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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF OHIO**

DINO RIKOS, TRACEY BURNS, and  
LEO JARZEMBROWSKI, On Behalf of  
Themselves, All Others Similarly Situated  
and the General Public,

Plaintiffs,

v.

THE PROCTER & GAMBLE  
COMPANY,

Defendant.

Case No.: 11-CV-00226-TSB  
Judge: Hon. Timothy S. Black

**STIPULATION OF SETTLEMENT**

Case No. 1:11-cv-226-TSB

**SETTLEMENT AGREEMENT**

1 **I. RECITALS**

2 A. This Settlement Agreement is entered into by and among plaintiffs Dino Rikos,  
3 Tracey Burns and Leo Jarzembrowski ("Plaintiffs"), on behalf of themselves and the  
4 Settlement Class Members, on the one hand, and defendant The Procter & Gamble Company  
5 ("P&G" or "Defendant"), on the other. Plaintiffs and Defendant are referred to individually in  
6 this Settlement Agreement as "Party" and collectively as the "Parties." Capitalized terms used  
7 herein are defined in §II of this Settlement Agreement or indicated in parentheses elsewhere in  
8 this Settlement Agreement. Subject to Court approval as required by the applicable Federal  
9 Rules of Civil Procedure, and as provided herein, the Parties stipulate and agree that, in  
10 consideration for the promises and covenants set forth in the Settlement Agreement and upon  
11 entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of  
12 the Effective Date, the Action shall be settled and compromised upon the terms and conditions  
13 contained herein.

14 B. WHEREAS, on September 21, 2010, Plaintiff Dino Rikos filed a class action  
15 complaint against P&G in the United States District Court for the Southern District of  
16 California captioned *Dino Rikos v. The Procter & Gamble Company*, Case No. 3:10-cv-01974-  
17 BEN(CAB), on behalf of himself and all other consumers who purchased P&G's Align®  
18 branded products; and

19 C. WHEREAS, on April 13, 2011, the Court in the Southern District of California  
20 granted P&G's motion to transfer venue pursuant to 28 U.S.C. § 1404, and transferred the  
21 lawsuit to the Southern District of Ohio, which was renumbered Case No. 1:11-cv-00226-  
22 TSB; and

23 D. WHEREAS, on October 20, 2011, Plaintiff Dino Rikos filed a complaint for  
24 injunctive and declaratory relief against P&G arising out of the same facts and circumstances  
25 as alleged in the lawsuit in the Superior Court of the State of California, County of San Diego  
26 captioned *Dino Rikos v. The Procter & Gamble Company*, Case No. 27-2011-00099818-CU-  
27 BT-CTL (collectively with the lawsuits described in §§ I(B)-(C) of this Settlement Agreement,  
28 the "Action"); and

1 E. WHEREAS, on August 17, 2012, Plaintiffs Tracey Burns and Leo  
 2 Jarzembrowski were added as named plaintiffs and proposed class representatives upon filing  
 3 of the Second Amended Class Action Complaint in this Action; and

4 F. WHEREAS, on June 19, 2014, the Court granted Plaintiffs' motion for class  
 5 certification of consumers who purchased Align in California, Florida, Illinois, North Carolina,  
 6 and New Hampshire from March 1, 2009, through June 6, 2016. On August 20, 2015, the  
 7 United States Court of Appeals for the Sixth Circuit issued an order affirming the decision  
 8 granting class certification. On March 28, 2016, the United States Supreme Court denied  
 9 P&G's petition for a writ of certiorari; and

10 G. WHEREAS, the Parties have engaged in substantial litigation and discovery.  
 11 As the result of extensive and detailed negotiations and pursuant to a discovery plan and e-  
 12 discovery protocol, P&G produced approximately 752,341 pages of hard-copy and electronic  
 13 documents from targeted network sources and document custodians. Plaintiffs' Counsel  
 14 received an additional 20,280 pages of documents as the result of more than 30 subpoenas  
 15 served on third-parties involved in advertising and marketing Align, retailers selling Align,  
 16 and scientists who conducted research on Align. Plaintiffs' Counsel submitted reports pursuant  
 17 to Federal Rule of Civil Procedure 26 from seven experts on issues relating to advertising and  
 18 marketing, gastroenterology, microbiology, biostatistics, and damages. Similarly, P&G  
 19 submitted reports pursuant to Federal Rule of Civil Procedure 26 from eight experts on issues  
 20 relating to advertising and marketing, gastroenterology, microbiology, biostatistics, and  
 21 damages. Plaintiffs' Counsel deposed 15 witnesses in this Action, including some of P&G's  
 22 primary scientists and marketers on Align, third-party scientists, and one of P&G's primary  
 23 scientific experts. In addition to written discovery directed at Plaintiffs, P&G deposed each of  
 24 the Plaintiffs, as well as one of Plaintiffs' scientific experts. The Parties have also engaged in  
 25 extensive motion practice over the last seven years; and

26 H. WHEREAS, the Parties participated in several formal and informal mediation  
 27 and settlement negotiation sessions over the last seven years, including before Mark D.  
 28 Petersen in September 2011, with David P. Kamp in April 2013, and before Antonio Piazza

1 beginning in March 2017. Throughout the course of mediation efforts, the Parties were  
 2 simultaneously engaging in the discovery and litigation efforts described above. Following an  
 3 in-person mediation session before Mr. Piazza in March 2017, discussions continued and the  
 4 Parties ultimately reached the resolution discussed herein; and

5 I. WHEREAS, counsel for all Parties have reached the resolution set forth in this  
 6 Settlement Agreement, providing for, among other things, the settlement of the Action  
 7 between and among Plaintiffs, on behalf of themselves and the Settlement Class, and P&G, on  
 8 the terms and subject to the conditions set forth below; and

9 J. WHEREAS, the Parties agree that throughout the course of the litigation, all  
 10 Parties and their counsel complied with the provisions of Federal Rule of Civil Procedure 11;  
 11 and

12 K. WHEREAS, Class Counsel have determined that a settlement of the Action on  
 13 the terms reflected in this Settlement Agreement is fair, reasonable, adequate, and in the best  
 14 interests of Plaintiffs and the Settlement Class; and

15 L. WHEREAS, P&G, to avoid costs; disruption and distraction of further  
 16 litigation, and without admitting the truth of any allegations made in or related to the Action,  
 17 or any liability with respect thereto, has concluded that it is desirable that the claims against it  
 18 be settled and dismissed on the terms reflected in this Settlement Agreement;

