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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JACKIE FITZHENRY-RUSSELL, AND  
GEGHAM MARGARYAN, individuals, on  
behalf of themselves, the general public and  
those similarly situated,

Plaintiffs,

v.

KEURIG DR PEPPER INC. AND DR  
PEPPER/SEVEN UP, INC.,

Defendants.

Case No. 5:17-cv-00564-NC

**CLASS ACTION SETTLEMENT  
AGREEMENT**

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into by and amongst Plaintiffs Jackie Fitzhenry-Russell and Gegham Margaryan, individuals, on behalf of themselves, the general public and those similarly situated, and Defendants Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc., and Dr Pepper/Seven Up, Inc. Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to the Court’s approval, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in the Settlement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

**I. RECITALS**

**1.1** On December 28, 2016, Jackie Fitzhenry-Russell and Robin Dale, through their counsel Gutride Safier LLP (“GSLLP”), filed a Class Action Complaint in Santa Cruz County Superior Court alleging Defendants deceptively marketed and sold its Canada Dry Ginger Ale products by including the words “Made from Real Ginger” on the front label. Plaintiffs alleged claims for violations of the California Consumer Legal Remedies Act, Civil Code § 1780, *et seq.* (“CLRA”), false advertising under California Business and Professions Code § 17500, *et seq.*; unfair business practices under California Business and Professions Code § 17200 *et seq.*; and fraud, seeking damages, an injunction and other relief. Plaintiffs sought to pursue these claims on behalf of themselves and all purchasers of Canada Dry Ginger Ale in the United States (other than resellers) between December 28, 2012, and the present. Defendants timely removed the action to the Northern District of California on February 3, 2017. (Dkt. #1.) Thereafter, two similar putative class action complaints were filed against Defendants in the Central District of California, *Arash Hashemi, et al v. Dr Pepper Snapple Group, Inc. et al.*, No. 2:17-cv-02042-FMO, *Gegham Margaryan, et al. v. Dr Pepper Snapple Group, Inc. et al.*, No. 2:17-cv-05234-JFW, which were subsequently transferred to the Northern District and consolidated with this Action.<sup>1</sup>

<sup>1</sup> Similar putative class actions also were filed in other jurisdictions: *Webb v. Dr Pepper*

1           **1.2**     The parties engaged in extensive motion practice, ultimately resulting in the filing  
2 of the Second Amended Consolidated Complaint on October 31, 2017, which remains the  
3 operative complaint. (Dkt. #97.)

4           **1.3**     Beginning in early 2017, the Parties engaged in extensive discovery. Defendants  
5 produced over 200,000 pages of corporate documents. Each of the named Plaintiffs was deposed.  
6 Plaintiffs also conducted depositions of Defendants' senior employees with authority over  
7 marketing, product formulation, and customer inquiries. In addition, Plaintiffs retained and  
8 worked with a survey expert to conduct surveys of California consumers. Plaintiffs also engaged  
9 a damages expert, who opined that Class members had paid a price premium for the Canada Dry  
10 Ginger Ale purchased during the class period averaging approximately 4% of the purchase price  
11 or an average of \$0.09 per product purchase for total alleged damages of \$10,778,477.16.  
12 Defendants retained and worked with an economist; his opinion is that there was no price  
13 premium, the Products were lined priced, and damages were \$0.00.

14           **1.4**     On April 9, 2018, Plaintiffs moved to certify a class of all purchasers in California  
15 of Canada Dry Ginger Ale between December 28, 2012, and the present, except for purposes of  
16 resale. (Dkt. #180.) After extensive briefing, on June 26, 2018, the Court granted class  
17 certification, and appointed GSSLP and the Margarian Law Firm Class Counsel (Dkt. #199.)

18           **1.5**     On August 15, 2018, the parties participated in mediation with Robert Meyer at  
19 JAMS in Los Angeles, California. (Dkt. #220.) No settlement was reached.

20           **1.6**     Both parties submitted additional reports from experts in the fields of chemistry,  
21 flavor science and marketing. On September 7, 2018, Defendants moved for summary judgment,  
22 and simultaneously moved to strike reports of several of Plaintiffs' experts. (Dkt. #225, 226.)  
23 Plaintiff opposed both motions. (Dkt. # 235, 237.) On November 2, 2018, the Court granted in  
24 part and denied in part Defendants' motion for summary judgment, including finding that the

25  
26 *Snapple Group, Inc., et al.*, No. 4:17cv624-RK, filed in the Western District of Missouri;  
27 *Childers v. Dr Pepper Snapple Group, et al.*, No. DC-18-08724, filed in the District Court of  
28 Dallas County, Texas; *Erwin v. Dr Pepper Snapple Group, et al.*, No. 18-L-0492, Circuit Court  
for the 20th Judicial Circuit County of St. Clair, State of Illinois; *Fisher v. Dr Pepper Snapple  
Group, Inc., et al.*, No. 1:18cv11381-MLW, filed in the United States District Court for the  
District of Massachusetts; *Fletcher v. Dr Pepper Snapple Group, Inc., et al.*, No. 1:18cv00766-  
EAW, filed in the United States District Court for the Western District of New York.

1 Canada Dry Ginger Ale was “Made from Real Ginger.” Thereafter, the Parties continued their  
2 trial preparations on the two remaining theories that “Made from Real Ginger” implied (1) that  
3 Canada Dry Ginger Ale was manufactured using ginger root rather than ginger oleoresin, and  
4 (2) would provide certain health benefits. (Dkt. #261.)

5 **1.7** A jury trial is set to begin on January 9, 2019.

6 **1.8** On December 11, 2018, Defendants reached a proposed class action settlement on  
7 behalf of consumers who purchased Canada Dry Ginger Ale in all states other than California,  
8 which settlement was preliminarily approved by the Circuit Court for St. Louis County,  
9 Missouri, on December 19, 2018 (“49-State Settlement”), in the case styled *George, et al. v.*  
10 *Keurig Dr Pepper Inc., et al.*, Case No. 1822-CC11811, currently pending in the Circuit Court of  
11 the City of St. Louis, State of Missouri. Upon doing so, Defendants notified this Court, and  
12 Plaintiffs and their counsel, of the settlement. In the 49-State Settlement, Defendants agreed to  
13 entry of a permanent injunction barring use of the unmodified phrase “Made from Real Ginger”  
14 in their labeling and marketing, but permitting use of the words “real ginger” if accompanied by  
15 the words “flavor” or “extract,” among other phrasing options. Defendants also agreed to allow  
16 consumers to submit monetary claims for all purchases in states other than California for  
17 payment of 40 cents (\$0.40) per unit purchased, up to 100 units (\$40.00) with proof of purchase,  
18 or 13 units (\$5.20) without proof of purchase, with a minimum payment of \$2.00 per claim even  
19 if fewer than 5 units were purchased, subject to a cumulative maximum payment of \$11.2 million  
20 for all claims. The 49-State Settlement was negotiated with the assistance of U.S. District Judge  
21 Wayne Andersen (Ret.). Class Counsel here was not aware of the 49-State Settlement or its  
22 negotiation until after preliminary approval had been granted.

