties  
 contain 15% of United States households.

<sup>9</sup> The average age for U.S. adults is 47, the average household income is \$77,026, and the average home  
 value is \$253,020.

1 14.9% more likely to have never married; 11.4% more likely to have attended college and 10.4%  
2 more likely to have not graduated high school; 11.1% more likely to rent their home; 7.6% more  
3 likely to live in the South Census Region and 5.9% more likely to live in the North East Census  
4 Region; and 5.3% more likely to own a home valued less than \$100,000.

5 ***Consumer Publications***

6 17. A third-page Summary Notice will be placed in *People* magazine. *People* reaches  
7 23.3% of TRESemmé Naturals Shampoo and Conditioner Consumers and, compared to the  
8 general adult population, readers of *People* are 31.7% more likely to be TRESemmé Naturals  
9 Shampoo and Conditioner Consumers.

10 18. The *People* placement will be tracked to ensure it appears exactly as planned and  
11 meets our high quality and positioning standards.

12 ***Internet Notice***

13 19. According to MRI data, 86.5% of TRESemmé Naturals Shampoo and Conditioner  
14 Consumers have access to the internet at home using a computer and 85.9% have looked at or used  
15 the internet in the last 30 days. Compared to the general adult population, TRESemmé Naturals  
16 Shampoo and Conditioner Consumers are 1.1% more likely to have access to the internet from  
17 home using a computer and 3.3% more likely to have looked at or used the internet in the last 30  
18 days.

19 20. Given this information, internet advertising is an appropriate component of the  
20 Notice Plan. One-hundred fifty million banner impressions will be purchased and will appear on  
21 websites over a period of about one month. The impressions will be targeted to adults 18 years of  
22 age or older (Adults 18+), and of those impressions, 105 million will be targeted to women 18  
23 years of age or older (Women 18+).

24 21. The banners will include an embedded link to the case website and where the full  
25 notice, as well as additional information about the litigation, may be viewed.

***CLRA Notice***

22. To fulfill CLRA notice requirements, an approximate eighth-page Summary Notice will appear four times in the *Sacramento Bee*. The Summary Notice will be published once a week for four consecutive weeks. The ad will appear concurrently in the newspaper's e-Edition, which is available on its website.

***Response Mechanisms***

23. An informational website will be established to allow Class members the ability to obtain additional information and documents about the settlement. The website address will be prominently displayed in all printed notice materials and accessible through a hyperlink embedded in the internet banners.

24. A toll-free number will be established to allow Class members the opportunity to learn more about the settlement in the form of frequently asked questions. It will also allow Class members to request to have more information mailed directly to them. The toll-free number will also be prominently displayed in all printed notice materials and direct callers to the settlement website where they can access the full notice and other relevant materials.

***Reach Delivered by the Notice Plan***

25. The combined print and internet media effort will reach approximately 71.6% of likely Class members.<sup>10</sup> Coverage will be further enhanced by the CLRA notice placements.

**CONCLUSION**

26. In my opinion, the proposed Notice Plan is reasonable and consistent with other effective settlement notice programs. It is designed to meet due process requirements and meets the "desire to actually inform" standard of *Mullane*. The proposed Plan provides the same reach evidence that Courts have approved and that has withstood appellate scrutiny. The Federal Judicial Center's (FJC) *Judges' Class Action Notice and Claims Process Checklist and Plain Language*

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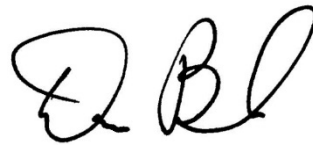
<sup>10</sup> See Footnote 3.

1 *Guide* (the FJC Checklist) considers reach among class members that exceeds 70% to be  
2 reasonable.

3  
4 I declare under penalty of perjury under the laws of the United States that the foregoing is  
5 true and correct.

6  
7 Executed on May 27, 2016 at San Rafael, California.

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A handwritten signature in black ink, appearing to read 'D. Burke', is written above a horizontal line.

Daniel Burke

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Kindall Declaration In Support of Plaintiffs' Motion  
for Preliminary Approval

# EXHIBIT 3

Firm Resume, Izard Nobel LLP



## **FIRM RESUME**

Izard Nobel LLP is one of the premier firms engaged in class action litigation on behalf of consumers, investors and employees. The Firm has been formally appointed by courts in over 60 class action cases as lead counsel or co-lead counsel.<sup>1</sup>

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<sup>1</sup> *Papanikolaou v. Value-Added Communications*, No. 3-95CV0346-H (N.D. Tex.), *Gorga v. Uniroyal Chemical Corp.*, No. CV-96-0132014-S (Conn. Super.); *David v. Simware, Inc.*, No. 96/602143 (N.Y. Sup.); *Butler v. Northstar Health Services, Inc.*, No. 96-701 (W.D. Pa.); *Allen v. Johansson*, 397CV02172 (RNC) (D. Conn.); *Feiner v. SS&C Techs.*, 397CV0656 (D. Conn.); *Berti v. Videolan Techs, Inc.*, No.3:97CV296H (W.D. Ky.); *Ganino v. Citizens Utilities Co.*, No. 398CV00480 (JBA) (D. Conn.); *Bunting v. HealthCor Holdings, Inc.*, No. 398CV0744-D (N.D. Tex.); *Hirsch v. PSS World Medical, Inc.*, No. 98 502 Civ. J20A (M.D. Fla.); *Kenneth Blau v. Douglas Murphy*, No. H 99 0535 (S.D. Tex.); *Angres v. Smallworldwide plc*, No. 99-K-1254 (D. Colo.); *In re Complete Mgmt., Inc. Sec. Litig.*, No. 99 Civ. 1454 (S.D.N.Y.); *Allain Roy v. dELiA's, Inc.*, No. 99 Civ. 3951 (JES) (S.D.N.Y.); *Russo v. KTI, Inc.*, No. 99-1780 (JAG) (D.N.J.); *Laborers Local 1298 Pension Fund v. Campbell Soup Co.*, No. 00-152 (JEI) (D.N.J.); *Hart v. Internet Wire*, No. 00 Civ. 6571 (S.D.N.Y.); *Ottmann v. Hanger Orthopedic Group, Inc.*, Civil Action No. AW 00CV3508 (D. Md.); *In re PolyMedica Corp. Sec. Litig.*, No. 00-12426-REK (D. Mass.); *Karl L. Kapps v. Torch Offshore, Inc.*, Case No. 02-CV-0582 (E.D. La); *In re Cable and Wireless, PLC, Sec. Litig.*, Civil Action No. 02-1860 (E.D. Va); *In re Alloy, Inc. Sec. Litig.*, Case No. 03-CV-1597 (S.D.N.Y.); *In re Surebeam Corporation Sec. Litig.*, Case No. 03-CV-1721 (S.D. Cal.); *In re Primus Telecoms. Group, Inc. Sec. Litig.*, Master Case No. 04-970-A (E.D. Va.); *In re Netopia Sec. Litig.*, Case No. C 04-3364 (N.D. Cal); *Malasky v. IAC/InterActive Corp.*, Case No. 04-CV-7447 (S.D.N.Y.); *In re Supportsoft, Inc. Sec. Litig.*, C 04-5222 SI (N.D. Cal.); *Berson v. Applied Signal Tech. Inc.*, 4:05-cv-01027-SBA (N.D. Cal.); *The Cornelia I. Crowell GST Trust v. Pemstar, Inc.*, 05-CV-1182 (D. MN); *UFCW Local 880 Retail Food Employers Joint Pension Fund v. Newmont Mining Corp.*, No. 05-CV-01046 (D. Colo.); *Aviva Partners v. Exide Techs.*, 3:05-CV-03098 (D. NJ); *In re Veritas Software Corp. Sec. Litig.*, No. 04-831 (D. Del.); *In re Ionatron, Inc. Sec. Litig.*, Case No. 06-354 (D. AZ); *In re FX Energy, Inc. Sec. Litig.*, 2:07-CV-00874 (D. UT); *In re First Virtual Communications, Inc. Securities Litigation*, No. C-04-3585MJJ (N.D. Cal.); *Melms v. Home Solutions of America*, Civil Action No. 3:07-CV-1961-N (N.D. Tex.); *In re: McDermott Int'l, Inc. Sec. Litig.*, 1:08-cv-09943-DC (S.D.N.Y. 2008); *Desai v. Bucksbaum*, No. 09-CV-487 (N.D. IL.); *Bauer v. Prudential, Inc.*, 09-cv-1120 (JLL) (D.NJ); *Klugmann v. American Capital Ltd.*, 09-CV-0005 (D. Md.); *Overby v. Tyco Int'l, Ltd.*, No. 02-CV-1357-B (D.N.H.); *In re Reliant Energy ERISA Litig.*, No. H-02-2051 (S.D. Tex.); *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, MDL Docket No. 1500