19 M. NOW, THEREFORE, this Settlement Agreement is entered into by and among  
 20 the Parties, by and through their respective counsel and representatives, and the Parties agree  
 21 that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and  
 22 forever settled and compromised as between Plaintiffs and the Settlement Class on the one  
 23 hand, and P&G on the other hand; (2) upon final approval of the Settlement Agreement, the  
 24 Final Judgment and Order Approving Settlement, substantially in the form attached as Exhibit  
 25 2, shall be entered dismissing the Action with prejudice and releasing all Released Claims  
 26 against the Released Parties, on the following terms and conditions; and (3) all necessary steps  
 27 shall be taken to secure the dismissal of the Action with prejudice.  
 28

1     **II.     DEFINITIONS**

2             A.     As used in this Settlement Agreement and the attached exhibits (which are an  
3     integral part of the Settlement Agreement and are incorporated in their entirety by reference),  
4     the following terms shall have the meanings set forth below, unless this Settlement Agreement  
5     specifically provides otherwise:

6                     1.     “Action” means *Dino Rikos v. The Procter & Gamble Company*, Case  
7     No. 1:11-cv-00226-TSB (S.D. Ohio), and all related lawsuits, including *Dino Rikos v. The*  
8     *Procter & Gamble Company*, Case No. 3:10-cv-01974-BEN(CAB) (S.D. California), and  
9     *Dino Rikos v. The Procter & Gamble Company*, Case No. 27-2011-00099818-CU-BT-CTL  
10    (San Diego Cty. Sup. Ct.).

11                    2.     “Align” means the dietary supplements marketed and distributed by  
12    P&G under the brand name Align® Probiotic Supplement.

13                    3.     “Attorneys’ Fees and Expenses” means such funds as may be awarded  
14    by the Court to compensate and reimburse Class Counsel and all other Plaintiffs’ Counsel for  
15    work performed in this matter, as described more particularly in Section IX of this Settlement  
16    Agreement.

17                    4.     “Cash Refund” means the cash award payments set forth in Sections  
18    IV(A)(2) of this Settlement Agreement.

19                    5.     “Claim” means a request for a Cash Refund submitted by a Settlement  
20    Class Member on a Claim Form submitted to the Settlement Administrator in accordance with  
21    the terms of this Settlement Agreement.

22                    6.     “Claimant” means a Settlement Class Member who submits a Claim.

23                    7.     “Claim Form” means the document to be submitted by a Claimant  
24    seeking a Cash Refund pursuant to this Settlement Agreement that will accompany the Class  
25    Notice, will be available online at the Settlement Website, and is substantially in the form of  
26    Exhibit 3.

27                    8.     “Claims Deadline” means the date by which all Claim Forms must be  
28    postmarked or submitted online to the Settlement Administrator to be considered timely. The

1 Claims Deadline shall be stated in the Class Notice, the Settlement Website, and on the Claim  
2 Form, and shall be 30 days after the date first set by the Court for the Final Approval Hearing.

3 9. "Claim Process" means the process by which a Settlement Class  
4 Member requests a Cash Refund payment to the Settlement Administrator in accordance with  
5 the terms of this Settlement Agreement.

6 10. "Class Notice" means the notice program discussed in Section VI of this  
7 Settlement Agreement, including the forms of notice substantially in the forms of Exhibits 4  
8 and 5.

9 11. "Class Representatives" or "Plaintiffs" means plaintiffs Dino Rikos,  
10 Tracey Burns, and Leo Jarzembrowski.

11 12. "Class Counsel" means Timothy Blood and Thomas J. O'Reardon II of  
12 Blood Hurst & O'Reardon, LLP.

13 13. "Court" means the United States District Court for the Southern District  
14 of Ohio, the Honorable Timothy S. Black presiding.

15 14. "Defendant" or "P&G" means The Procter & Gamble Company.

16 15. "Digestive Health Improvement Contributions" or "DHIC" means the  
17 contributions of (1) intellectual property and/or know how; and/or (2) research and/or  
18 education grant(s); and/or (3) product donations to research or educational institutions or  
19 programs working to improve digestive health pursuant to the terms and conditions provided  
20 in Sections II(A)(15) & (19) and IV(A)(1) & (3)-(6) of this Settlement Agreement and Exhibit  
21 6 attached to this Settlement Agreement.

22 16. "Effective Date" means the later in time of: (a) the date on which the  
23 time to appeal has expired if no appeal has been taken from the Final Judgment and Order  
24 Approving Settlement; (b) in the event that an appeal or other effort to obtain review has been  
25 initiated, the date after such appeal or other review has been finally concluded and is no longer  
26 subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc,  
27 petitions for writ of certiorari, or otherwise; or (c) if Class Counsel and P&G agree in writing,  
28 any other agreed date that is earlier than the Effective Date as calculated according to

1 subparagraphs (a) and (b) above.

2 17. "Final Approval Hearing" means the hearing to be conducted by the  
3 Court on such date as the Court may order to determine the fairness, adequacy, and  
4 reasonableness of the Settlement Agreement.

5 18. "Final Judgment and Order Approving Settlement" means, collectively,  
6 the Final Judgment and Final Order Approving Settlement to be entered by the Court  
7 approving the settlement as fair, adequate, and reasonable, confirming the certification of the  
8 Settlement Class, and issuing such other findings and determinations as the Court and/or the  
9 Parties deem necessary and appropriate to implement the Settlement Agreement. The Final  
10 Judgment and Order Approving Settlement shall be substantially in the form of Exhibit 2.

11 19. "Guaranteed Digestive Health Improvement Contributions" or  
12 "Guaranteed DHIC" means the \$5,000,000 (five million dollars) of guaranteed, up-front, non-  
13 reversionary Digestive Health Improvement Contributions to benefit directly the Settlement  
14 Class and in addition to the Cash Refund payments to the Settlement Class via the Claim  
15 Process.

16 20. "Notice and Claim Administration Expenses" means all costs and  
17 expenses incurred by the Settlement Administrator, including all notice expenses, the costs of  
18 administering the Class Notice program, and the costs of processing and distributing all Cash  
19 Refunds to authorized Claimants.

20 21. "Notice Date" means the date by which the Settlement Administrator  
21 shall commence dissemination of the Class Notice as provided in the Settlement Agreement,  
22 which shall be within thirty (30) days from the Preliminary Approval Order.

23 22. "Objection Date" means the date by which Settlement Class Members  
24 must file and serve objections to the Settlement Agreement and shall be no later than thirty  
25 (30) days before the date first set for the Final Approval Hearing.

26 23. "Opt-Out Date" means the postmark date by which a Request for  
27 Exclusion must be submitted to the Settlement Administrator for a Settlement Class Member  
28 to be excluded from the Settlement Class, and shall be no later than thirty (30) days before the

1 date first set for the Final Approval Hearing.

2 24. "P&G's Counsel" means D. Jeffrey Ireland and Erin E. Rhinehart of  
3 Faruki Ireland Cox Rhinehart & Dusing P.L.L.