23 **1.9** From December 20 through December 30, 2018, the Parties had multiple  
24 negotiation sessions with the two JAMS mediators, Robert Meyer and Judge Anderson. Those  
25 communications ultimately culminated in the Settlement for the California Class herein.

26 **1.10** Defendants deny Plaintiffs’ allegations that the Products’ labeling, marketing, or  
27 advertising was false and misleading or that consumers suffered any harm or injury as a result.  
28

1           **1.11** The Parties, to avoid the costs, disruption, and distraction of further litigation and  
2 the uncertainty of a jury trial, and without admitting the truth of any allegations made in the  
3 Action, or any liability with respect thereto, having participated in mediation and follow-up  
4 negotiations under the supervision of JAMS mediators Robert A. Meyer, Esq., and the  
5 Honorable Wayne R. Andersen (Ret.), have concluded that it is desirable that the claims be  
6 settled and dismissed on the terms negotiated by the parties, recommended by the mediators, and  
7 now reflected in this Settlement.

8           **1.12** The undersigned Parties agree, subject to approval by the Court, that the litigation  
9 between Plaintiffs, on the one hand, and Defendants, on the other hand, shall be fully and finally  
10 compromised, settled, and released on the terms and conditions set forth in this Agreement.

11           **1.13** Plaintiffs and Class Counsel, after taking into account the foregoing, along with  
12 the risks and costs of further litigation, and, in particular, the risk of trial and the risks and costs  
13 of post-trial briefing and any appeals, are satisfied that the terms and conditions of this  
14 Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action and  
15 the prompt provision of effective relief to the Class are in the best interests of the Class  
16 Members.

17           **1.14** Defendants, while continuing to deny all allegations of wrongdoing and  
18 disclaiming any liability with respect to any and all claims, and further denying that the evidence  
19 is sufficient to support a finding of liability on any of the claims in the Action, consider it  
20 desirable to resolve the Action on the terms stated herein, in order to avoid further expense,  
21 inconvenience, and interference with ongoing business operations, and to avoid trial and  
22 potential post-trial briefing and appeals. Therefore, Defendants have determined that settlement  
23 of this litigation on the terms set forth herein is in their best interests and is fair, adequate, and  
24 reasonable.

25           **1.15** This Agreement is contingent upon the issuance by the Court of both the  
26 Preliminary Approval Order and Final Approval Order. Should the Court not issue the  
27 Preliminary Approval Order and Final Approval Order, Defendants do not waive, and instead  
28 expressly reserve, all rights to defend against the claims in the Action.

1           **1.16** This Agreement reflects a compromise between the Parties, and shall in no event  
2 be construed as or be deemed an admission or concession by any Party of the truth, or lack  
3 thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense  
4 asserted in any of the pleadings or filings in the litigation, or of any fault on the part of any  
5 Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall  
6 constitute an admission of liability or be used as evidence of liability, by or against any Party  
7 hereto.

8           NOW, THEREFORE, in consideration of the covenants and agreements set forth herein,  
9 and of the releases and dismissals of claims described below, the Parties agree to this Agreement,  
10 subject to Court approval, under the terms and conditions that follow.

## 11 **II. DEFINITIONS**

12           As used in this Settlement and the attached exhibits (which are an integral part of the  
13 Settlement and are incorporated in their entirety by reference), the following terms shall have the  
14 meanings set forth below, unless this Settlement specifically provides otherwise. Other  
15 capitalized terms in this Settlement but not defined in this section shall have the meanings  
16 ascribed to them elsewhere in this Agreement.

17           **2.1** “Administration Expenses” means reasonable fees and expenses incurred by the  
18 Settlement Administrator for all tasks the Settlement Administrator and any third parties  
19 appointed by the Parties perform in furtherance of the notice and administration of the Settlement  
20 and to secure performance as set forth in this Settlement.

21           **2.2** “Affiliate” means, with respect to any Person, any other Person that directly, or  
22 indirectly through one or more intermediaries, controls, is controlled by, or is under common  
23 control with such Person. For purposes of the definition, “control” means (a) with respect to any  
24 corporation or other entity having voting shares or the equivalent and elected directors,  
25 managers, or Persons performing similar functions: (i) the ownership or power, directly or  
26 indirectly, to vote more than fifty percent (50%) of shares or the equivalent having the power to  
27 vote in the election of such directors, managers or Persons performing similar functions, or  
28

1 (ii) the ability, directly or indirectly, to direct its business and affairs, and (b) with respect to any  
2 other Person: the ability, directly or indirectly, to direct its business and affairs.

3 **2.3** “Agreement” means this Class Action Settlement Agreement, containing all  
4 terms, conditions, and Exhibits A–F, which constitute the entire agreement between the Parties.  
5 For the avoidance of doubt, Exhibit G is not a part of this Agreement but is attached hereto for  
6 ease of reference.

7 **2.4** “Application” means the application to be filed by Class Counsel in this Action  
8 by which they will seek an award of Attorneys’ Fees and Expenses and Class Representative  
9 Service Awards.

10 **2.5** “Attorneys’ Fees and Expenses” means such funds as may be awarded by the  
11 Court based on the Settlement described herein to compensate Class Counsel as determined by  
12 the Court and described more particularly in Section VI of this Settlement. This award will also  
13 include a reimbursement of expenses incurred by Class Counsel, arising from their  
14 representation in the Action, as determined and awarded by the Court.

15 **2.6** “Benefit” means the cash payment available to a Claimant who files a Valid  
16 Claim under this Agreement. The specific Benefit paid is subject to review, validation, and  
17 adjustments by the Settlement Administrator based upon the terms and conditions of this  
18 Agreement.

19 **2.7** “Benefit Checks” are the form of payment issued for Valid Claims as determined  
20 by the Settlement Administrator and in accordance with this Agreement.

21 **2.8** “California Action” or “Action” means the class action lawsuit styled as  
22 *Fitzhenry-Russell, et al. v. Keurig Dr Pepper Inc., et al.*, Case No. 5:17-cv-00564-NC, pending  
23 in the United States District Court for the Northern District of California.

24 **2.9** “Claim” means a request for relief pursuant to this Settlement submitted by a  
25 Class Member on a Claim Form filed with the Settlement Administrator in accordance with the  
26 terms of this Settlement.

27 **2.10** “Claim Form” means the proposed Claim Form in substantially the form attached  
28 hereto as Exhibit A to be used by Class Members to make a Claim under the Settlement, which

1 form is to be approved by the Court and to be posted online in accordance with Sections IV and  
2 V of this Settlement.

3 **2.11** “Claim Period” means the period of time during which a Class Member must  
4 submit a Claim Form to be eligible to receive monetary Benefit as part of the Settlement, which  
5 shall begin when Class Notice goes out and shall extend for a period of sixty (60) days thereafter.  
6 If the Claim Period ends on a weekend or holiday, the Claim Period shall extend to the next  
7 business day.

8 **2.12** “Claimant” means a Class Member who files a Claim seeking a Benefit under this  
9 Agreement.