In the consumer area, the Firm has served or is serving as lead counsel in cases involving a variety of industries including banking, *Mathena v. Webster Bank, N.A.*, Civil Action No. 3:10-cv-01448-SRU (D. Conn) and *Farb v. Peoples United Bank*, UYW-CV11-6009779-S Conn Sup. Ct); wholesale milk pricing, *Ice Cream Liquidation, Inc. v. Land O'Lakes, Inc.*, No. 02-cv-0377 (D. Conn.); book printing and distribution, *Booklocker.com, Inc. v. Amazon.com*, 08-cv-00160-JAW (D. Me); gasoline distribution, *Wyatt Energy v. Motiva Enterprises, LLC*, X01 cv 02-0174090-S (Conn. Super Ct); and electricity supply contracts, *Richards v. Direct Energy Services, LLC*, No. 3:14-cv-01724 (D. Conn.), *Chandler v. Discount Power*, No. X03-HHD-CV14-6055537 (Conn. Super. Ct.), *Edwards v. North American Power & Gas, LLC*, No. 3:14-cv-1714 (D. Conn.), *Gruber v. Starion Energy, Inc.*, No. 3:14-cv-01828 (D. Conn.), *Roberts v. Verde Energy, USA, Inc.*, No. HHD-cv-156060160 (Conn. Super. Ct.), *Sanborn v. Viridian Energy, Inc.*, No. 3:14-cv-01731 (D. Conn.), and *Steketee v. Viridian Energy, Inc.*, No. 3:15-cv-00585.

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(S.D.N.Y.); *Furstenau v. AT&T*, Case No. 02 CV 8853 (D.N.J.); *In re AEP ERISA Litig.*, Case No. C2-03-67 (S.D. Ohio); *Pettit v. JDS Uniphase Corp.*, Civil Action No. 03-4743-CW (N.D. Cal.); *In re Sprint Corporation ERISA Litig.*, Master File No. 2:03-cv-02202-JWL (D. Kan.); *In re Cardinal Health, Inc. ERISA Litig.*, Case No. C 2-04-642 (S.D. Ohio); *Spear v. Hartford Fin. Svcs Group. Inc.*, No. 04-1790 (D. Conn.); *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.*, MDL No. 1658 (D.N.J.); *In re Diebold ERISA Litig.* No.5:06-CV- 0170 (N.D. Ohio); *In re Bausch & Lomb, Inc. ERISA Litig.*, Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.); *In re Dell, Inc. ERISA Litig.*, Case No. 06-CA-758-SS (W.D. Tex.); *In re First American Corp. ERISA Litig.*, SA-CV07-1357 (C.D. Cal.); *In re Hartford Fin. Svcs Group. Inc. ERISA Litig.*, No. 08-1708 (D. Conn.); *In re Merck & Co., Inc. Vytarin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.); *Mayer v. Administrative Committee of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. Ill.); *In re YRC Worldwide ERISA Litig.*, Case No. 09-CV-02593 (D. Kan); *Board of Trustees of the Operating Engineers Pension Trust v. JPMorgan Chase Bank, N.A.*, 09-cv-09333 (S.D.N.Y.); *White v. Marshall & Ilsley Corp.*, No. 10-CV-00311 (E.D. Wis.); and *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.); *In re Eastman Kodak ERISA Litig.*, No. 6:12-cv-06051 (W.D.N.Y.).



Izard Nobel is also representing consumers of ramen noodles in an antitrust action (*In re Korean Ramen Antitrust Litig.*, No. C-13-04115 (N.D. Cal.), and purchasers of a variety of consumer products in unfair trade practice cases, including *Langan v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-cv-01470 (D. Conn.), *Fagan v. Neutrogena Corp.*, No. EDCV 13-01316 (C.D. Cal.), *Morales v. Conopco Inc., d/b/a Unilever*, No. 2:13-cv-2213 (ED Cal.), and *Balser v. The Hain Celestial Group, Inc.*, No. 13-cv-5604 (C.D. Cal.). Rounding out their wide-ranging experience, prior to joining Izard Nobel, Robert Izard represented an insurer in price-fixing litigation in various state courts and one federal court around the United States, while Seth Klein worked for the consumer protection department of the Connecticut Attorney General's Office.

The Firm's notable successes include settlements against AOL Time Warner (\$100 million), Cardinal Health (\$40 million), Tyco International (\$70.5 million), Merck (\$49.5 million) and AT&T (\$29 million). The Firm settled a securities fraud class action on behalf of investors in Smallworldwide plc, for over 85% of the total losses claimed by class members, and on behalf of investors in Prudential Financial, Inc. for over 86% of the total claimed losses.

Izard Nobel's successful prosecution of class actions has been recognized and commended by judges in numerous judicial districts. In the Tyco litigation, Judge Barbadoro commented about the Firm and Mr. Izard:

I have absolutely no doubt here that the settlement is fair, reasonable and adequate. I think, frankly, it's an extraordinary settlement given the circumstances of the case and the knowledge that I have about the risks that the plaintiff class faced in pursuing this matter to verdict . . . . [I]t was a very, very hard fight and they made you work for everything you obtained on behalf of the Class here....

I have a high regard for you. I know you to be a highly

experienced ERISA class action lawyer. You've represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don't think there's any question that the quality of counsel here is a factor that favors the Court's endorsement of the proposed settlement. . . .

I have enjoyed working with you in this case. You've always been helpful. You've been a gentleman. You've been patient when I've been working on other matters. .

*In re Tyco Int'l Ltd. Sec. Litig.*, Case No. 02-1335 (D.N.H. Nov. 18, 2009). Similarly, in approving the Sprint settlement, Judge Lungstrum found, "[t]he high quality of [Izard Nobel's] work culminated in the successful resolution of this complex case" and that "the results obtained by virtue of the settlement are extraordinary. . . ." *In re Sprint Corp. ERISA Litig.*, No. 03-2202 (D. Kan. Aug. 3, 2006). A Special Master appointed in the AOL Time Warner case commented that obtaining an additional \$30 million for the class stood out as "some of the hardest work and most outstanding results" obtained by Izard Nobel and its co-counsel. *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02-CV-1500 (S.D.N.Y.), Report & Recommendation of Special Master dated August 7, 2007.

### **ATTORNEYS**

**Robert A. Izard** is or has been lead or co-lead counsel in many significant class actions, including cases against Merck, Tyco International, AOL Time Warner, AT&T and Sprint among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

Prior to joining the firm, Mr. Izard was a partner at Robinson & Cole where he represented large corporate clients in a variety of business litigation matters. For example, he represented a large worker's compensation insurer in numerous class action lawsuits filed throughout the country concerning an alleged conspiracy to fix worker's compensation insurance rates.

As part of his twenty plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration, and is a Distinguished Neutral for the CPR Institute for Dispute Resolution.

Mr. Izard is the author of *Lawyers and Lawsuits: A Guide to Litigation* published by Simon and Schuster and a contributing author to the *Mediation Practice Guide*. He is the former chair of the Commercial and Business Litigation Committee of the Litigation Section of the American Bar Association.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the *Emory Law Journal*.