4 25. "Parties" means the Plaintiffs and Defendant in this Action.

5 26. "Plaintiffs' Counsel" means Class Counsel and all other law firms that  
6 have made an appearance on behalf of Plaintiffs in the Action.

7 27. "Preliminary Approval Order" means the order to be entered by the  
8 Court conditionally certifying the Settlement Class, preliminarily approving the Settlement  
9 Agreement, setting the date of the Final Approval Hearing, appointing Class Counsel for the  
10 Settlement Class, approving the Notice Program and Class Notice, and setting the Opt-Out  
11 Date, Objection Date, and Notice Date, the proposed form of which is attached as Exhibit 1.

12 28. "Released Claims" means, with the exception of claims for personal  
13 injury, all claims, demands, actions, suits, and/or causes of action that have been brought or  
14 could have been brought, are currently pending or were pending, or are ever brought in the  
15 future, by any Settlement Class Member against P&G or any Released Party, in any forum in  
16 the United States and its territories, whether known or unknown, asserted or unasserted, under  
17 or pursuant to any statute, regulation, common law or equity, that relate in any way, directly or  
18 indirectly, to facts, acts, events, transactions, occurrences, courses of conduct, representations,  
19 omissions, circumstances or other matters related to or referenced in any claim raised  
20 (including, but not limited to, any claim that was raised against any Released Party) in this  
21 Action, including damages, costs, expenses, penalties, and attorneys' fees.

22 29. "Released Party" or "Released Parties" means Defendant and its  
23 parents, subsidiaries, divisions, departments, and affiliates, and any and all of its past and  
24 present officers, directors, employees, stockholders, agents, successors, attorneys, insurers,  
25 representatives, licensees, licensors, subrogees, and assigns.

26 30. "Releasing Party" means Plaintiffs and each Settlement Class Member  
27 who does not timely submit a valid Request for Exclusion.

28 31. "Request for Exclusion" means the written communication that must be



submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

32. "Settlement Administrator" means KCC LLC, the entity retained by the Parties and approved by the Court to design, consult on, and implement the program for disseminating Class Notice to the Settlement Class, administer and send the Cash Refunds portion of this Settlement Agreement, and perform overall administrative functions.

33. "Settlement Agreement" means this Settlement Agreement (including all Exhibits attached to this Settlement Agreement), duly executed by Class Counsel and P&G's Counsel.

34. "Settlement Class" means all persons who purchased within the United States and its territories P&G's Align, other than solely for purposes of resale, from March 1, 2009 to June 6, 2016. Excluded from the Settlement Class are: (i) Defendant and its officers, directors, and employees; (ii) any person who files a valid and timely Request for Exclusion; and (iii) judicial officers and their immediate family members and associated court staff assigned to the case.

35. "Settlement Class Member" means a member of the Settlement Class.

36. "Settlement Costs" means: (i) all Notice and Claim Administration Expenses; (ii) any award of Attorneys' Fees and Expenses to Class Counsel approved by the Court; and (iii) any service award to the Class Representatives approved by the Court.

37. "Settlement Website" means the Internet website to be created and maintained for this settlement by the Settlement Administrator to provide information to the public and the Settlement Class about this Settlement Agreement.

B. Capitalized terms used in this Settlement Agreement, but not defined in Section II, shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

### **III. CERTIFICATION OF THE CLASS AND FILING OF THE AMENDED COMPLAINT**

#### **A. Certification of the Settlement Class**

1. This Settlement Agreement is for settlement purposes only, and neither

1 the fact of, nor any provision contained in this Settlement Agreement, nor any action taken  
 2 hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or  
 3 allegation by Plaintiffs, or of any defense asserted by P&G, in the Action; or (b) any  
 4 wrongdoing, fault, violation of law, or liability on the part of any Party, Released Parties,  
 5 Settlement Class Member, or their respective counsel.

6           2. As part of the Motion for Preliminary Approval of Settlement, Plaintiffs  
 7 will seek certification of the Settlement Class. P&G consents, solely for purposes of  
 8 settlement, to the certification of the Settlement Class, to the appointment of Class Counsel,  
 9 and to the approval of Plaintiffs as suitable representatives of the Settlement Class; provided,  
 10 however, that if the Court fails to approve this Settlement Agreement or the Settlement  
 11 Agreement otherwise fails to be consummated, then P&G shall retain all rights it had  
 12 immediately as of March 10, 2017, including the right to object to the maintenance of the  
 13 Action as a class action.

14           **B. Filing of Amended Complaint**

15           Plaintiffs shall file a Third Amended Class Action Complaint within 5 (five) days of  
 16 the execution of this Settlement Agreement. The Third Amended Class Action Complaint will  
 17 be substantially in the form of the operative Second Amended Class Action Complaint with  
 18 the exception that it will contain a new class definition to conform to this Settlement  
 19 Agreement.

20           **IV. SETTLEMENT RELIEF**

21           **A. Digestive Health Improvement Contributions and Cash Refund Payments**

22           1. Guaranteed, Up-Front, Non-Reversionary Digestive Health Improvement  
 23 Contributions

24           a. Guaranteed DHIC. P&G shall provide \$5,000,000 (five million dollars)  
 25 of guaranteed, up-front, non-reversionary Digestive Health Improvement Contributions to  
 26 directly benefit the Settlement Class. The Guaranteed DHIC will be targeted to benefit directly  
 27 the Settlement Class; namely, U.S. consumers who suffer from Irritable Bowel Syndrome  
 28 (“IBS”) or who regularly seek assistance and care for their digestive health. P&G will provide

1 the Guaranteed DHIC in the form of: (1) intellectual property and/or know-how; (2) research  
 2 and/or education grant(s); and/or (3) product donations to research and/or educational  
 3 institutions and/or programs working to improve digestive health. P&G will have sole  
 4 discretion to select the recipients of, and form and combination of, the Guaranteed DHIC  
 5 provided, including any combination of (1) – (3), above, subject to prior review and approval  
 6 by Class Counsel. Class Counsel shall not unreasonably withhold such approval, which may  
 7 be withheld for good cause only.

8 b. The Guaranteed DHIC are not made in lieu of and do not diminish Cash  
 9 Refund payments to Settlement Class.

10 2. Cash Refund to Settlement Class

11 a. Pursuant to the terms of the Claim Process described in this Settlement  
 12 Agreement, P&G shall provide Cash Refunds as follows:

13 1. Claims for purchases made between March 1, 2009 and October

14 31, 2009, inclusive: Settlement Class Members are entitled to

15 Cash Refunds for up to two (2) purchases of Align made

16 between March 1, 2009 and October 31, 2009, inclusive, also

17 defined as the period when the marketing claims included

18 “clinically proven” symptom relief claims. The amount of Cash

19 Refund for each such purchase is \$15.88, which is 50% of the

20 average weighted retail price of Align during that time period.