10 **2.13** “Claim Form Deadline” means the date by which a Claim Form must be  
11 postmarked via United States First Class Mail or via electronic submission by 11:59 p.m. Pacific  
12 time to be considered timely. The Claim Form Deadline shall be clearly set forth in the  
13 Preliminary Approval Order as well as in the Settlement Notice and/or the Claim Form and shall  
14 conclude prior to the entry of the Final Approval Order. If the Claim Form Deadline is on a  
15 weekend or holiday, the Claim Form Deadline shall extend to the next business day following  
16 the weekend or holiday.

17 **2.14** “Class Counsel” means the law firms Gutride Safier LLP; Margarian Law Firm,  
18 and Durie Tangri LLP.

19 **2.15** “Class” means the class certified on June 26, 2018 of “All persons who, between  
20 December 28, 2012 and June 26, 2018, purchased any Canada Dry Ginger Ale Products in the  
21 state of California.” Excluded from the Class are: (a) all Persons who purchased or acquired the  
22 Product for resale; (b) Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc., Dr  
23 Pepper/Seven Up, Inc., and their directors, officers, employees, principals, affiliated entities,  
24 legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out  
25 request; (d) federal, state, and local governments (including all agencies and subdivisions  
26 thereof, but excluding employees thereof); and (e) the Honorable Nathanael Cousins, the  
27 Honorable Wayne R. Andersen (Ret.) of JAMS, Robert A. Meyer of JAMS, and any members of  
28 their immediate families.



1           **2.16** “Class Members” means all Persons who are members of the Class and who do  
2 not exclude themselves from the Class in the manner and time prescribed by the Court in the  
3 Preliminary Approval Order.

4           **2.17** “Class Notice” means the Publication Notice, Long-Form Settlement Notice,  
5 Email Notice, Online Notice, and Media Plan as set forth in Exhibits B1–B5 attached hereto.

6           **2.18** “Class Period” means the period of December 28, 2012, through, and including,  
7 June 26, 2018.

8           **2.19** “Class Representatives” means Plaintiffs Jackie Fitzhenry-Russell and Gegham  
9 Margaryan.

10           **2.20** “Class Representative Service Award” means any award sought by application  
11 and approved by the Court that is payable to Class Representatives, up to a maximum total  
12 amount of five thousand dollars and zero cents (\$5,000.00) per Class Representative, payable in  
13 addition to the Settlement Amount, to compensate each Class Representative for their efforts in  
14 bringing the Action and achieving the benefits of this Settlement on behalf of the Class.

15           **2.21** “Court” means the United States District Court for the Northern District of  
16 California.

17           **2.22** “Defendants” mean Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc.,  
18 and Dr Pepper/Seven Up, Inc.

19           **2.23** “Effective Date” means the fifth business day after the last of the following dates:  
20 (a) all Parties and their counsel, Defendants’ counsel, and Class Counsel have executed this  
21 Settlement; (b) the Court has entered the Final Approval Order approving the Agreement and  
22 entering judgment thereon; (c) the date on which the time to appeal or to seek permission to  
23 appeal from the Court’s approval of the Settlement Agreement has expired; (d) if timely  
24 appealed, the date on which approval of the Settlement Agreement has been affirmed in its  
25 entirety by the Court of last resort to which such appeal has been taken and such affirmance is no  
26 longer subject to further appeal or review; and (e) if writ of certiorari is timely sought, the date  
27 upon which the writ is denied or dismissed or the order of the appellate court is affirmed, thus  
28 making the Final Approval Order a final, non-appealable judgment. However, with respect to

1 clauses (d) and (e) above, an appeal or petition for certiorari directed only at the Fee Award or  
2 Class Representative Service Payments shall not prevent this settlement from becoming final and  
3 effective, and a modification or reversal on appeal of any Fee Award or Class Representative  
4 Service Payments shall not prevent this settlement from becoming final and effective if all other  
5 aspects of the final judgment have been affirmed.

6 **2.24** “Email Notice” means a notice by email in substantially the same form as Exhibit  
7 B4.

8 **2.25** “Fairness Hearing” and/or “Final Approval Hearing” means the final hearing to  
9 be conducted by the Court on such date as the Court may order to determine the fairness,  
10 adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to  
11 be held after notice has been provided to the Class in accordance with this Settlement, and where  
12 the Court will: (a) determine whether to grant final approval to the Settlement and enter the  
13 Final Approval Order, (b) determine whether to approve Class representative Service Awards  
14 and in what amounts, and (c) rule on Class Counsel’s Application for Attorneys’ Fees and  
15 Expenses.

16 **2.26** “Fee Award” means the Attorneys’ Fees and Expenses to be paid separate and  
17 apart from the payment of Valid Claims, awarded by the Court to Class Counsel for all the past,  
18 present, and future attorneys’ fees, costs (including court costs), expenses, and disbursements  
19 incurred by them and their experts, staff, and consultants in connection with the Action, up to a  
20 maximum of two-million-two-hundred-fifty-thousand dollars and zero cents (\$2,250,000.00).

21 **2.27** “Final Approval Order” means the issuance of an order granting final approval of  
22 this Agreement, substantially in the form of the Proposed Final Approval Order attached hereto  
23 as Exhibit E as binding upon the Parties; holding this Agreement to be final, fair, reasonable,  
24 adequate, and binding on all Class Members who have not excluded themselves as provided  
25 below; ordering that the settlement relief be provided as set forth in this Agreement; ordering the  
26 Releases as set forth in Section IX of this Agreement; entering judgment in this case; and  
27 retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the  
28 Settlement.

1           **2.28** “49-State Settlement” means the preliminarily approved settlement in the lawsuit  
2 styled *George, et al. v. Keurig Dr Pepper Inc., et al.*, Case No. 1822-CC11811, currently  
3 pending in the Circuit Court of the City of St. Louis, State of Missouri, for a class of consumers  
4 who purchased the Product in the United States, other than in California, between January 1,  
5 2013, and December 19, 2018, for purposes other than resale.

6           **2.29** “Household” means any number of Persons cohabitating and related by blood or  
7 marriage in the same dwelling unit or physical address.

8           **2.30** “Labeling” means the display of written, printed, or graphic matter upon the  
9 packaging of the Product, as well as written, printed, or graphic matter or audio designed for use  
10 in the marketing, advertising, distribution or sale of the Product, including information found on  
11 Defendants’, their Affiliates’, or their bottlers’, distributors’, or customers’ websites or in any  
12 other media format describing, explaining, and/or promoting the Product(s).

13           **2.31** “Media Plan” means the notice plan, in substantially the form attached hereto as  
14 Exhibit B2, developed by the Settlement Administrator to notify the Class of the Settlement  
15 Notice and to command the Class Members’ attention about their rights under the Settlement. If  
16 the Defendants have mailing address or email address information for any Class Members in  
17 their customer service database, Defendants will provide those email addresses to the Settlement  
18 Administrator.

19           **2.32** “Motion for Preliminary Approval of Settlement” means the motion, to be filed  
20 by Plaintiffs, seeking entry by the Court of the Preliminary Approval Order, and includes all  
21 supporting papers.

22           **2.33** “Notice Date” means the date on which the Settlement Administrator  
23 disseminates the Class Notice as set forth in the Media Plan. The Notice Date shall be as soon as  
24 possible, and no later than thirty (30) days, after the Court’s entry of the Preliminary Approval  
25 Order.