**Mark P. Kindall** joined the firm in 2005, and has worked on many significant class action cases, including ERISA litigation against AOL Time Warner, Kodak and Cardinal Health, securities fraud litigation against SupportSoft, American Capital and Nuvelo, and bank overdraft fee litigation against Webster Bank and People's United Bank. Mr. Kindall successfully argued the 2008 appeal of *Berson v. Applied Signal Tech. Inc.*, 527 F.3d 982 (9th Cir. 2008), and the 2015 appeal of *Balser v. The Hain Celestial*

*Group*, No. 14–55074, 2016 WL 696507 (9th Cir. 2016), which clarified standards for victims of securities and consumer fraud, respectively.

Mr. Kindall was an associate at Covington & Burling in Washington, D.C. from 1988 until 1990. In 1990 he joined the United States Environmental Protection Agency as an Attorney Advisor. He represented the U.S. government in international negotiations at the United Nations, the Organization for Economic Cooperation and Development and the predecessor of the World Trade Organization, and was a member of the U.S. Delegation to the United Nations Conference on Environment and Development (the “Earth Summit”) in Rio de Janeiro in 1992. From 1994 until 2005, Mr. Kindall was an Assistant Attorney General for the State of Connecticut, serving as lead counsel in numerous cases in federal and state court and arguing appeals before the Connecticut Supreme Court and the United States Court of Appeals for the Second Circuit.

Mr. Kindall has taught courses in appellate advocacy, administrative law and international environmental law at the University of Connecticut School of Law. He is admitted to practice in Connecticut, California, and the District of Columbia. He is also a member of the bar of the United States Supreme Court, the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits, and the United States District Courts for Connecticut, the District of Columbia, the Eastern District of Wisconsin, and all District Courts in New York and California.

Mr. Kindall is a 1988 graduate of Boalt Hall School of Law at the University of California at Berkeley, where he served as Book Review Editor of the California Law Review and was elected to the Order of the Coif. He has a bachelor’s degree in history

with highest honors from the University of California at Riverside, and he also studied history at the University of St. Andrews in Scotland.

**Seth R. Klein** graduated *cum laude* from both Yale University and, in 1996, from the University of Michigan Law School, where he was a member of the Michigan Law Review and the Moot Court Board and where he was elected to the Order of the Coif. After clerking for the Hon. David M. Borden of the Connecticut Supreme Court, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein thereafter joined the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions of dollars. At IZARD NOBEL, Mr. Klein's practice continues to focus on consumer protection matters as well as on complex securities and antitrust litigation.

**Douglas P. Needham** received his Bachelor of Science degree from Cornell University in 2004 and his Juris Doctorate from Boston University School of Law in 2007. At Boston University, Mr. Needham was the recipient of a merit scholarship for academic achievement and a member of the school's Moot Court Team. Mr. Needham practiced law for six years in Syracuse, New York, devoting his practice to trial and appellate litigation in state and federal court. He moved to Connecticut in May of 2013 to join LeClair Ryan, A Professional Corporation, and became a partner at that firm in 2014. At LeClair Ryan, Mr. Needham prosecuted and defended a variety of business tort claims, including many for breach of fiduciary duty and fraud, in Connecticut, New York and Massachusetts.

Mr. Needham joined Izard Nobel in 2016. His practice focuses on fiduciary litigation under ERISA as well as consumer protection and fraudulent business practices.

***Christopher M. Barrett*** has been an integral member of litigation teams responsible for securing monetary recoveries on behalf of plaintiffs that collectively exceed \$150 million. In 2015, he was selected by Super Lawyers magazine as a Rising Star. Super Lawyers Rising Stars recognizes top up-and-coming attorneys who are 40 years old or younger, or who have been practicing for 10 years or less.

Prior to joining the Firm, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett received his J.D., magna cum laude, from Fordham University School of Law where he served as a member of the Fordham Law Review, and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to two United States District Judges (S.D.N.Y. and E.D.N.Y.) and a New York Supreme Court Justice.

Kindall Declaration In Support of Plaintiffs' Motion  
for Preliminary Approval

# EXHIBIT 4

Firm Resume, Bramson, Plutzik, Mahler & Birkhaeuser, LLP

**BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER, LLP**

Bramson Plutzik, Mahler & Birkhaeuser, LLP is a San Francisco Bay Area law firm that specializes in representing plaintiffs in class actions, derivative suits and other complex litigation nationwide.

Members of the firm serving as lead or co-lead counsel have successfully handled class actions in which hundreds of millions of dollars have been recovered for the class members. Among these cases are: *In re Unocal Toxic Spill Litigation*, in which \$80 million was recovered for victims of a release of toxic chemicals; *Clark v. Ford Motor Credit Co.*, in which the plaintiff class recovered \$58.25 million; *Klussman v. Cross Country Bank*, in which the class achieved a \$21 million recovery; *Nguyen v. Verizon Wireless*, which also produced a \$21 million recovery; *Patrick v. Blue Shield of California*, in which \$20 million was recovered for the class; *Gross v. Barnett Bank*, in which over \$19 million was recovered; *Ganal v. Toyota Motor Credit*, in which an \$18 million recovery was achieved; *Henderson v. First Interstate Bank of California*, in which \$16.25 million was recovered for the plaintiff class; *Guyette v. Viacom, Inc.*, in which a settlement was negotiated that included a cash payment to the class of \$13 million; *Reed v. Bank of America*, in which \$9 million was recovered; *In re Worlds of Wonder Securities Litigation*, a securities fraud action which resulted in a \$9 million recovery; *Whitehouse v. Westcorp Financial Services, Inc.*, in which an \$8 million settlement was achieved. The firm's partners have represented clients in class action and derivative cases in federal and state courts throughout the United States.

In addition to its expertise in class actions and derivative litigation, the firm has also achieved prominence in the areas of telecommunications law and First Amendment litigation. The firm's efforts in these areas have resulted in significant published decisions, including two favorable rulings from the United States Supreme Court -- *Community Communications v. City of Boulder*, 455 U.S. 40 (1982) and *City of Los Angeles v. Preferred Communications*, 476 U.S. 488 (1986). See also *Preferred Communications v. City of Los Angeles*, 13 F.3d 1327 (9th Cir.), cert. denied, 114 S.Ct. 2738 (1994).

**Robert M. Bramson**

Robert M. Bramson has more than thirty years of experience in the litigation of antitrust and consumer cases, class actions and other complex litigation. Mr. Bramson received his undergraduate degree in economics, summa cum laude, from the University of California at Berkeley in 1977, and obtained his law degree from the Boalt Hall School of Law in 1981.

Mr. Bramson has represented both plaintiffs and defendants in numerous antitrust cases, and has acted as lead counsel in two such actions taken to trial – *Pacific West Cable Co. v. City of Sacramento*, et al. (E.D. Cal.) (\$12 Million settlement on 24th day of trial, at close of plaintiff's case; Sherman Act §2 monopolization claims) and *Coleman et al. v. Sacramento Cable Television* (Sacramento Sup. Ct.) (\$2.4 Million judgment after 17-day trial; class action/B & P §17200 case; B & P §17024 discriminatory pricing claims).



Mr. Bramson specializes in antitrust, business torts and communications litigation, as well as in class action cases. He served for many years on the Board of Directors of the National Association of Consumer Advocates and co-chaired its class action committee. He is a contributing author to the National Consumer Law Center's publication *Consumer Class Actions*. He acted as reporter for the National Association of Consumer Advocates in preparing its influential *Standards and Guidelines For Consumer Class Actions*, 176 F.R.D. 375 (1997).

Mr. Bramson's lecture topics have included "Strategic and Ethical Issues in Litigating 17200 Cases" (Bar Association of San Francisco, San Francisco 2001), "Equitable Remedies In Class Actions and Under California's Section 17200 Statute" (National Association of Consumer Advocates, Chicago 2000), "Ethical Issues Arising in Class Action Settlements" (National Consumer Law Center, Wash. DC and San Diego 1999 and 1998) "California's Business & Professions Code Section 17200" (California Bar Association, Lake Tahoe 1997), "Preparation of Competitive Business Practices Cases" (Continuing Education of the Bar, Sacramento 1997), and "The Cable Communications Policy Act of 1984" (California State University, Fullerton 1993).