21 2. Claims for purchases made between November 1, 2009 and June

22 6, 2016, inclusive: Settlement Class Members are entitled to a

23 Cash Refund for one (1) purchase of Align made between

24 November 1, 2009 and June 6, 2016, inclusive. The amount of

25 Cash Refund for each such purchase is \$17.50, which is 50% of

26 the average weighted retail price of Align during that time

27 period.

28 3. Each Settlement Class Member is limited to a maximum Cash

1 Refund of \$49.26 for three Align purchases based on the formula  
 2 above and each Settlement Class Member's respective,  
 3 qualifying purchase(s) of Align.

4 b. To be eligible to receive any Cash Refund payment as provided in this  
 5 Settlement Agreement, each Claimant must submit a valid and timely Claim Form. Claim  
 6 Forms may be submitted either by mail or electronically through the Settlement Website and  
 7 must be postmarked on or before the Claims Deadline if submitted by mail, or submitted  
 8 electronically on or before the Claims Deadline. The Settlement Administrator shall make  
 9 final decisions on whether a valid Claim for payment is made, and the amount of such  
 10 payment, subject to the agreement of Class Counsel and P&G's Counsel. The Court shall  
 11 retain jurisdiction over all disputes arising under this Section of the Settlement Agreement.

12 c. If the aggregate of eligible Claims exceeds \$15,000,000, then the  
 13 qualifying Claims shall be reduced *pro rata* to reach a total of \$15,000,000. Under no  
 14 circumstances whatsoever shall P&G be responsible for paying, or causing to be paid, more  
 15 than \$15,000,000 in Cash Refunds to the Settlement Class.

16 d. P&G shall not be obligated to make any payment on any  
 17 Claim until all eligible Claims have been fully and finally resolved by the Settlement  
 18 Administrator, per the terms of this Settlement Agreement. Once all Claims are fully and  
 19 finally resolved by the Settlement Administrator, and no later than 30 days from the Effective  
 20 Date, P&G shall pay, or cause to be paid, to a qualified settlement fund, the total aggregate  
 21 amount of the Claims that have been fully and finally resolved by the Settlement  
 22 Administrator.

23 3. Additional DHIC.

24 a. If the amount of eligible Claims is below \$10,000,000, then P&G shall  
 25 contribute Additional DHIC so that the total aggregate contributions to the Settlement Class  
 26 (including Cash Refunds and all DHIC) shall reach, but not exceed, \$15,000,000. For  
 27 example, if eligible Claims total \$9,000,000, then P&G shall contribute \$1,000,000 worth of  
 28 Additional DHIC.

b. If the aggregate amount of eligible Claims exceeds \$15,000,000, then P&G shall contribute, approximately dollar-for-dollar above \$15,000,000, Additional DHIC up to a maximum of \$25,000,000 total value (including Cash Refunds and all DHIC) to the Settlement Class.

c. If the amount of eligible Claims is at or between \$10,000,000 and \$15,000,000, then P&G shall not be obligated to contribute any Additional DHIC.

4. The DHIC shall be separate and apart from any similar benefit P&G provides in the ordinary course of business or plans to provide at the time of execution of this Settlement Agreement. At the request of Class Counsel, P&G will provide Class Counsel with a statement attesting that it has complied with this provision.

5. Within a reasonable period of time following the Effective Date, but in any event prior to the date on which the first Cash Refund payment is required to be made, P&G shall begin making the Guaranteed DHIC described above. Distribution of all DHIC shall be completed within two (2) years of the Effective Date.

6. Determination of Value of DHIC.

a. The determination of the value of intellectual property shall be supported by a report from Charles River Associates, an independent third-party appraiser experienced and qualified in valuing intellectual property. The report by the independent appraiser shall be timely provided to Class Counsel.

b. Research and Education Grants shall be valued at the dollar amount of such grant actually paid by P&G.

c. Product Donations to Research and Educational Institutions or Programs shall be valued at the price at which P&G sells the products to wholesalers and/or distributors.

d. Know How shall be valued at the reasonable cost of time spent by P&G personnel, but at no time shall Know How be valued greater than actual cost to P&G. Charles River Associates, an independent third-party appraiser experienced and qualified in valuing intellectual property, shall review and support the valuation of Know How provided by P&G.

1           B.     **Injunctive Relief**

2           1.     As determined from discovery conducted in the Action, the Parties  
3 agree that the injunctive relief has value. P&G shall not make the "clinically proven" five  
4 symptom relief claims contained on the Align packaging and sold to consumers from  
5 approximately March 1, 2009 through October 31, 2009, absent new supporting clinical data  
6 and/or analysis, or a change in product formula. "New supporting clinical data and/or  
7 analysis" shall mean competent and reliable scientific evidence that was not originally relied  
8 on by P&G to support the "clinically proven" five symptom relief claims contained on the  
9 Align packaging and sold to consumers from approximately March 1, 2009 through October  
10 31, 2009. Nothing in this Settlement Agreement shall otherwise prohibit P&G from making  
11 advertising claims regarding Align, in any formulation.

12     **V.     CLAIM FORM SUBMISSION, REVIEW AND PAYMENT**

13           1.     Settlement Class Members may submit a Claim for a Cash Refund and  
14 the Settlement Administrator shall review the Claim to determine if the Claimant has  
15 substantially complied with the instructions on the Claim Form and process the Claim  
16 accordingly.

17           2.     Claim Forms will be available for online submission on the Settlement  
18 Website, available for download from the Settlement Website, and upon request, will be  
19 mailed or emailed to Settlement Class Members by the Settlement Administrator. The Claim  
20 Form will also be available for download from Class Counsel's website and may be submitted  
21 to the Settlement Administrator by U.S. mail or other regularly maintained mail delivery  
22 service.

23           3.     Payment will be made directly to the Settlement Class Member by first  
24 class mail after such Settlement Class Member submits the Claim Form, and the Claim is  
25 accepted for payment pursuant to the terms of this Settlement Agreement, and within sixty  
26 (60) days of the Effective Date.

27           4.     Failure to provide all information requested in the Claim Form will not  
28 automatically result in nonpayment of the Claim. Instead, the Settlement Administrator will

1 take all adequate and customary steps to determine the Settlement Class Member's eligibility  
 2 for payment and the amount of payment based on the information contained in the Claim  
 3 Form, and such other reasonably available information from which eligibility for payment can  
 4 be determined.

5           5.       The Settlement Administrator shall send payment to eligible Settlement  
 6 Class Members or, as applicable, a letter explaining the rejection of the Claim and the appeal  
 7 of eligibility process, within sixty (60) days of the Effective Date.