26           **2.34** “Objection” means an objection filed with the Court by a member of the Class,  
27 objecting to any aspect of the Settlement.

28           **2.35** “Objection Deadline” means sixty (60) days after the Notice Date.

1           **2.36** “Online Notice” means Internet-disseminated notice in substantially the same  
2 forms as shown on Exhibit B5.

3           **2.37** “Opt-Out” means a request by a member of the Class to be excluded from the  
4 Class by following the procedures set forth in the Preliminary Approval Order and the Class  
5 Notice.

6           **2.38** “Opt-Out Deadline” means sixty (60) days after the Notice Date.

7           **2.39** “Parties” (or “Party” individually) means Plaintiffs and Defendants.

8           **2.40** “Person” means any natural person, corporation, partnership, business  
9 organization or association, or other type of legal entity.

10          **2.41** “Plaintiff” or “Plaintiffs” means Jackie Fitzhenry-Russell and Gegham  
11 Margaryan.

12          **2.42** “Preliminary Approval Order” means an order, in substantially the form of the  
13 Proposed Preliminary Approval Order attached hereto as Exhibit D, granting preliminary  
14 approval to this Agreement consistent with Rule 23(e)(1); approving Class Notice to the Class  
15 Members as described in Section V below; and setting a hearing to consider final approval of the  
16 Settlement and any objections thereto.

17          **2.43** “Product” and/or “Products” means all Canada Dry branded products which  
18 contain the terms “Made from Real Ginger” on the labels, a complete list of which is provided in  
19 Exhibit C.

20          **2.44** “Proof of Purchase” means a receipt or other documentation from a third-party  
21 commercial source that reasonably establishes the fact and date of purchase of the Product during  
22 the Class Period in the United States.

23          **2.45** “Proposed Preliminary Approval Order” means the order attached hereto as  
24 Exhibit D.

25          **2.46** “Publication Notice” means the proposed short form notice, in substantially the  
26 form attached as Exhibit B3 hereto, to be approved by the Court and to be published in  
27 accordance with Section V of this Settlement Agreement.

1           **2.47** “Releases” means the release of all claims contained in Section IX of this  
2 Settlement.

3           **2.48** “Released Claims” are defined in Section IX.

4           **2.49** “Released Parties” means Keurig Dr Pepper Inc., f/k/a Dr Snapple Group, Inc.,  
5 Dr Pepper/Seven Up, Inc., and each of their parent companies, related companies, direct and  
6 indirect subsidiaries, Affiliates, divisions, franchisees, attorneys, bottlers, distributors,  
7 wholesalers, retailers, advertising and production agencies, licensors, licensees, and agents,  
8 including all officers, directors, managers, members, employees, shareholders, consultants,  
9 insurers, agents, representatives, successors, and assigns of any of the foregoing. For the  
10 avoidance of doubt, Released Parties shall include all persons or entities in the stream of  
11 commerce for the labeling, marketing, sale, and/or distribution of the Products.

12           **2.50** “Settlement” means the settlement into which the Parties have entered to resolve  
13 the Action. The terms of the Settlement are as set forth in this Agreement and attached exhibits.

14           **2.51** “Settlement Administrator” means Heffler Claims Group, the independent entity  
15 selected by the Parties to administer the Settlement and to be approved by the Court.

16           **2.52** “Long Form Settlement Notice” means a long form notice substantially in the  
17 form attached as Exhibit B1, to be approved by the Court, and to be disseminated in accordance  
18 with Section V of this Agreement.

19           **2.53** “Settlement Website” means the website to be created for this Settlement that will  
20 include information about the Action, the Settlement, and relevant documents, as well as  
21 electronic and printable forms relating to the Settlement, including the Claim Form, which can be  
22 submitted online or printed and mailed, and which Class Members can visit to read or request  
23 additional information regarding the Settlement. The Settlement Website shall be  
24 [www.CDGASettlement.com](http://www.CDGASettlement.com).

25           **2.54** “Undertaking” means an undertaking, substantially in the form of Exhibit F.

26           **2.55** “Unit” means a single quantity of the Product (e.g., one 12-pack, one 24-pack,  
27 one 2 liter bottle, etc.). By way of example, a Claim for 10 Units means that the Class Member  
28

1 is seeking \$4.00 (\$0.40 per Unit x 10 Units = \$4.00) before adjustments by the Settlement  
2 Administrator.

3 **2.56** “Valid Claim” means a Claim Form submitted by a Class Member that is:  
4 (a) submitted in accordance with the directions accompanying the Claim Form and the  
5 provisions of the Settlement; (b) on the initial submission, accurately, fully and truthfully  
6 completed and executed, with all of the information requested in the Claim Form, by a Class  
7 Member; (c) signed physically or by e-signature by a Class Member personally, subject to the  
8 penalty of perjury; (d) returned via mail and postmarked by the Claim Forms Deadline, or, if  
9 submitted online, submitted by 11:59 p.m. Pacific time on the Claim Forms Deadline; and (e)  
10 determined to be valid by the Settlement Administrator.

### 11 **III. CHANGED PRACTICES AND INJUNCTIVE RELIEF**

12 **3.1** Subject to the rights and limitations set forth in this Agreement, Defendants agree  
13 that, upon Final Approval, the Court shall enter a Permanent Injunction precluding Defendants  
14 from using the phrase “Made from Real Ginger” in any Labeling of any Canada Dry Ginger Ale,  
15 which injunction shall become binding and enforceable against Defendants on the Effective  
16 Date.

17 **3.2** Notwithstanding the provisions of section 3.1, Defendants shall be permitted, at  
18 their option, to use any of the following words and phrases: “ginger,” “real ginger,” or “natural  
19 ginger,” in combination with one of the following three words: “taste,” “extract,” or  
20 “flavor.” For example, the words “taste,” “extract,” or “flavor” may be used, preceding, or  
21 following, the words “ginger,” “real ginger,” or “natural ginger” (the “Approved Permitted Label  
22 Claim”).

23 **3.3** By way of example, the injunction shall include these Approved Permitted Label  
24 Claim examples of permissible label claims: “real ginger taste,” “made with real ginger extract,”  
25 “real ginger flavor,” “flavor from real ginger extract,” and “natural ginger flavor.” The  
26 Permanent Injunction shall also include court-approved use of “ginger extract,” “natural ginger  
27 flavor extract,” “natural ginger extract,” “natural ginger flavor,” or “ginger flavor” in the label  
28

1 ingredient line. Such approved examples shall not limit other usages and combinations of the  
2 Approved Permitted Label Claim in conjunction with other words or phrases.

3 **3.4** Nothing herein shall limit the ability of the U.S. Food and Drug Administration  
4 (“FDA”) to enforce FDA regulations.