### **Robert M. Bramson Representative Cases**

*Klussman v. Cross Country Bank* (Alameda County Superior Court) Honorable Ronald Sabraw and Honorable Lawrence Appel, presiding. Co-counsel for a consumer class against credit card issuer. Shortly before trial was due to commence, a settlement was negotiated that resulted in the recovery of consideration exceeding \$21 million.

*Boltz v. Buena Vista Home Entertainment, et al.* (Los Angeles Superior Court) Honorable Anthony Mohr, presiding. Co-counsel on behalf of a nationwide class of hard of hearing persons seeking "close captioning" of content on the DVDs distributed to the public by four major motion picture studios. Case was settled by stipulations to industry-changing injunctions requiring greater captioning.

*Acree v. General Motors Acceptance Corp.* (Sacramento Superior Court; Third District Court of Appeal) Honorable James Long, presiding. Class action challenging insurance charges imposed upon borrowers by defendant. Following extended trial and multiple appeals, judgment for class and award of fees against defendant totaling approximately \$7,000,000 upheld on appeal.

*In re Unocal Refinery Litigation* (Contra Costa Superior Court) Honorable Ignacio Ruvulo, presiding. One of two co-lead counsel for a class of victims exposed to a toxic chemical spill. Following extensive discovery, including several months of daily depositions, an \$80,000,000 settlement was negotiated.

*Pacific West Cable Company v. City of Sacramento, et al.* (U.S. District Court, E.D. Cal.) Honorable Milton L. Schwarz, presiding. Antitrust jury trial on behalf of plaintiff. Case settled for \$12,000,000 after month-long presentation of plaintiff's case in chief.

*Coleman v. Sacramento Cable Television* (Sacramento Superior Court) Honorable Roger K. Warren, presiding. Judgment of \$2,400,000 obtained for clients in Bus. & Prof. Code §17200 “quasi-class” case, following 26 day trial.

*Campisi v. Chavez, et al.* (Arbitration) Charles E. Farnsworth, Esq., Referee, presiding. Defended clients against claims of breach of contract and breach of fiduciary duty. Three week arbitration proceeding resulting in ruling limiting plaintiff to amount stipulated as due.

*Pacific West Cable Company v. City of Sacramento, et al.* (U.S. District Court, E.D. Cal.) Honorable Milton L. Schwarz, presiding. Twenty-nine day jury trial challenging municipal cable franchising activities. Favorable jury verdicts (see 672 F. Supp. 1322) led to \$6,000,000 settlement for client as well as injunction permitting access to the market.

*Nor-West Cable Communications Partnership v. City of St. Paul* (U.S. District Court, D. Minn.) Honorable Joseph Alsop, presiding. Three month jury trial challenging municipal policy fostering monopolization of local cable television market.

*Furniture Creations, Inc. v. Universal Furniture* (Los Angeles Superior Court) Honorable Robert Einstein, presiding. Three week jury trial in breach of contract case resulting in \$1,000,000 verdict for clients.

**Robert M. Bramson Selected Published Decisions:**

*Klussman v. Cross Country Bank*, 134 Cal.App.4th 1283 (2005).

*Acree v. General Motors Acceptance Corp.*, 92 Cal.App.4<sup>th</sup> 385 (2001).

*Heartland Communications, Inc. v. Sprint Corp.*, 161 F.R.D. 111 (D. Kan. 1995).

*Preferred Communications, Inc. v. City of Los Angeles*, 13 F.3d 1327 (9<sup>th</sup> Cir.), *cert. denied*, 512 U.S. 1235 (1994).

*Gordon v. Ford Motor Credit Corp.*, 868 F. Supp. 1191 (N.D. Cal. 1992).

*Century Federal, Inc. v. City of Palo Alto*, 710 F.Supp. 1559 (N.D. Cal. 1988).

*Pacific West Cable Company v. City of Sacramento*, 672 F. Supp. 1322 (E.D. Cal. 1987) and 693 F. Supp. 865 (E.D. Cal. 1988).

*Colorado Springs Cablevision, Inc. v. Lively*, 579 F. Supp. 252 (D. Colo. 1984).

**Alan R. Plutzik**

Alan R. Plutzik specializes in complex business litigation in federal and state courts. Areas of particular emphasis include consumer class actions, securities fraud and corporate governance litigation, antitrust and communications law. Mr. Plutzik is admitted to practice in California and the District of Columbia Bar (inactive member) and is a member of the bars of the United States Supreme Court, the Second, Third, Eighth, Ninth, Tenth and District of Columbia Circuits and a number of federal district courts.

Mr. Plutzik joined the firm upon his graduation from the University of California at Berkeley's Boalt Hall School of Law in 1977. He received his undergraduate degree from St. John's College, Annapolis, Maryland, in 1971, and holds an M. A. from Stanford University.

Mr. Plutzik has handled a wide variety of class actions and derivative cases. He has represented, among other clients,

- investors in securities class actions
- shareholders in corporate derivative suits;
- victims of consumer fraud;
- parties alleging breach of contract by insurance companies and other corporations;
- limited partners challenging conduct by their general partners;
- consumers and businesses harmed by price-fixing and other anticompetitive conduct;
- employees in ERISA and wage/hour cases;
- property owners in litigation challenging policies that affect their property rights;
- purchasers of mislabeled and defective products;
- home buyers in suits brought under the Real Estate Settlement Procedures Act;
- victims of toxic pollution; and
- Subscribers to cellular, landline telephone, cable TV and Internet-delivered services.

Mr. Plutzik has also represented technology companies in litigation and arbitration, and broadcasters, cable television companies, communications common carriers and consumers in litigation and in administrative proceedings before the Federal Communications Commission and the California Public Utilities Commission. He has been designated a Northern California SuperLawyer.

Mr. Plutzik has written or lectured on topics that include class actions, California consumer law, substantive and procedural issues under the federal securities laws, First Amendment issues applicable to the media, cable television franchising and legal issues arising from cable television companies' access to utility poles and real estate developments. He has appeared as a guest radio commentator on the Len Tillem Show on KGO-Radio in San Francisco, discussing class actions, consumer protection law and investor rights.

Mr. Plutzik has served as a judge *pro tem* on the Contra Costa County Superior Court. He is also Co-President of the Warren W. Eukel Teacher Trust, a charity that honors outstanding teachers in Contra Costa County, California.

### **Alan R. Plutzik Representative Cases**

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court). Mr. Plutzik is co-lead counsel for the plaintiffs in a consumer class action challenging the validity of a landline telephone company's late fees in light of California statutory limitations on liquidated damages. A \$38 million settlement was negotiated and approved by the Court.

*Patrick v. California Physicians' Service dba Blue Shield of California* (San Francisco County, California Superior Court and United States District Court for the Northern District of California). Mr. Plutzik represented the plaintiffs in a class action for consumer fraud, unfair business practices and violations of ERISA arising from allegedly deceptive and unfair practices by a health insurance company in connection with patient co-payments for hospital treatment. A settlement of \$20 million was negotiated after the close of discovery.

*In re Cellphone Termination Fee Cases – Handset Locking Actions* (Alameda County, California Superior Court). Mr. Plutzik served as co-lead counsel in five coordinated cases challenging the secret locking of cellphone handsets by major national wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements were approved in all five cases on terms that required the cellphone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cellphone consumers nationwide regarding the locking and unlocking of cellphone handsets.

*In re Cellphone Termination Fee Cases – Early Termination Fee Cases* (Alameda County, California Superior Court and Federal Communications Commission). Mr. Plutzik is Liaison Counsel and a member of the plaintiffs' Executive Committee in connection with claims challenging the validity under California law of early termination fees imposed by national cellphone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict and affirmed on appeal, the Court ruled after trial that more than \$73 million of flat early termination fees that Sprint PCS had collected from California consumers over an eight-year period were void and unenforceable, and enjoined Sprint from collecting an additional \$225 million of such charges that had been billed but not paid.

*Guyette v. Viacom, Inc.* (Alameda County, California Superior Court). Mr. Plutzik was co-counsel for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with the subscribers. A settlement was negotiated shortly before trial under which defendants paid the class \$13 million in cash.