8           6.       Any Claimant who believes his or her Claim was improperly rejected  
 9 may appeal the rejection by sending written notice of his or her appeal to the designated  
 10 Settlement Administrator. The Settlement Administrator shall decide the appeal. The decision  
 11 of the Settlement Administrator shall be final. All appeals shall be decided, and any Cash  
 12 Refunds awarded pursuant to such appeals findings by the Settlement Administrator, no later  
 13 than one hundred twenty (120) days after the Effective Date.

#### 14       **VI.     ADMINISTRATION AND NOTIFICATION PROCESS**

##### 15           A.       **Third-Party Settlement Administrator**

16           1.       The Parties shall retain KCC LLC as Settlement Administrator to help  
 17 implement the terms of the proposed Settlement Agreement. All Notice and claim  
 18 administration expenses shall be paid by P&G separate and apart from any other consideration  
 19 paid under this settlement.

20           2.       The Settlement Administrator will be tasked with conducting matters  
 21 relating to the administration of this Settlement Agreement, as set forth herein. Those  
 22 responsibilities include, but are not limited to (1) arranging for publication of the Short-form  
 23 Class Notice and Long-form Class Notice, (2) mailing or arranging for the mailing, emailing  
 24 or other distribution of the Long-form Class Notice and Cash Refunds to Settlement Class  
 25 Members, (3) handling returned mail and email not delivered to Settlement Class Members,  
 26 (4) making any additional mailings required under the terms of this Settlement Agreement, (5)  
 27 answering written inquiries from Settlement Class Members and/or forwarding such inquiries  
 28 to Class Counsel or their designee, (6) receiving and maintaining on behalf of the Court and



the Parties any Settlement Class Member correspondence regarding Requests for Exclusion from the Settlement, (7) establishing the Settlement Website that posts the Third Amended Class Action Complaint, Settlement Agreement, Short-form and Long-form Class Notices, and other related documents, (8) establishing and maintaining a toll-free telephone number that will provide settlement-related information to Settlement Class Members, (9) processing and distributing Cash Refunds to Settlement Class Members, and (10) otherwise assisting with administration of the Settlement Agreement.

3. The contract(s) with the Settlement Administrator(s) shall obligate the Settlement Administrator to abide by the following performance standards:

a. The Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Settlement Agreement in communications with Settlement Class Members; and

b. The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, P&G and/or P&G's Counsel.

#### **B. Class Notice**

1. Long-form Class Notice: The Long-form Class Notice available on the Settlement Website and to be sent to Settlement Class Members at their request shall be in substantially the form of Exhibit 5. At a minimum, the Long-form Class Notice shall:

a. include a short, plain statement of the background of the Action and the proposed Settlement Agreement;

b. describe the proposed settlement relief as set forth in this Settlement Agreement;

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

d. describe the procedures for participating in the settlement, including all applicable deadlines, and advise Settlement Class Members of their rights to



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1 submit a Claim to be eligible to receive a Cash Refund under the Settlement Agreement;

2 e. explain the scope of the Release;

3 f. state that any Cash Refunds to Settlement Class Members under  
4 the Settlement Agreement is contingent on the Court's final approval of the Settlement  
5 Agreement;

6 g. state the identity of Class Counsel and the amount sought in  
7 attorneys' fees and expenses and the Class Representative service award;

8 h. explain the procedures for opting out of the Class including the  
9 applicable deadline for opting out;

10 i. explain the procedures for objecting to the Settlement  
11 Agreement including the applicable deadline; and

12 j. explain that any judgment or orders entered in the Action,  
13 whether favorable or unfavorable to the Class shall include and be binding on all Settlement  
14 Class Members who have not been excluded, even if they have objected to the proposed  
15 Settlement Agreement and even if they have another claim, lawsuit, or proceeding pending  
16 against Defendant.

17 2. Short-form Class Notice: The Short-form Class Notice shall be in  
18 substantially the form of Exhibit 4, and shall include the web address of the Settlement  
19 Website and a telephone number for the Settlement Administrator, a description of the  
20 Settlement Class, a brief description of relief available to the Settlement Class, and an  
21 explanation of the right to object and/or opt-out of the Settlement Class and the deadlines to  
22 exercise these rights.

23 3. Website Notice: The Settlement Website shall be created and  
24 maintained by the Settlement Administrator. The Settlement Website shall be activated no  
25 later than the Notice Date, and shall remain active until 120 days after the Effective Date. The  
26 Settlement Administrator shall post the Class Notice, a copy of this Settlement Agreement and  
27 its Exhibits, the Preliminary Approval Order, the Third Amended Class Action Complaint, the  
28 Final Approval Order, answers to frequently asked questions, the number for the toll-free

1 hotline maintained by the Settlement Administrator for this settlement, settlement-related  
 2 deadlines, and any other materials or information the Parties agree to include on the Settlement  
 3 Website. These documents shall be available on the Settlement Website for as long as the  
 4 Settlement Website is active. The Settlement Administrator shall obtain the Parties' respective  
 5 consent before publishing any documents or other information relating to the Settlement  
 6 Agreement.

7 4. Class Action Fairness Act Notice: P&G shall work with the Settlement  
 8 Administrator to comply with all notice requirements imposed by 28 U.S.C. § 1715(b)  
 9 ("CAFA Notice").

10 **C. Dissemination of Class Notice**

11 1. Publication Notice: The Short-form Class Notice, or a variation of the  
 12 Short-form Class Notice suitable for the manner of the specific publication, shall be published  
 13 no later than the Notice Date. Publication will include a combination of national publications  
 14 and outlets, including effective online advertising developed with the Settlement Administrator  
 15 using accepted reach methodology to reach the Settlement Class.

16 2. Posting of the Notice: No later than the Notice Date, the Settlement  
 17 Administrator will post the Long-form Class Notice on the Settlement Website. Class Notice  
 18 may also be posted on Class Counsel's website at its option.

19 3. Upon Request: Class Notice shall also be sent via electronic mail or  
 20 regular mail to Settlement Class Members who so request.

21 **VII. OBJECTIONS AND REQUESTS FOR EXCLUSION**

22 **A. Objections**

23 1. Any Settlement Class Member who intends to object to the fairness of  
 24 the Settlement Agreement must do so in writing no later than the Objection Date. The written  
 25 objection must be filed with the Court and served on the Class Counsel identified in the Class  
 26 Notice and P&G's Counsel no later than the Objection Date. The written objection must  
 27 include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone  
 28 number and, if represented by counsel, the name, address, and telephone number of his/her

counsel; (c) a statement under oath that the objector is a Settlement Class Member; (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's handwritten, dated signature (the signature of objector's counsel, an electronic signature, and the annotation "/s" or similar annotation will not suffice).

2. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Settlement Agreement, including attorneys' fees. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice and to P&G's Counsel, and file the notice of appearance with the Court, no later than twenty (20) days before the Final Approval Hearing, or as the Court may otherwise direct.