5 **3.5** The Permanent Injunction shall expressly allow for Defendants and their  
6 packaging suppliers, bottlers, distributors, wholesalers and retailers of Canada Dry Ginger Ale  
7 Products to sell-through all remaining stock of the existing label and introduce the new label as  
8 they sell through existing stock. The sell-through shall not require the withdrawal or destruction  
9 of any existing labels or recall of Product. Instead, the new label shall begin to be phased into  
10 the market on or about the *later of* 120 days after the Effective Date *or* June 1, 2019, and the  
11 transition to new labels shall be completed no later than the *later of* 120 days after the Effective  
12 Date *or* January 1, 2020 (or any further extension of the United States Food and Drug  
13 Administration’s deadline for new nutrition fact panel changes); provided, however, that because  
14 Defendants cannot control all sources of old stock in the market, neither Defendants nor any  
15 bottler, distributor, wholesaler or retailer would be penalized or be liable for de minimis sales of  
16 old stock after that date. The injunction shall prohibit Defendants from printing labels and from  
17 creating other marketing collateral (e.g. advertisements, websites) containing the phrase “Made  
18 from Real Ginger” on the Products after the *later of* 120 days after the Effective Date *or* June 1,  
19 2019.

20 **IV. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION**

21 **4.1** Subject to the rights and limitations set forth in this Agreement, every Class  
22 Member shall have the right to submit a claim for a Settlement Benefit. A claim shall be a Valid  
23 Claim only if submitted on the Claim Form pursuant to and in compliance with, the procedures  
24 set forth herein. Submission of a claim, regardless of whether it is determined to be a Valid  
25 Claim, shall confer no rights or obligations on any Party, any Class Member, or any other  
26 Person, except as expressly provided herein.

27 **4.2** At the election of the Class Member, a Claim Form may be submitted in paper via  
28 first class mail or online at the Settlement Website. A Claim Form must be postmarked to the

1 Settlement Administrator or submitted online no later than the Claims Deadline. A Claim Form  
2 postmarked or submitted online after that date will not be a Valid Claim. The Settlement  
3 Administrator may track Claim Forms with unique security identifiers or control numbers. For  
4 Claim Forms that are submitted online, every Class Member shall be provided the opportunity on  
5 the Claim Form to upload Proof of Purchase image files (e.g., jpeg, tif, pdf); if the Class Member  
6 attempts to submit an online claim for more than 13 Units, the Class Member shall be required to  
7 upload an image file in order to complete the Claim Form submission.

8 **4.3** On the Claim Form, the Class Member, or a Person with authority to sign and  
9 bind the Class Member, must provide and certify the truth and accuracy of the following  
10 information under the penalty of perjury, including by signing the Claim Form physically or by  
11 e-signature, or the claim will not be considered a Valid Claim by the Settlement Administrator:

- 12 (a) The Class Member's name and mailing address;
- 13 (b) The Class Member's email address (unless the Class Member  
14 returns the claim form by mail, in which case an email address is  
15 optional);
- 16 (c) The number of Products purchased during the Class Period, the  
17 approximate dates of purchase, and (if the Class Member elects to  
18 provide the information) the store where purchased; and
- 19 (d) That the claimed purchases were not made for the purpose of  
20 resale.

21 **4.4** Each Class Member who submits a Valid Claim, as determined by the Settlement  
22 Administrator, shall receive a Benefit. In consideration for the Settlement and Releases given  
23 herein and subject to the rights, terms, and conditions of this Agreement, Defendants will pay or  
24 cause to be paid Valid Claims as follows. Class Members who provide a Valid Claim Form shall  
25 recover forty cents (\$0.40) per Unit subject to the following minimums and maximums:

- 26 (a) The minimum payment for any Valid Claim shall be two dollars  
27 and zero cents (\$2.00) per Household. Thus, a Class Member who  
28 submits a Valid Claim for purchases of one (1) to five (5) Products



1 shall recover two dollars and zero cents (\$2.00) per Household.

2 (b) A Class Member who does not provide valid Proof of Purchase  
3 shall recover for a maximum of thirteen (13) Units, or five dollars  
4 and twenty cents (\$5.20), per Household.

5 (c) A Class Member who does provide a valid Proof of Purchase may  
6 recover for a maximum of one hundred (100) Units, or forty  
7 dollars and zero cents (\$40.00), per Household.

8 If more than one claim is submitted per Household, all such claims shall be combined and treated  
9 as a single claim for purposes of the limits set forth herein.

10 **4.5** The Settlement Administrator shall be responsible for, among other things,  
11 providing notice as set forth in the Media Plan, processing Claim Form and administering the  
12 Settlement Website, Opt-Out process, and Benefit claims process described herein (including  
13 receiving and maintaining on behalf of the Court and the Parties any Class Member  
14 correspondence regarding Opt-Out requests from the Class). The Settlement Administrator will  
15 use adequate and customary procedures and standards to prevent the payment of fraudulent  
16 Claims and to pay only Valid Claims. The Settlement Administrator and Parties shall have the  
17 right to audit Claims and the Settlement Administrator may request additional information from  
18 Claimants. If any fraud is detected or reasonably suspected, the Settlement Administrator and  
19 Parties can require information from the Class Members (including by cross-examination) or  
20 deny claims, subject to the supervision of the Parties and ultimate oversight by the Court. At  
21 least fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall  
22 provide a declaration to the Court regarding the number and dollar value of Claims and Valid  
23 Claims submitted.

24 **4.6** The determination of validity of Claims shall occur no later than (14) days before  
25 Final Approval. The Settlement Administrator shall approve or deny all Claims, and its decision  
26 shall be final and binding, except that Plaintiffs' counsel and Defendants shall have the right to  
27 audit claims and to challenge the Settlement Administrator's decision by motion to the Court.  
28 Defendants' choice not to audit the validity of any one or more Claim Form shall not constitute

1 or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim  
2 Form, individually or as a group, and similarly shall not be construed as a waiver or  
3 relinquishment by the Party as to any of its audit and other rights under this Agreement. Nothing  
4 in this Agreement or claims process creates a claim by any Person against Class Representatives,  
5 Defendants, Defendants' counsel, or the Settlement Administrator based on any determination of  
6 a Valid Claim, distributions, or awards made in accordance with this Agreement and the Exhibits  
7 hereto, and all relief shall be solely as provided in this Agreement and by its Claims process.  
8 Neither Plaintiffs nor Defendants, nor their counsel, shall have any liability whatsoever for any  
9 act or omission of the Settlement Administrator.

10 **4.7** Valid Claims shall be paid by check to the Class Members and mailed to the  
11 address provided on the Claim Form as updated in the National Change of Address Database,  
12 within forty-five (45) days after the Effective Date except that, in the event of an appeal from  
13 final approval that challenges only the award of Attorneys' Fees and Expenses and/or the Class  
14 Representative Service Awards and does not challenge any other aspect of the Settlement and  
15 does not raise an argument, theory, or issue that could result in the reversal of final approval or  
16 modification of other terms of the Settlement, then all Valid Claims shall be paid within sixty  
17 (60) days after entry of the Final Approval Order, unless otherwise ordered by the Court.

18 **4.8** All Benefit Checks shall be subject to a one-hundred-twenty (120) day void  
19 period, after which the checks shall no longer be negotiable. If a Benefit Check is not  
20 negotiated, the Class Member shall not be entitled to any further payment under this Agreement.  
21 If the Benefit Check is returned as undeliverable, the Settlement Administrator shall send an  
22 email to the Claimant, if an email address was provided with the Claim, to attempt to obtain a  
23 better address, and if obtained, shall mail the Benefit Check to the new address, but shall have no  
24 other obligation to skip-trace or obtain an updated address. If no email address was provided  
25 with the Claim, the Settlement Administrator shall attempt to locate the address or perform a  
26 skip-trace of the Claimant for purposes of issuance of a Benefit Check. The return or failure to  
27 cash checks shall have no effect on a Class Member's release of claims, obligations,  
28 representations, or warranties as provided herein, which shall remain in full effect.