*Green v. Metropolitan Life Insurance Co.* (San Francisco County, California Superior Court). Mr. Plutzik was co-counsel for a California class of MetLife policy holders in a class action alleging that MetLife had engaged in “twisting,” “churning” and other misconduct in the sale of replacement life insurance policies. After the California class was certified, the case settled on a nationwide basis for consideration in excess of \$1 billion.

*In re Pacific Lumber Company Securities Litigation* (United States District Court, Southern District of New York). Mr. Plutzik was counsel for the plaintiff class in a securities class action arising out of a tender offer for Pacific Lumber Company by a corporate raider. The plaintiff class recovered in excess of \$140 million.

*In re Worlds of Wonder Securities Litigation* (United States District Court, Northern District of California). Mr. Plutzik was co-lead counsel for the plaintiff class in a securities fraud class action against officers, directors, venture capitalists and auditors of failed toy company in a case raising complex accounting and auditing issues. After percipient and expert discovery, summary judgment, appeal and remand, a settlement was reached against the company's auditor, Deloitte & Touche, LLP, for \$9 million. The case resulted in a number of published opinions – e.g., *In re Worlds of Wonder Securities Litigation*, 35 F.3d 1407 (9th Cir. 1994), *cert. denied*, 516 U.S. 868 (1995); 694 F. Supp. 1427 (N.D. Cal. 1988); 721 F. Supp. 1140 (N.D. Cal. 1989); 1990 U.S. Dist. LEXIS 18396, [1990-91 Transfer Binder] Fed. Sec. L. Rep. (CCH) 95,689 (N.D. Cal. 1990); 147 F.R.D. 208 (N.D. Cal. 1992).

*McCall v. Newkirk Capital LLC* (Connecticut Superior Court, New Britain Judicial District). Mr. Plutzik represented a class of investors in 90 limited partnerships in a suit arising out of a consolidation, or “rollup,” of the partnerships. A settlement was negotiated and approved by the Court that provided for the class to receive significant consideration, including cash, additional partnership units and a restructuring of certain assets and agreements with the general partner and its affiliates.

*In re Daisy Systems Securities Litigation* (United States District Court, Northern District of California). Mr. Plutzik represented a plaintiff class in a securities fraud class action against the directors and officers of a Silicon Valley company. A \$13.1 million settlement was reached.

*Hodge v. Franklin Select Realty Trust* (San Mateo County, California Superior Court). Mr. Plutzik was co-counsel for a shareholder class in a claim against directors and officers of a real estate investment trust and others, arising out of merger with two other related companies. A settlement of \$4 million was negotiated.

*Barnett v. Glenborough Pension Investors* (San Mateo County, California Superior Court). Mr. Plutzik was co-counsel for a plaintiff class of limited partners in a claim against general partners, attorneys and lenders arising from the restructuring of a real estate limited

partnership. A settlement of approximately \$3 million was reached after the close of expert discovery.

*In re Technical Equities Federal Securities Litigation* (United States District Court, Northern District of California). Mr. Plutzik represented the plaintiff class in securities fraud class action against directors, officers, auditors, attorneys, lenders and investment bankers of a public corporation that operated a complex Ponzi scheme. A global classwide settlement in the amount of \$13 million was reached shortly before trial. *See In re Technical Equities Federal Securities Litigation*, 1988 U.S. Dist. LEXIS 15813, [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 94, 093 (N.D. Cal. Oct. 3, 1988)

*Daniels v. Centennial Group* (Orange County, California Superior Court). Mr. Plutzik was co-counsel for the plaintiff class in a claim for fraud, negligent misrepresentation and breach of fiduciary duty against general partners and promoters arising from a "roll-up" of six real estate limited partnerships. A settlement of approximately \$4 million was reached on behalf of the investors. The case resulted in an important published opinion regarding the standards for class certification under California law – *Daniels v. Centennial Group, Inc.*, 16 Cal.App.4th 467 (1993).

*Harbor Finance Partners v. BKP Capital Management et al.* (San Francisco County Superior Court). Mr. Plutzik was co-counsel for a plaintiff class consisting of both individual and institutional investors in an action asserting claims of misrepresentation, breach of fiduciary duty and unfair business practices against a hedge fund, its general partner, its auditor and others. The action settled on terms favorable to the class.

*Condes v. Evercom et al.* (Alameda County, California Superior Court). Mr. Plutzik was co-counsel for a class of recipients of inmate telephone calls. A partial class settlement which, together with individual settlements, resulted in the recovery of more than \$1 million was negotiated and approved by the Court.

*NV Security, Inc. v. Fluke Networks, Inc.* (U.S. District Court, Central District of California). Mr. Plutzik was counsel in a class action on behalf of purchasers of allegedly defective telephone line equipment. A settlement was negotiated that included monetary and injunctive relief for class members.

*McCullough v. Jameson* (United States District Court for the Northern District of California) – Individual and derivative case on behalf of shareholders of a privately held oil company for alleged misappropriation of corporate opportunities and other breaches of fiduciary duties. The case settled favorably.

*Stock Options Backdating Derivative Cases* (United States District Court, Northern District of California) – Mr. Plutzik served as Liaison Counsel in a number of corporate derivative cases in the United States District Court for the Northern District of California alleging the improper backdating of stock options, including *In re Integrated Silicon Solutions Derivative Cases*, *In re Actel Derivative Cases* and *In re Chordiant Derivative Cases*. Successful results were achieved in all of those cases.



*In re Washington Public Power Supply Securities Litigation* (United States Court of Appeals for the Ninth Circuit) – Mr. Plutzik represented a class action law firm in a case that established important principles regarding the compensation of plaintiffs’ counsel in federal class actions. The case resulted in a published opinion. *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9<sup>th</sup> Cir. 1994).

*Antitrust Direct and Indirect Purchaser Class Actions* – Mr. Plutzik has served in a leadership position in numerous antitrust class actions, including *In re Methionine Direct Purchaser Antitrust Litigation* (United States District Court for the Northern District of California), *In re California Indirect Purchaser MSG Antitrust Litigation* (San Francisco County Superior Court) and *In re California Infant Formula Indirect Purchaser Antitrust Litigation* (San Francisco County Superior Court).

*California Community Television Association v. Pacific Gas & Electric Company* (Alameda County, California Superior Court), *Group Cable v. PG&E* (United States District Court for the Northern District of California) and *California Community Television Association v. Pacific Gas & Electric Company* (California Public Utilities Commission) – associational and class action cases alleging antitrust and related business tort claims for denial of access to utility poles on reasonable terms, and administrative action seeking regulatory ruling setting fair and reasonable prices and terms, brought on behalf of California cable television companies against a public utility. The cases were settled on terms that permitted favorable conditions of access to the poles.

*Lucero v. Frederick's of Hollywood, Inc.* (Santa Clara County, California Superior Court). Mr. Plutzik served as lead counsel for an employee class in this wage and hour class action. A \$950,000 settlement was approved by the Court.

*USA Media Group LLC v. Truckee Donner Public Utility District* (United States District Court for the Eastern District of California). Mr. Plutzik represented a cable television company in a claim brought against a public utility district for constitutional and antitrust violations and related state-law claims arising from restrictions imposed by the public utility district on the cable television company's access to utility poles owned by the public utility district, which was planning to offer competitive cable television service. The case settled on terms that permitted the cable television company to continue to obtain access the poles on reasonable terms and conditions.

*Tele-Communications of Key West, Inc. v. United States* (United States District Court, District of the District of Columbia). Mr. Plutzik represented a cable television company in constitutional litigation arising from its provision of service on Homestead Air Force Base. *Telecommunications of Key West, Inc. v. United States*, 757 F.2d 1330 (D.C. Cir. 1985).

*Citizens Cable Communications Co. v. Cox Cable Communications Co.* (United States District Court for the Northern District of Indiana). Mr. Plutzik represented a cable television company in litigation arising from an option to purchase a cable television system in a neighboring community. The case settled favorably during trial.

**Daniel E. Birkhaeuser**

Daniel E. Birkhaeuser received his law degree from the University of California, Davis in 1988. While at Davis, he served as an Editor of the *U.C. Davis Law Review*.