3. Any Settlement Class Member who fails to comply with the provisions of Sections VII(A)(1)-(2) above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all of the terms of this Settlement Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, in the Action, other than as provided in Section VII(A)(1) above.

#### **B. Requests for Exclusion**

1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Settlement Class Member who wishes to opt out of the Class must do so no later than the Opt-Out Date. To opt out, a Settlement Class Member must send to the Settlement Administrator a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Settlement Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class. Mass or class opt-outs shall not be allowed. No person may opt out

1 of the Settlement Class for any other person or be opted-out by any other person, and no  
 2 Settlement Class Member shall be deemed opted-out of the Settlement Class through any  
 3 purported "mass" or "class" opt-outs.

4 2. Any Settlement Class Member who does not file a timely, written  
 5 Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final  
 6 Judgment and Order Approving Settlement in this Action, even if he or she has pending, or  
 7 subsequently initiates, litigation, arbitration, or any other proceeding against Defendant  
 8 relating to the Released Claims.

9 3. Any Settlement Class Member who properly requests to be excluded  
 10 from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the  
 11 Action relating to the Settlement Agreement; (b) be entitled to a Cash Refund from the  
 12 Settlement Fund, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of  
 13 the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement  
 14 Agreement.

15 4. The Settlement Administrator shall provide Class Counsel and P&G's  
 16 Counsel with a final list of all timely Requests for Exclusion within fifteen (15) days after the  
 17 Opt-Out Date. P&G's Counsel shall file the final list of all timely Requests for Exclusion prior  
 18 to or at the Final Approval Hearing.

#### 19 **VIII. RELEASES**

20 A. Upon the Effective Date, each and every Releasing Party shall be permanently  
 21 barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim against  
 22 any Released Party in any court or any forum. In the event of a material breach of this  
 23 Settlement Agreement, as determined by the Southern District of Ohio, the Honorable Judge  
 24 Timothy S. Black, the releases and other provisions of this Settlement Agreement, as  
 25 appropriate, shall be null and void.

26 B. Upon the Effective Date, each Releasing Party shall be deemed to have released  
 27 and forever discharged each Released Party of and from any and all liability for any and all  
 28 Released Claims.

1 C. Additional Mutual Releases

2 1. On the Effective Date, each of the Released Parties shall be deemed to  
3 have fully, finally, and forever released, relinquished and discharged the Releasing Parties  
4 from all claims of every nature and description, known and unknown, relating to the initiation,  
5 assertion, prosecution, non-prosecution, settlement, and/or resolution of the Action or the  
6 Released Claims.

7 2. On the Effective Date, each of the Releasing Parties shall be deemed to  
8 have fully, finally, and forever released, relinquished and discharged the Released Parties from  
9 all claims of every nature and description, including unknown claims, relating to the defense,  
10 settlement, and/or resolution of the Action or the Released Claims.

11 3. Except as to the rights and obligations provided for under this  
12 Settlement Agreement, P&G and its attorneys and all of its respective past, present, and future  
13 predecessors, successors, assigns, devisees, relatives, heirs, legatees, attorneys, insurers, and  
14 agents, including their respective past, present, and future predecessors, successors, assigns,  
15 devisees, relatives, heirs, legatees, attorneys, insurers, and agents, hereby release and forever  
16 discharge Plaintiffs, Class Counsel, and Plaintiffs' Counsel from any and all charges,  
17 complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes  
18 of action of every nature, character, and description, whether known or unknown, asserted or  
19 un-asserted, suspected or unsuspected, fixed or contingent, relating to the Action, which  
20 Defendant may now have, own or hold or which Defendant at any time may have, own, or  
21 hold, against Plaintiffs, Class Counsel, and Plaintiffs' Counsel by reason of any matter, cause  
22 or thing whatsoever occurred, done, omitted, or suffered from the beginning of time to the date  
23 of this Settlement Agreement.

24 4. Except as to the rights and obligations provided for under this  
25 Settlement Agreement, Plaintiffs and each Settlement Class Member who does not timely  
26 submit a valid Request for Exclusion, and their attorneys, including Class Counsel, and all of  
27 their respective past, present, and future predecessors, successors, assigns, devisees, relatives,  
28 heirs, legatees, attorneys, insurers, and agents, including their respective past, present, and

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1 future predecessors, successors, assigns, devisees, relatives, heirs, legatees, attorneys, insurers,  
 2 and agents, hereby release and forever discharge P&G and its predecessors, parents, direct and  
 3 indirect subsidiaries, and affiliates, and its equity holders, shareholders, members, trusts (any  
 4 settlers, trustees and beneficiaries), directors, officers, employees, partners, agents,  
 5 representatives, licensors, licensees, suppliers, customers, attorneys, insurers, accountants,  
 6 heirs, executors, administrators, conservators, successors and assigns, and each and all of them  
 7 at any tier, or and from any and all claims, demands, liens, actions, suits, causes of action,  
 8 obligations, controversies, debts, losses, costs, attorneys' fees, expenses, damages, judgments,  
 9 orders, and liabilities of whatever kind, nature or description, at law, in equity, or otherwise,  
 10 whether now known or unknown, asserted or unasserted, fixed or contingent, suspected or  
 11 unsuspected, and whether or not concealed or hidden, that arose out of, were raised or could  
 12 have been raised in, or connected to, the Action. Notwithstanding anything herein to the  
 13 contrary, nothing in this Settlement Agreement shall prevent any Party from asserting any  
 14 claim arising from their respective rights under or the breach of any obligations in this  
 15 Settlement Agreement or any claim, cause of action or matter not released by this settlement.

16 D. The Parties intend the Releases set forth in this Settlement Agreement to be  
 17 general and comprehensive in nature, and for the Parties to release all claims and potential  
 18 claims stemming only from the Action against each other to the maximum extent permitted at  
 19 law, except for any claims to enforce this Settlement Agreement.

20 E. The Parties agree and warrant that they shall not bring, commence, institute,  
 21 maintain, or prosecute, or allow any person, entity, or organization to bring, commence,  
 22 institute, maintain, or prosecute in their name, any other action at law or in equity or any legal  
 23 proceeding, claim, or counterclaim whatsoever against the other Party or any Released Parties  
 24 arising from, or connected to, the Action, other than an action to enforce this Settlement  
 25 Agreement or based on an alleged breach thereof. This Settlement Agreement may be pleaded  
 26 as a full and complete defense to, and may be used as a basis for injunctive relief against, any  
 27 action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of  
 28 this Settlement Agreement.