1           **4.9**     No deductions for taxes will be taken from any Benefit at the time of distribution.  
2 Class Members are responsible for paying all taxes due on such Benefits. All Benefit Checks  
3 shall be deemed to be paid solely in the year in which payments are actually issued. The Parties  
4 do not purport to provide legal advice on tax matters to each other or Class Members. To the  
5 extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or  
6 constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or  
7 written to be used, and cannot be used, by any Person for the purpose of avoiding penalties under  
8 the Internal Revenue Code or any state's tax laws.

9           **4.10**    Defendants shall be responsible for paying all fees and expenses incurred by the  
10 Settlement Administrator in administering claims and performing the other tasks set forth in this  
11 Section VIII.

12           **4.11**    Defendants shall be responsible for paying all costs of Valid Claims.

13 **V.    NOTICE**

14           **5.1**     Notice and administration will be combined with the 49-State Settlement for cost  
15 and administrative efficiency, as well as to avoid confusion to class members in the California  
16 Action and 49-State Settlement. If preliminary approval is granted by this Court, the Published  
17 Notice and Online Notice shall be issued nationwide, directing Class Members to a single  
18 settlement website. From there, the Class Members can elect to file their Claim in the California  
19 Action or the 49-State Settlement. The California Action and the 49-State Settlement shall have  
20 separate Claim Forms and Long Form Settlement Notices advising Class Members of their rights  
21 and procedures to opt-out or object. The Parties agree that objections to the Settlement by  
22 members of the certified class in the California Action shall be heard by this Court, while  
23 objections by members of the 49-State Settlement class shall be heard by the Missouri court.  
24 Defendants shall pay all reasonable and necessary administration costs for both settlements.

25           **5.2**     Prior to the Notice Date, the Settlement Administrator shall establish the  
26 Settlement Website, which shall contain the Long Form Settlement Notice with a clickable table  
27 of contents, answers to frequently asked questions, a Contact Information page that includes the  
28 address for the Settlement Administrator and addresses and telephone numbers for Class Counsel

1 and Defendants' counsel as well as the Settlement Agreement, Motion to Approve the  
2 settlement, signed Preliminary Approval Order, downloadable and online version of the Claim  
3 Form, and an online version of a form by which Class Members may Opt-Out of the Class. Any  
4 subsequent filings by the parties regarding approval of the Settlement or requests for a Fee  
5 Award and Class Representative Service Awards will also be made available on the Settlement  
6 Website. The Settlement Website shall remain accessible until one-hundred-eighty (180) days  
7 after all Benefit Checks are distributed.

8 **5.3** Notice shall be provided as outlined in the Media Plan. The Settlement  
9 Administrator shall provide a declaration in support of Preliminary Approval attesting that the  
10 Media Plan is the best notice that is practicable under the circumstances, including the reasons  
11 for selection of the methods of notice and computation of the expected notice reach.

12 **5.4** The Parties shall supervise the Settlement Administrator in the performance of the  
13 notice functions set forth in this Section. At least fourteen (14) days prior to the Final Approval  
14 Hearing, the Settlement Administrator shall provide a declaration stating that notice was  
15 provided as required herein, attesting to the number of impressions and reach of the notice, and  
16 stating how many direct (mailed or emailed) notices were delivered and how many were returned  
17 undeliverable.

18 **VI. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**  
19 **AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**

20 **6.1** No later than twenty-one (21) days prior to the Objection Deadline, Class Counsel  
21 will submit to the Court an application seeking a Fee Award and Class Representative Service  
22 Award. Class Counsel may apply to the Court for an award of their attorneys' fees, costs, and  
23 expenses in a total amount not to exceed the amount calculated using lodestar  
24 methodology. Defendants shall pay the Court's award of attorneys' fees and costs of any amount  
25 equal to or less than two-million-two-hundred-fifty-thousand dollars and zero cents  
26 (\$2,250,000.00) inclusive of fees and costs and shall not have an obligation to pay an amount in  
27 excess of two-million-two-hundred-fifty-thousand dollars and zero cents (\$2,250,000.00) (total,  
28 inclusive of fees and costs). Defendants shall pay the attorneys' fees, costs and expenses within

1 thirty (30) days after issuance of one or more order(s) by this Court finally approving this  
2 California Settlement and awarding attorneys' fees and expenses, provided that Plaintiffs'  
3 counsel provide an Undertaking, secured by sufficient assets, to guarantee repayment of such  
4 amounts in the event that final approval or the award of fees and expenses is reversed on appeal,  
5 substantially in the form of Exhibit F.

6 **6.2** In addition, Class Representatives may seek a Class Representative Service  
7 Award in the amount of five thousand dollars and zero cents (\$5,000.00) per Class  
8 Representative as compensation for their efforts in bringing the Action and achieving the  
9 benefits of the Settlement on behalf of the Class.

10 **6.3** The Fee Award and Class Representative Service Awards shall be paid separate  
11 and apart from the Settlement Amount and shall not take away from or otherwise reduce the  
12 monetary relief available to the Class. Court approval of Class Counsel's Fee Award and Class  
13 Representative Service Award will not be a condition of the Settlement. If the Court denies, in  
14 whole or part, Class Counsel's Application for a Fee Award and/or Class Service Award, or if  
15 any Fee Award or Class Service Award ordered by the Court is the subject of any appeal, the  
16 remainder of the terms of this Agreement shall remain in effect. In addition, no interest will  
17 accrue on such amounts at any time. Neither Class Counsel nor Plaintiffs will request, nor will  
18 they accept, any award inconsistent with these terms.

19 **6.4** The attorneys' fees and costs awarded by the Court as set forth in this Section VI  
20 shall be the total obligation of Defendants to pay attorneys' fees and expenses of any kind to  
21 Class Counsel in connection with this Action and this Settlement. In no event shall Defendants  
22 be obligated to pay to Class Counsel any amount larger than the amount set forth herein.