Following graduation, Mr. Birkhaeuser joined the law firm of McCutchen, Doyle, Brown and Enersen. At the McCutchen firm, he represented plaintiffs and defendants in a wide variety of complex civil litigation matters including real estate, bankruptcy and environmental litigation. In 1991, Mr. Birkhaeuser co-chaired an eight week trial in *Quadrant Corporation v. First Interstate Bank*, Contra Costa County Superior Court Action No. C90-03855 recovering for his client over \$15 million which, at that time, was the largest jury verdict in Contra Costa County history.

In 1992, Mr. Birkhaeuser began to focus his career on class action litigation at the trial and appellate levels. One such matter, *Harris v. Chase Manhattan Bank*, N.A. (1994) 34 Cal. App. 4th 1563, resulted in a favorable decision, the reasoning of which was affirmed by the California Supreme Court in a companion case entitled *Smiley v. Citibank* (1995) 11 Cal. 4th 138, and ultimately by the United States Supreme Court in the same case. *Smiley v. Citibank* (1996) 517 U.S. 735.

Mr. Birkhaeuser joined the firm in 1994 and became a partner in 1997. At the firm, he has prosecuted class action cases involving insurance, false nutritional labeling, price fixing and securities fraud. Mr. Birkhaeuser served in a leadership position in *In Re Kansas Vitamin Antitrust Litigation* and *In re Wisconsin Vitamin Antitrust Litigation*, which were coordinated through proceedings in the District of Columbia and consolidated with *parens patriae* actions brought by attorneys general in 23 jurisdictions. He served on plaintiffs' Executive Committee in *In re DRAM California Indirect Purchaser Antitrust Litigation* and *In re California Polyester Indirect Purchaser Antitrust Litigation*, and serves as Liaison Counsel in *In Re Korean Ramen Indirect Purchaser Antitrust Litigation*. He has also represented indirect purchaser plaintiffs in antitrust matters alleging price fixing in the "Flash Memory," Cathode Ray Tube, Automobile, and Paper industries. He has also served as a judge *pro tem* in the Contra Costa Superior Court.

**Other Significant Cases:**

*Van Warmerdam v. Honey Hill Farms* (arbitration) Honorable William Boone, presiding. Lead counsel in complex contract dispute resulting in verdict in client's favor on complaint and cross-complaint.

*Meadow Wood Land Company v. Landmark Vineyards, Ltd, et. al.*, First Appellate District No. AO43692. Lead counsel for defendants and respondents in case which settled favorably after the filing of Respondents' brief on appeal.

*Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531 (1991). Landmark decision under California Environmental Quality Act addressing City's ability to amend general plan by voter initiative.



*Acree v. General Motors, Inc.*, 92 Cal. App. 4th 385 (2001). Important decision defining scope of covenant of good faith and fair dealing and reasonableness of fee award after class action trial against tenacious defendant.

*Morelli v. Weider Nutrition Group, Inc.*, 275 A.D.2d 607, 712 N.Y.S. 2d 551 (1<sup>st</sup> Dept. 2000). Case of first impression holding that plaintiffs' claims for false nutritional labeling were not preempted by the Nutritional Labeling and Education Act.

*Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292 (S.D. Fla. 2007). Lead counsel for objector/class member in state court action who, joined by attorneys general from 35 states, successfully defeated settlement of later-filed federal action on the ground that the settlement was unfair.

*Vassalle v. Midland Funding*, 708 F. 3d 747 (6th Cir. 2013) Co-lead counsel for objector in which the Court rejected a proposed class action settlement of claims relating to affidavits containing false representations of personal knowledge.

### **Jennifer S. Rosenberg**

Jennifer S. Rosenberg is senior counsel with the firm. She received her A.B. in political science, with great distinction in general scholarship, in 1981 from the University of California at Berkeley. She is a member of Phi Beta Kappa. Ms. Rosenberg obtained her law degree from the University of California at Berkeley (Boalt Hall) in 1985.

From 1985 to 1987, Ms. Rosenberg was an associate with the law firm of McKenna, Conner & Cuneo, specializing in banking law. Before joining Bramson, Plutzik, Mahler & Birkhaeuser, she was associated with McCutchen, Doyle, Brown & Enersen, practicing commercial litigation and land use litigation. As an adjunct professor at the University of San Francisco, she has taught business law and business ethics in the undergraduate and MBA programs of the McLaren School of Business.

Ms. Rosenberg is a contributing writer for Justice Maria Rivera's *California Practice Guide: Civil Procedure Before Trial Forms* (The Rutter Group), the companion volume to Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group). She is the principal drafter and editor of the Guide's class action forms. She has published articles in *California Lawyer* and *Business Voice* magazines and edited the 1994 edition of Remy, Thomas & Moose's *Guide to the California Environmental Quality Act*.

At Bramson, Plutzik, Mahler & Birkhaeuser, Ms. Rosenberg has focused on the prosecution of consumer class actions. Ms. Rosenberg is admitted to practice in California and is a member of the bars of the federal district courts of California and of the Ninth Circuit. She has acted as a judge pro tem for civil matters and as a small claims appeals judge in Superior Court, as well as a fee arbitrator.

**Selected Published Decisions:**

*Ayyad v. Sprint Spectrum, L.P.*, 210 Cal.App.4th 851 (2012)

*Figueroa v. Sharper Image Corporation*, 517 F.Supp.2d 1292 (S.D. Fla. 2007)

*Acree v. General Motors Acceptance Corporation*, 92 Cal. App. 4th 385 (2001)

*Mangini v. Aerojet-General Corporation*, 230 Cal.App.3d 1125 (1991)

**Michael S. Strimling**

Michael S. Strimling has extensive experience in complex litigation and class actions. He received his J.D. from Boalt Hall Law School at U.C. Berkeley and was admitted to the California Bar in 1980. As well as actively prosecuting class actions and mass tort litigation while at Lieff, Cabraser, Heimann & Bernstein, at Bramson, Plutzik, Mahler & Birkhaeuser, LLP, and of counsel in other complex litigation, he has defended class actions while associated with Bartko, Zankel, Tarrant & Miller and Wendel, Rosen, Black & Dean.

In addition, Mr. Strimling has served as the Research Attorney for the Complex Litigation Department of Santa Clara County Superior Court, as a Senior Research Attorney to the California Sixth District Court of Appeal, as a Research Attorney to the Alameda County Superior Court, as a Legal Advisor to the Solomon Islands government in the United States Peace Corps, and as a three-term member of the California State Bar's Committee on the Administration of Justice. In addition to admission before State and Federal District Courts he has been admitted to the Bar and argued before the U.S. Court of Federal Claims in Washington, D.C., lectured in continuing legal education seminars, published articles on derivative litigation, and been admitted to the New Zealand and Solomon Islands Bar.

**Jenelle Welling**

**Jenelle Welling** graduated from the University of California, Hastings College of the Law in 2000, where she was honored with the American Jurisprudence Award in both Moot Court and Trial Advocacy. She also was a member of the Hastings Women's Law Journal. Prior to law school, Ms. Welling received a Masters Degree in Public Policy from the University of California at Berkeley. She graduated with Highest Honors from the University of California at San Diego with a Bachelor of Arts degree in Political Science. Recognized as a Rising Star by the Super Lawyers of Northern California in 2010 and 2011, Ms. Welling is a member of the National Association of Consumer Advocates, the Consumer Attorneys of California, and the Contra Costa County Bar Association. Her primary practice area is complex and class action litigation in consumer financial services and consumer products. She also practices in antitrust and commercial litigation. She has lectured on the Truth in Billing Act, mediating consumer class actions, and presented seminars on the basics of consumer class action litigation for plaintiffs' lawyers.