1 F. All Parties to this Settlement Agreement, including but not limited to all  
 2 Releasing Parties, specifically acknowledge that they have been informed by their legal  
 3 counsel of Section 1542 of the California Civil Code and they expressly waive and relinquish  
 4 any rights or benefits available to them under this statute. California Civil Code § 1542  
 5 provides:

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

11 Notwithstanding Section 1542 of the California Civil Code, or any other statute or rule of law  
 12 of similar effect, this Settlement Agreement shall be given full force and effect according to  
 13 each and all of its expressed terms and provisions, including those related to any unknown or  
 14 unsuspected claims, liabilities, demands, or causes of action which are based on, arise from or  
 15 are in any way connected with the Actions. All Parties to the Settlement Agreement, including  
 16 but not limited to all Releasing Parties, have been advised specifically by their legal counsel of  
 17 the effect of this waiver, and they expressly acknowledge that they understand the significance  
 18 and consequence of this expressed wavier of Section 1542 of the California Civil Code.

19 G. The Parties agree that the Court shall retain exclusive and continuing  
 20 jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the  
 21 terms, conditions, and obligations under the Settlement Agreement.

## 22 **IX. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS**

23 A. Class Counsel shall make, and Defendant agrees not to oppose, an application  
 24 for an award of attorneys' fees and reimbursement of expenses not to exceed \$4,500,000. The  
 25 award of Attorneys' Fees and Expenses will be paid by P&G separate and apart from the other  
 26 payment obligations in this Settlement Agreement. The application for an award of Attorneys'  
 27 Fees and Expenses will be made by Class Counsel on behalf of themselves and the other  
 28 Plaintiffs' Counsel. Class Counsel shall distribute and allocate the Attorneys' Fees and  
 Expense awarded to Plaintiffs' Counsel in its sole discretion. The attorneys' fees were



1 negotiated subsequent to and separate from the other terms of this Settlement Agreement.

2 P&G shall not be responsible for any other fees or expenses incurred by Plaintiffs or Plaintiffs'  
3 Counsel.

4 B. There shall be no obligation to pay an award of Attorneys' Fees and Expenses  
5 unless and until final Court approval. Class Counsel will be entitled to payment of the fees and  
6 expenses within thirty (30) days of the Effective Date.

7 C. Plaintiffs will apply for Class Representative service awards of up to \$2,500 for  
8 each Class Representative. The Court-approved service awards will be paid by P&G separate  
9 and apart from the other payment obligations in this Settlement Agreement. The purpose of  
10 such awards shall be to compensate Plaintiffs for efforts and risks they have taken on behalf of  
11 the Settlement Class. Nothing in this Settlement Agreement shall be interpreted as an offer or  
12 admission concerning the amount, if any, of the service award that Plaintiffs shall be awarded.  
13 The service awards to the Plaintiffs will be in addition to the other consideration to the  
14 Settlement Class Members as set forth in this Settlement Agreement. The service award shall  
15 be paid to the Class Representatives within thirty (30) days of the Effective Date.

#### 16 **X. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

17 This Settlement Agreement is subject to and conditioned upon the issuance by the  
18 Court of the Final Judgment and Order Approving Settlement that finally certifies the Class for  
19 the purposes of this settlement, grants final approval of the Settlement Agreement, and  
20 provides the relief specified herein, which relief shall be subject to the terms and conditions of  
21 the Settlement Agreement and the Parties' performance of their continuing rights and  
22 obligations hereunder. Such Final Judgment and Order Approving Settlement shall be in  
23 substantially the form attached hereto as Exhibit 2.

#### 24 **XI. REPRESENTATIONS AND WARRANTIES**

25 A. Defendant represents and warrants: (1) that it has the requisite corporate power  
26 and authority to execute, deliver, and perform the Settlement Agreement and to consummate  
27 the transactions contemplated hereby; (2) that the execution, delivery and performance of the  
28 Settlement Agreement and the consummation by it of the actions contemplated herein have



1 been duly authorized by necessary corporate action on the part of Defendant; and (3) that the  
 2 Settlement Agreement has been duly and validly executed and delivered by Defendant and  
 3 constitutes their legal, valid and binding obligations.

4 B. Plaintiffs represent and warrant that they are entering into the Settlement  
 5 Agreement on behalf of themselves individually and as proposed representatives of the  
 6 Settlement Class Members, of their own free will and without the receipt of any consideration  
 7 other than what is provided in the Settlement Agreement or disclosed to, and authorized by,  
 8 the Court. Plaintiffs represent and warrant that they have reviewed the terms of the Settlement  
 9 Agreement in consultation with Class Counsel and believe them to be fair and reasonable, and  
 10 covenant that they will not file a Request for Exclusion from the Settlement Class or object to  
 11 the Settlement Agreement. Class Counsel represent and warrant that they are fully authorized  
 12 to execute the Settlement Agreement on behalf of Plaintiffs.

13 C. The Parties warrant and represent that no promise, inducement or consideration  
 14 for the Settlement Agreement has been made, except those set forth herein.

## 15 **XII. NO ADMISSIONS, NO USE**

16 A. The Settlement Agreement and every stipulation and term contained in it is  
 17 conditioned upon final approval of the Court and is made for settlement purposes only.  
 18 Whether or not consummated, this Settlement Agreement shall not be: (1) construed as,  
 19 offered in evidence as, received in evidence as, and/or deemed to be, evidence of a  
 20 presumption, concession or an admission by Plaintiffs, Defendant, any Settlement Class  
 21 Member or Releasing Party or Released Party, of the truth of any fact alleged or the validity of  
 22 any claim or defense that has been, could have been, or in the future might be asserted in any  
 23 litigation or the deficiency of any claim or defense that has been, could have been, or in the  
 24 future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of  
 25 such Party; or (2) construed as, offered in evidence as, received in evidence as, and/or deemed  
 26 to be, evidence of a presumption, concession or an admission of any liability, fault or  
 27 wrongdoing, or in any way referred to for any other reason, by Plaintiffs, Defendant, any  
 28 Releasing Party or Released Party in the Action, or in any other civil, criminal or

1 administrative action or proceeding other than such proceedings as may be necessary to  
2 effectuate the provisions of the Settlement Agreement.

3       B.     **No Admission.** The terms of this Settlement Agreement are not, and should  
4 not be construed as, an admission of liability or wrongdoing on the part of P&G. The Parties  
5 further agree that any changes that P&G made to its website or packaging were done by P&G  
6 without any obligation.

### 7 **XIII. TERMINATION OF THIS SETTLEMENT AGREEMENT**

8       A.     Any Party may terminate this Settlement Agreement by providing written  
9 notice to the other Parties within ten (10) days of any of the following events:

10           1.     The Court does not enter a Preliminary Approval Order that conforms in  
11 material respects to Exhibit 1; or

12           2.     The Court does not enter a Final Judgment and Order Approving  
13 Settlement conforming in material respects to Exhibit 2, or if entered, such Final Judgment and  
14 Order Approving Settlement is reversed, vacated, or modified in any material respect by  
15 another court.