23 **6.5** The parties acknowledge that Class Counsel represent plaintiffs in two other  
24 actions involving the "Made from Real Ginger" claim on Canada Dry Ginger Ale, which are  
25 pending in the United States District Court for the District of Massachusetts, and the United  
26 States District Court for the Western District of New York, respectively entitled *Fisher v. Keurig*  
27 *Dr Pepper, Inc.*, No. 18-cv-11381-MLW (D. Mass), and *Fletcher v. Keurig Dr Pepper, Inc.*, No.  
28 18-cv-00766-EAW (W.D.N.Y.). The plaintiffs in those actions are residents of states other than

1 California and are members of the proposed 49-State Settlement Class. Those plaintiffs have  
2 separately agreed to settle their individual claims, which agreement also provides for monetary  
3 compensation to Class Counsel as set forth in Exhibit G. Nothing in this Section VI or this  
4 Agreement shall in any way affect the rights of Class Counsel to enforce their rights under  
5 Exhibit G. It is the Parties' intention that Class Counsel should receive the Fee Award in  
6 addition to the compensation set forth in Exhibit G and that no deduction should be made from  
7 the Fee Award on account of the compensation set forth in Exhibit G. Defendants further agree  
8 that substantial portions of the collective lodestar worked by Class Counsel may be properly  
9 allocated to the prosecution by Class Counsel of claims on behalf of persons outside California  
10 and that such work was a catalyst for the injunctive relief and monetary benefits provided to such  
11 persons in the 49-State Settlement. Defendants covenant and agree on behalf of themselves and  
12 Released Parties that they and Released Parties shall not (a) oppose or submit any evidence or  
13 argument challenging or undermining Class Counsel's application for attorneys' fees, costs,  
14 expenses, (b) encourage or assist any person to oppose or submit any evidence or argument  
15 challenging or undermining Class Counsel's application for attorneys' fees, costs, expenses, or  
16 (c) encourage or assist any person to appeal from an order making a Fee Award, provided that  
17 the total compensation to Class Counsel does not exceed the sum of the Fee Award and the  
18 separate amount set forth in Exhibit G.

19 **6.6** Defendants covenant and agree on behalf of themselves and Released Parties that  
20 they and Released Parties shall not (a) oppose or submit any evidence or argument challenging  
21 or undermining Class Representatives' application for a Class Representative Service Award, (b)  
22 encourage or assist any person to oppose or submit any evidence or argument challenging or  
23 undermining Class Representatives' application for a Class Representative Service Award, or  
24 (c) encourage or assist any person to appeal from an order making a Class Representative  
25 Service Award. Any payment of a Class Representative Service Award by the Court as set forth  
26 in this Section VI and Benefit from the submission of a Valid Claim shall be the total obligation  
27 of Defendants to pay money to Class Representatives in connection with this Action and this  
28 Settlement. In no event shall Defendants be obligated to pay to Plaintiffs any amount larger than

1 the amount set forth herein other than for a Valid Claim pursuant to Section IV of this  
2 Agreement.

3       **6.7** Class Counsel shall provide Defendants with all necessary accounting and tax  
4 information, including W-9 forms, with reasonable advance notice to allow Defendants to make  
5 the Attorneys' Fees and Expenses award payment as set forth above. Once Defendants makes  
6 the Fee Award payment as directed in writing by Class Counsel, Defendants shall have no  
7 further obligation to pay any additional sums to Class Counsel under this Agreement and shall be  
8 held harmless and indemnified by Class Counsel for the division and disbursements of the Fee  
9 Award amongst and between Class Counsel.

10       **6.8** Defendants shall be responsible for paying their own attorneys' fees and  
11 expenses.

## 12 **VII. CLASS SETTLEMENT PROCEDURES**

13       **7.1** Settlement Approval. As soon as practicable after the signing of this Agreement,  
14 Plaintiffs shall move for an order granting Preliminary Approval to this Agreement as within the  
15 range of possible final approval; approving Class Notice to the Class Members as described in  
16 Section V above; and setting a hearing to consider final approval of the Settlement and any  
17 Objections thereto. Defendants shall have no obligation to make separate filings in support of the  
18 motion. Defendants shall appear at the hearing to confirm their agreement with the terms of the  
19 Settlement as provided herein.

20       **7.2** Final Approval Order and Judgment. No later than twenty-one (21) days prior to  
21 the Objection Deadline, Plaintiffs shall move for entry of an order of final approval, granting  
22 final approval of this settlement and holding this Agreement to be final, fair, reasonable,  
23 adequate, and binding on all Class Members who have not excluded themselves as provided  
24 herein, and ordering that the settlement relief be provided as set forth in this Agreement,  
25 ordering the releases as set forth in Section IX, and entering judgment in this case. Defendants  
26 shall have no obligation to make separate filings in support of the motion. Defendants shall  
27 appear at the hearing to confirm their agreement with the terms of the Settlement as provided  
28 herein.

1           **7.3**    Objections. Any Class Member, on his or her own, or through an attorney hired  
2 at his or her own expense, may object to the terms of the Settlement. Objections must be filed  
3 with the Court no later than the Objection Deadline. To be effective, any such Objection must be  
4 in writing and include the contents described below:

- 5           (a)    A reference to this case, *Fitzhenry-Russell, et al. v. Keurig Dr Pepper Inc.,*  
6                 *et al.*, Case No. 5:17-cv-00564-NC (N.D. Cal.);
- 7           (b)    The name, address, telephone number, and, if available, the email address  
8                 of the Person objecting, and if represented by counsel, of his/her counsel;
- 9           (c)    A written statement of all grounds for the Objection, accompanied by any  
10                legal support for such Objection;
- 11          (d)    Whether he/she intends to appear at the Final Approval Hearing, either  
12                with or without counsel;
- 13          (e)    A statement of his/her membership in the Class, including all information  
14                required by the Claim Form; and
- 15          (f)    A detailed list of any other objections submitted by the Class Member, or  
16                his/her counsel, to any class actions submitted in any court, whether state  
17                or otherwise, in the United States in the previous five (5) years. If the  
18                Class Member or his/her counsel has not objected to any other class action  
19                settlement in any court in the United States in the previous five (5) years,  
20                he/she shall affirmatively state so in the written materials provided in  
21                connection with the Objection to this Settlement.

22           Any Class Member who fails to timely file and serve a written Objection containing all of  
23 the information listed in items (a) through (f) of the previous paragraph shall not be permitted to  
24 object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the  
25 terms of the Agreement by any means, including but not limited to an appeal.

26           If any Objection is received by the Settlement Administrator, but not filed with the Court,  
27 the Settlement Administrator shall forward the Objection and all supporting documentation to  
28 counsel for the Parties. At least fourteen (14) days prior to the Final Approval Hearing,



1 Plaintiffs' Class Counsel shall submit all such Objections and supporting documentation to the  
2 Court. Any party may seek Court approval, prior to the Final Approval Hearing, to take a  
3 deposition of any Class Member who submits a timely written Objection. The failure of the  
4 Class Member to comply with the filing requirements of paragraph 7.3 shall be grounds for  
5 striking and/or overruling the Objection, even if the Objection is submitted to the Settlement  
6 Administrator.

7 A Class Member who objects to the settlement may also submit a Claim Form on or  
8 before the Claim Form Deadline, which shall be processed in the same way as all other Claim  
9 Forms. A Class Member shall not be entitled to an extension to the Claim Form Deadline merely  
10 because the Class Member has also submitted an objection.

11 **7.4 Opt-Out Requests.** If any Class Member wishes to Opt-Out from (in other  
12 words, be excluded from) this Settlement, the Class Member may do so by completing the online  
13 exclusion form at the Settlement Website; downloading and submitting to the Settlement  
14 Administrator a completed exclusion form; or submitting a valid request to exclude themselves,  
15 as described in the Notice to the Settlement Administrator. Opt-Out requests must be postmarked  
16 to the Settlement Administrator by the Opt-Out Deadline or they shall not be valid. Class  
17 Members who elect to Opt-Out from this Settlement shall not be permitted to object to this  
18 Settlement or to intervene. Class Members shall be encouraged, but not required, to provide  
19 their email addresses in their requests for exclusion.