Some of the clients and plaintiff classes Ms. Welling has represented include:

- *In re: Ford Explorer Cases, J.C.C.P. Nos. 4266 & 4270.* Ms. Welling, along with co-counsel, represented a class of California consumers alleging that Ford withheld material information about the rollover propensity of the Ford Explorer. Ms. Welling was a member of the 5-person trial team that presented plaintiffs' case over the course of a 50-day trial, and was primarily responsible for presenting expert testimony in support of restitution under Business & Professions Code §17200 totaling more than \$500 million. The case settled on the eve of closing argument and ultimately provided injunctive relief that will inure to the benefit of consumers nationwide, as well as the opportunity for monetary redress for consumers in California, Texas, Illinois, and Connecticut.
- *In re CARB Compliant Gasoline Cases II, JCCP No. 4449.* Jenelle Welling served as co-liaison counsel in this anti-trust action filed in California Superior Court. Plaintiffs allege that Union Oil Company misled the California Air Resources Board (CARB) into adopting standards for the composition of summertime reformulated gasoline that overlapped with Union Oil Company's then undisclosed and pending patents. Through this alleged deception and other alleged anti-competitive acts, California consumers in the downstream market allegedly overpaid for summertime CARB-complaint gasoline. A settlement providing \$48 million in cy pres was approved by the court in 2008.
- *In re: Baycol Cases I and II.* This action alleges that Bayer's advertisement and sale of the cholesterol drug Baycol, which was ultimately pulled from the market for safety risks, violated California's Unfair Competition Law. In February 2011, Ms. Welling successfully overturned an appellate opinion, and obtained a ruling in Plaintiff's favor on important class action procedural issues. *See In re Baycol Cases I and II*, (2011) 51 Cal.4th 751.
- *Brothers v. Hewlett-Packard.* In this case, Ms. Welling secured speedy relief for owners nationwide of certain HP laptop computers that were alleged to contain a defect associated with an advanced graphics card. Consumers received a new, equally performing graphics card at no expense and a refund of 100% of expenses associated with any repair of the alleged defect. This case also generated the first decision within the Ninth Circuit establishing federal jurisdiction under CAFA for Magnuson-Moss claims without the 100 plaintiff jurisdictional requirement. *See Brothers v. Hewlett Packard, Co.*, Case No. 06-02254, 2007 WL 485979 (N.D. Cal. Feb. 12, 2007).
- *In re: Tenet Healthcare Cases II.* Jenelle Welling served on the Plaintiffs' Executive Committee in this consolidated action that obtained redress for uninsured consumers who received treatment from one of Tenet Healthcare's 42 California hospitals. The complaint alleged Tenet charged exorbitant and unconscionable prices, for example, marking up prescription drugs 1,038% on average, to increase revenues and profits. A national settlement was approved in August 2005 that provides for restitution, injunctive relief

and \$4 million of cy pres damages. The settlement has been hailed as a model for how the nation's uninsured population should be billed for hospital care.

- *Prata v. Bank One*. Ms. Welling, along with co-counsel, represented the plaintiff class in this case involving "Same as Cash" credit card financing claims. The Superior Court in Los Angeles approved a \$3 million cash settlement for California consumers who participated in the "Same as Cash" financing plan. Litigation of this case resulted in a oft-cited opinion interpreting Bus. & Prof. Code § 17200, *Prata v. Sup. Ct.* (2001) 91 Cal. App. 4th 1128.
- *Starkey v. Rusnak BMW*. Ms. Welling led this class action asserting that expensive BMW wheels on new cars were secretly replaced before sale with lower value after market wheels. The action was resolved quickly to the benefit of the class, and included an agreement by the dealer to refrain from selling after market wheels on new cars.
- *Prata v. GE Capital*. Ms. Welling, along with co-counsel, restored another \$2.5 million to Californians who were duped by the "Same as Cash" advertising slogan and program that GE bought from Bank One. GE also agreed to refrain from using the "Same as Cash" slogan to advertise financing plans that require minimum monthly payments.

**Paul F. Mahler (Of Counsel)**

Paul F. Mahler is a 1980 graduate of the University of California, Boalt Hall School of Law. After working several years in-house at a major educational company headquartered in San Francisco, Mr. Mahler joined the firm in 1985, became a partner in 1997 and is currently of counsel to the firm.

Mr. Mahler handles business transactions, representing primarily small and medium-sized businesses. Mr. Mahler's transactional work includes entity formation and agreements among owners; the purchase and sale of assets, stock or other interests; intellectual property issues; employment matters; and commercial real estate matters, primarily in leasing. His clients include high technology companies, biotechnology companies, accounting and insurance firms and companies with significant retail store operations.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAINIE COHEN, ALBA MORALES, LINDA  
CLAYMAN and KENNETH DREW, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CONOPCO, INC. D/B/A UNILEVER,

Defendant.

Case No. 2:13-cv-02213-WBS

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT,  
CONDITIONALLY CERTIFYING THE  
CLASS, PROVIDING FOR NOTICE  
AND SCHEDULING ORDER**

WHEREAS, Plaintiffs in the action *Morales, et al. v. Conopco, Inc.*, filed on October 10, 2013, in the U.S. District Court for the Eastern District of California and assigned Case No. 2:13-cv-02213, and Defendant Conopco, Inc. d/b/a Unilever have entered into a Stipulation of Settlement, filed May 27, 2016 after arm's-length settlement discussions (the "Settlement" or "Stipulation");

AND, WHEREAS, the Court has received and considered the Stipulation, including the accompanying exhibits;

AND, WHEREAS, the Parties have made an application for an order preliminarily approving the settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set forth in the Stipulation;

AND, WHEREAS, the Court has reviewed the Parties' application for such order, and has found good cause for same.

NOW, THEREFORE, IT IS HEREBY ORDERED:

**A. The Class Is Provisionally Certified**

1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only, the Court hereby provisionally certifies the following Class:<sup>1</sup>

All individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the “Products”). Specifically excluded from the Class are (1) Defendant, (2) the officers, directors, or employees of Defendant and their immediate family members, (3) any entity in which Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of Defendant, (5) all federal court judges who have presided over this Action and their immediate family members, (6) all persons who submit a valid request for exclusion from the Class and (7) those who purchased the Products for the purpose of resale.

2. With respect to the Class and for settlement purposes only, the Court preliminarily finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representatives and Class Counsel; (e) predominance of common questions of fact and law among the Class; and (f) superiority. Provisional certification of a Class pursuant to the terms of the Settlement shall not constitute and does not constitute, and shall not be construed or used as, an admission, concession, or declaration by or against Defendant that (except for the purposes of the Settlement) this action or any other action is appropriate for class treatment under Fed. R. Civ. P. 23, or any similar federal or state class action statute or rule, for litigation purposes.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints the Plaintiffs in the Action Alba Morales, Lainie Cohen, Linda Clayman and Kenneth Drew, as class representatives.

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<sup>1</sup> All capitalized terms in this Order shall have the same meaning as the defined terms in the Stipulation.

1           4.     Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1),  
2 the Court hereby appoints the law firm of IZARD NOBEL LLP as class counsel and the law firm of  
3 Bramson, Plutzik, Mahler & Birkhaeuser, LLP as liaison counsel for the Class.

4           **B. The Settlement Is Preliminarily Approved and Final Approval Schedule Set**

5           5.     The Court preliminarily finds that (a) the proposed Settlement resulted from  
6 extensive arm's-length negotiations with the assistance of an experienced mediator, (b) the  
7 Settlement was executed only after Class Counsel had conducted appropriate investigation and  
8 discovery regarding the strengths and weaknesses of Plaintiffs' claims, (c) Class Counsel have  
9 concluded that the proposed Settlement is fair, reasonable, and adequate, and (d) the proposed  
10 Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed  
11 Settlement to the Class. Having considered the essential terms of the Settlement under the  
12 recommended standards for preliminary approval of settlements as set forth in relevant  
13 jurisprudence, the Court finds that those whose claims would be settled, compromised, dismissed,  
14 and/or released pursuant to the Settlement should be given notice and an opportunity to be heard  
15 regarding final approval of the Settlement and other matters. Accordingly, the Court preliminarily  
16 approves the Stipulation and the terms and conditions of settlement set forth therein, subject to  
17 further consideration at the Final Approval Hearing described below.