16       B.     P&G shall have the right to terminate the Settlement Agreement if the number  
17 of Class Members who submit valid requests to opt out of the Settlement Class is or exceeds  
18 500. P&G must exercise their right to terminate the Settlement Agreement due to the number  
19 of Class Members who request to Opt Out of the Settlement Class within ten (10) days from its  
20 receipt from the Settlement Administrator of a complete list of all Opt Out requests submitted  
21 by the Opt Out deadline and not timely revoked. P&G shall provide written notice to Class  
22 Counsel of its decision to terminate the Settlement Agreement pursuant to this Section of the  
23 Settlement Agreement.

24       C.     In the event that this Settlement Agreement terminates for any reason, all  
25 Parties shall be restored to their respective positions as of March 10, 2017. In no event will  
26 Defendant be entitled to recover any funds spent for Notice and Claims Administration  
27 Expenses prior to termination of this Settlement Agreement.

28

1 **XIV. MISCELLANEOUS PROVISIONS**

2 A. Entire Settlement Agreement: The Settlement Agreement, including all  
 3 Exhibits, shall constitute the entire Settlement Agreement among the Parties with regard to the  
 4 Action and shall supersede any previous settlement agreements, terms sheets, representations,  
 5 communications and understandings among the Parties with respect to the subject matter of the  
 6 Settlement Agreement. The Settlement Agreement may not be changed, modified, or amended  
 7 except in a writing signed by one of Class Counsel and one of P&G's Counsel and, if required,  
 8 approved by the Court. The Parties contemplate that the Exhibits to the Settlement Agreement  
 9 may be modified by subsequent agreement of Defendant and Class Counsel, or by the Court.

10 B. Execution in Counterparts: The Settlement Agreement may be executed by the  
 11 Parties in one or more counterparts, each of which shall be deemed an original but all of which  
 12 together shall constitute one and the same instrument. Facsimile signatures or signatures sent  
 13 by email shall be treated as original signatures and shall be binding.

14 C. Notices: Whenever this Settlement Agreement requires or contemplates that  
 15 one Party shall or may give notice to the other, notice shall be provided in writing by first class  
 16 US Mail and email to:

17 1. If to Plaintiffs or Class Counsel:

18 Timothy G. Blood  
 19 BLOOD HURST & O'REARDON, LLP  
 20 701 B Street, Suite 1700  
 21 San Diego, California 92101  
 Tel: 619-338-1100  
 tblood@bholaw.com

22 2. If to P&G or P&G's Counsel:

23 D. Jeffrey Ireland  
 24 FARUKI IRELAND COX  
 25 RHINEHART & DUSING P.L.L.  
 26 201 E. Fifth Street, Suite 1420  
 Cincinnati, OH 45202  
 Tel: 513-632-0310  
 djireland@ficlaw.com

27 D. Good Faith: The Parties agree that they will act in good faith and will not  
 28 engage in any conduct that will or may frustrate the purpose of this Settlement Agreement. The

1 Parties further agree, subject to Court approval as needed, to reasonable extensions of time to  
2 carry out any of the provisions of the Settlement Agreement.

3 E. Publicity: To the extent P&G or Plaintiffs make any public statements  
4 regarding the settlement of this Action, any such statements shall be consistent with the Court-  
5 approved documents that comprise this Settlement Agreement or otherwise agreed on by the  
6 Parties in writing in advance.

7 F. Binding on Successors: The Settlement Agreement shall be binding upon, and  
8 inure to the benefit of, the heirs, successors and/or assigns of the Released Parties.

9 G. Arms-Length Negotiations: The determination of the terms and conditions  
10 contained herein and the drafting of the provisions of this Settlement Agreement has been by  
11 mutual understanding after negotiation, with consideration by, and participation of, the Parties  
12 hereto and their counsel. This Settlement Agreement shall not be construed against any Party  
13 on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of  
14 construction that ambiguities are to be resolved against the drafting party shall not be  
15 employed in the implementation of this Settlement Agreement and the Parties agree that the  
16 drafting of this Settlement Agreement has been a mutual undertaking.

17 H. Waiver: The waiver by one Party of any provision or breach of the Settlement  
18 Agreement shall not be deemed a waiver of any other provision or breach of the Settlement  
19 Agreement.

20 I. Variance: In the event of any variance between the terms of this Settlement  
21 Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall  
22 control and supersede the Exhibit(s).

23 J. Exhibits: All Exhibits to this Settlement Agreement are material and integral  
24 parts hereof, and are incorporated by reference as if fully rewritten herein.

25 K. Taxes: No opinion concerning the tax consequences of the Settlement  
26 Agreement to any Settlement Class Member is given or will be given by P&G, P&G's  
27 Counsel, Class Counsel, or Plaintiffs' Counsel; nor is any Party or their counsel providing any  
28 representation or guarantee respecting the tax consequences of the Settlement Agreement as to

1 any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax  
2 reporting and other obligations respecting the Settlement Agreement, if any.

3 L. Modification in Writing: This Settlement Agreement may be amended or  
4 modified only by written instrument signed by one of Class Counsel and one of P&G's  
5 Counsel. Amendments and modifications may be made without additional notice to the  
6 Settlement Class Members, unless such notice is required by the Court.

7 M. Integration: This Settlement Agreement represents the entire understanding and  
8 Settlement Agreement among the Parties and supersedes all prior proposals, negotiations,  
9 settlement agreements, and understandings related to the subject matter of this Settlement  
10 Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation,  
11 condition, representation, warranty, inducement, negotiation or undertaking concerning any  
12 part or all of the subject matter of this Settlement Agreement has been made or relied upon  
13 except as set forth expressly herein.

14 N. Retain Jurisdiction: The Court shall retain jurisdiction with respect to the  
15 implementation and enforcement of the terms of this Settlement Agreement, and all Parties  
16 hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the  
17 Settlement Agreement embodied in this Settlement Agreement.

18 O. Choice of Law: This Settlement Agreement is governed by, and shall be  
19 construed and enforced in accordance with, Ohio law.

20 P. Computation of Time: All deadlines and time periods prescribed in this  
21 Settlement Agreement shall be calculated pursuant to Fed. R. Civ. P. 6.

22 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to  
23 be executed as of the last date set forth below.

BLOOD HURST & O'REARDON, LLP

Dated:

9/21/17

BLOOD HURST & O'REARDON, LLP  
TIMOTHY G. BLOOD (CA 149343)  
LESLIE E. HURST (CA 178432)  
THOMAS J. O'REARDON II (CA 247952)

By:

  
TIMOTHY G. BLOOD

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*Class Counsel*

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*Additional Plaintiffs' Counsel*

Dated:

9/25/17

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