18           Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval  
19 Hearing on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., at the Robert T. Matsui United States  
20 Courthouse, 501 I Street, Sacramento, CA, in the Courtroom of the Honorable William B. Shubb,  
21 for the following purposes:

- 22
- 23           a. making a final determination as to whether the Class meets all applicable  
24 requirements of Federal Rule of Civil Procedure 23 and, thus, the Class should  
be certified for purposes of effectuating the Settlement;
  - 25           b. making a final determination as to whether Plaintiffs should be appointed Class  
26 Representatives, IZARD NOBEL LLP should be appointed as class counsel under  
Rule 23(g) and Bramson, Plutzik, Mahler & Birkhaeuser, LLP as liaison counsel  
for the Class;
- 27



- c. making a final determination as to whether Notice provided in accordance with the Notice Plan and preliminarily approved herein (a) constitutes the best practicable notice; (b) constitutes notice reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- d. making a final determination as to whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. making a final determination as to whether the proposed Plan of Allocation should be approved;
- f. considering the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as provided for under the Stipulation;
- g. considering the applications of Plaintiffs for class representative incentive awards, as provided for under the Stipulation;
- h. considering whether the Court should enter the [Proposed] Final Settlement, Order and Judgment;
- i. considering whether the release of the Released Claims as set forth in the Stipulation should be provided; and
- j. ruling upon such other matters as the Court may deem just and appropriate.

6. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Class Members.

7. The Parties may further modify the Stipulation prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the Settlement provided thereunder. The Court may approve the Stipulation with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

8. All papers in support of the Settlement and any application for an award of Attorneys' Fees, Costs and Expenses and/or Class Representative Awards must be filed with the Court and served at least thirty-five (35) days prior to the Final Approval Hearing.



**C. The Court Approves the Form and Method of Class Notice**

9. The Court approves, as to form and content, the proposed Publication Notice and Class Notice (collectively the “Notice”), which are Exhibits C and E, respectively, to the Stipulation.

10. The Court finds that the proposed Publication Notice and Class Notice fairly and adequately: (a) describe the terms and effects of the Settlement and the Plan of Allocation; (b) notify the Class that Class Counsel will seek Attorneys’ Fees, Costs and Expenses from the Settlement Fund; (c) notify the Class that the four (4) Named Plaintiffs will request that the Court approve Class Representative Awards, not to exceed a total amount of \$15,000 for all Class Representatives, for their services in such capacity, to be paid by Defendant separate and apart from Defendant’s payment of \$3.25 million to the Settlement Fund; (d) give notice to the Class of the time and place of the Final Approval Hearing; and (d) describe how the recipients of the Class Notice may object to any of the relief requested, opt out of the Settlement, and/or file claims.

11. The Court finds that the distribution of Notice substantially in the manner and form set forth in the Notice Plan attached to the Stipulation as Exhibit D meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

12. The Court approves the designation of KCC Class Action Services LLC to serve as the Court-appointed Claim Administrator for the Settlement. The Claim Administrator shall cause the Publication Notice to be published, disseminate Class Notice, and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Stipulation and this Order under the direction and supervision of the Court.

13. The Court directs the Claim Administrator to establish a Settlement Website, on which it will make available copies of this Order, Class Notice, Claim Forms (that may be downloaded and submitted online, by mail, or by facsimile), the Stipulation and all Exhibits

thereto. The Settlement Website will list a toll-free hotline, as well as other information that may be of assistance to Class Members or required under the Stipulation. The Class Notice and Claim Forms shall be made available to Class Members through the Settlement Website on the date notice is first published and continuously thereafter through the Effective Date (and on the websites of Class Counsel at their options during the same period).

14. The Claim Administrator is ordered to complete publication of the Publication Notice on or about ninety (90) days before the Final Approval Hearing.

15. The costs of Notice, processing of Class Members' claims, creating and maintaining the Settlement Website, and all other Claim Administrator and Notice expenses shall be paid from the Settlement Fund in accordance with the applicable provisions of the Stipulation. In the event that the Settlement is not finally approved, or is terminated pursuant to the terms of this Stipulation, all Notice Costs actually paid or incurred will not be returned or repaid to Defendant.

**D. Procedure for Class Members to Participate in the Settlement**

16. The Court approves the Parties' proposed Claim Form. Any Class Member who wishes to participate in the Settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claim Administrator no later than five (5) days after the date of the Final Approval Hearing, which date will be specifically identified in the Claim Form. Such deadline may be further extended without notice to the Class by written agreement of the Parties.

17. The Claim Administrator shall have the authority to accept or reject claims in accordance with the Stipulation, including the Claims Administration Protocols.

18. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class Members who do not enter an appearance will be represented by Class Counsel.

**E. Procedure for Requesting Exclusion from the Class**

19. All Class Members who do not timely exclude themselves from the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

20. Any person or entity falling within the definition of the Class may, upon his, her or its request, be excluded from the Class. Any such person or entity must submit a request for exclusion to the Clerk of the Court c/o the Class Action Administrator, postmarked or delivered no later than twenty-one (21) days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. Requests for exclusion purportedly filed on behalf of groups of persons/or entities are prohibited and will be deemed to be void.

21. Any Class Member who does not send a signed request for exclusion postmarked or delivered on or before the time period described above will be deemed to be a Class Member for all purposes and will be bound by all judgments and further orders of this Court related to the Settlement of this Action and by the terms of the Settlement, if finally approved by the Court. The written request for exclusion must request exclusion from the Class, must be signed by the potential Class Member and include a statement indicating that the person or entity is a member of the Class. All persons or entities who submit valid and timely requests for exclusion in the manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound by the Stipulation or the Final Judgment and Order.

22. A list reflecting all requests for exclusions shall be filed with the Court by the parties at or before the Final Approval Hearing.

**F. Procedure for Objecting to the Settlement**

23. Any Class Member who desires to object either to the Settlement, application for attorneys' fees and expenses, or Class Representative Awards must timely file with the Clerk of this Court and timely serve on the Parties' counsel by hand or first-class mail a notice of the

objection(s) and the grounds for such objections, together with all papers that the Class Member desires to submit to the Court no later than twenty-one (21) days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. The Court will consider such objection(s) and papers only if such papers are timely received by the Clerk of the Court and by Class Counsel and by Defendant's Counsel. Such papers must be sent to each of the following persons:

Mark P. Kindall  
**IZARD NOBEL LLP**  
29 South Main Street, Suite 305  
West Hartford, CT 06107  
Telephone: (860) 493-6292  
Facsimile: (860) 493-6290

Jay P. Lefkowitz, P.C.  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, N.Y. 10022

Clerk of Court  
Eastern District of California  
Robert T. Matsui United States Courthouse  
501 I Street  
Sacramento, 95814

24. All objections must include the name, address, and telephone number of the objecting Class Member, an affirmation that they purchased one of the Products, and the submitting party's signature. All objections must also include a reference to *Morales, et al. v. Conopco, Inc. d/b/a Unilever*, No. 2:13-cv-02213 (E.D. Cal.). Each Class Member submitting an objection must state whether he or she (or his or her attorney) intends to appear at the Final Approval Hearing.

25. Attendance at the Final Approval Hearing is not necessary; however, any Class Member wishing to be heard orally with respect to approval of the Settlement, the applications for attorneys' fees and reimbursement of expenses, or the application for Class Representative Awards are required to provide written notice of their intention to appear at the Final Approval Hearing no later than twenty-one (21) days prior to the date of the Final Approval Hearing, which date will be

specifically identified in the Class Notice. Class Members who do not oppose the Settlement, the applications for attorneys' fees and expenses, or class representative incentive awards need not take any action to indicate their approval. A Class Member's failure to submit a written objection in accordance with the procedure set forth in the Class Notice waives any right the Class Member may have to object to the Settlement, attorneys' fees and expenses, or class representative incentive awards, to appear at the Final Approval Hearing, or to appeal or seek other review of the Final Judgment and Order.

Dated: May 27, 2016

Respectfully submitted,

By: /s/ Mark P. Kindall

Mark P. Kindall (State Bar No. 138703)

Robert A. Izard (Admitted *pro hac vice*)

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IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable William B. Shubb  
United States District Court Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who have consented to electronic service are being served with a copy of the attached **[Proposed] Preliminary Approval Order** via the CM/ECF system on May 27, 2016.

DATED: May 27, 2016

/s/ Mark P. Kindall  
Mark P. Kindall