20 At least fourteen (14) days prior to the Final Approval Hearing, the Settlement  
21 Administrator shall prepare a list of the names of the persons who, pursuant to the Settlement  
22 Notice, have Opted-Out from the Class in a valid and timely manner, and Class Counsel shall file  
23 that list with the Court.

24 If a Class Member submits both a Claim Form and an Opt-Out request, the Claim Form  
25 shall take precedence and be considered valid and binding, and the Opt-Out request shall be  
26 deemed to have been sent by mistake and rejected.

27 **7.5 Effect if Settlement Not Approved or Agreement is Terminated.** This Agreement  
28 was entered into only for purposes of Settlement. In the event that preliminary or final approval

1 of this Settlement and this Agreement do not occur for any reason, or if the Final Approval Order  
2 is reversed on appeal, or the Agreement is terminated pursuant to paragraph 8.2 or paragraph  
3 13.1, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation,  
4 documentation, or other part or aspect of the Parties' Settlement discussions shall have any effect,  
5 nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other  
6 proceeding (unless Class Counsel and Defendants mutually agree in writing to proceed with this  
7 Agreement); the complaint shall be deemed automatically withdrawn; and the Action shall  
8 continue as if the Settlement had not occurred. The Parties agree that all drafts, discussions,  
9 negotiations, documentation or other information prepared in relation to this Agreement, and the  
10 Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court  
11 order, be disclosed to any Person other than the Parties' counsel, and only for purposes of the  
12 Action. Even in the event of termination of the Agreement, Defendants shall bear all costs and  
13 expenses as set forth in Section VIII of this Agreement, and all costs and expenses incurred prior  
14 to the termination date by the Settlement Administrator in administering claims, as provided in  
15 Section IV of this Agreement.

16 7.6 Post-Distribution Accounting. Within 21 days after the payment of Valid Claims,  
17 the Settlement Administrator will submit a declaration stating the total estimated size of the  
18 Class, the total number of Class Members to whom notice was sent and not returned as  
19 undeliverable, the number and percentage of Claim Forms submitted, the number and percentage  
20 of opt-outs, the number and percentage of objections, the average and median recovery per  
21 claimant, the largest and smallest amounts paid to Class Members, the method(s) of notice and  
22 the method(s) of payment to Class Members, the number and value of checks not cashed, the  
23 administrative costs. This declaration will be posted on the Settlement Website, along with a  
24 chart that Class Counsel will prepare that summarizes the information in the declaration and adds  
25 information about the approved Fee Award, the lodestar, the multiplier applied, the injunctive  
26 relief obtained and its benefit to the class.

1 **VIII. COSTS OF NOTICE AND ADMINISTRATION**

2 **8.1** In addition to providing to Class Members the Benefits described in Section IV  
3 above, Defendants will pay all fees and expenses for (a) the costs of preparing and disseminating  
4 the notices provided for in Section V above and (b) the other Administration Expenses, including  
5 payments made for the services of the Settlement Administrator and third-party expenses  
6 incurred by the Settlement Administrator pursuant hereto.

7 **8.2** Should the total cost of such notice and administration (not including the amounts  
8 paid to Class Members for Valid Claims) exceed seven-hundred-fifty-thousand dollars and zero  
9 cents (\$750,000.00), Defendants shall have the unilateral right to terminate this Settlement.

10 **8.3** Notwithstanding anything to the contrary herein, Defendants shall not be responsible  
11 for any cost that may be incurred by, on behalf of, or at the direction of, Plaintiffs or Class  
12 Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Action;  
13 (b) posting the Publication Notice on Class Counsel's website, should that occur; (c) defending  
14 the Agreement or the Settlement against any challenge to either or both of them; or (d) defending  
15 against any challenge to the Preliminary Approval Order, Final Approval Order, or judgment  
16 entered pursuant to the Agreement.

17 **IX. RELEASES**

18 **9.1** Named Plaintiffs' (Class Representatives) Release of the Released Parties. Upon  
19 the Effective Date and without any further action by the Court or by any Party to this Agreement,  
20 Plaintiffs, including any Person claiming rights derivative of Plaintiffs as their parent, child, heir,  
21 guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor,  
22 successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee  
23 or affiliate, on the one hand, and the Released Parties on the other hand, for good and sufficient  
24 consideration, the receipt and adequacy of which is acknowledged, shall mutually release and  
25 forever discharge each other from and shall be forever barred from instituting, maintaining, or  
26 prosecuting:

27 (a) any and all actions, causes of actions, claims, administrative claims,  
28 demands, rights, damages, obligations, suits, debts, liens, penalties, fines, contracts, agreements,

1 judgments, expenses, costs, liabilities, and causes of action of every nature and description,  
2 whether known or unknown, suspected or unsuspected, existing now or arising in the future, that  
3 actually were, or could have been, asserted in the Action, that (i) is or are based on any or any  
4 alleged act, omission, inadequacy, misstatement, representation, misrepresentation, fraud,  
5 deception, harm, matter, cause, or event pertaining to the Products that has occurred at any time  
6 from the beginning of time up to and including the entry of the Preliminary Approval Order,  
7 (ii) arise from or are related in any way to the Action, the Products or the design, manufacturing,  
8 testing, packaging, marketing, advertising, promoting, Labeling, or sale of the Products, or  
9 (iii) includes any Canada Dry branded products which contain the terms “Made From Real  
10 Ginger,” including, but not limited to, those listed in the Second Amended Complaint and all  
11 Products (the “Released Claims”);

12 (b) without limiting the foregoing, the release specifically extends to any  
13 claims related to the permitted sell-through of existing stock, as provided in Section III, as well  
14 as claims that the Plaintiffs do not know or suspect to exist in their favor at the time that the  
15 Settlement, and the release contained herein, becomes effective. This paragraph constitutes a  
16 waiver of any and all provisions, rights, and benefits conferred by any law of any state of the  
17 United States, or principle of common law or otherwise, which is similar, comparable, or  
18 equivalent to section 1542 of the California Civil Code, which provides:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
20 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**  
21 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**  
22 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
23 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

24 The Plaintiffs understand and acknowledge the significance of these waivers of California Civil  
25 Code section 1542 and any other applicable federal or state statute, case law, rule or regulation  
26 relating to limitations on releases. In connection with such waivers and relinquishment, the  
27 Plaintiffs acknowledge that they are aware that they may hereafter discover facts in addition to,  
28 or different from, those facts that they now know or believe to be true with respect to the subject  
matter of the Settlement, but that it is their intention to release fully, finally, and forever all  
Released Claims with respect to the Released Parties, and in furtherance of such intention, the

1 release of the Released Claims will be and remain in effect notwithstanding the discovery or  
2 existence of any such additional or different facts.

3 **9.2** Class Members and Released Parties.

4 (a) Upon the Effective Date and without any further action by the Court or by  
5 any Party to this Agreement, Class Members (except any such Person who has filed a proper any  
6 timely request for exclusion from the Class), including any Person claiming derivative rights of  
7 the Class Member as the Class Member's parent, child, heir, guardian, associate, co-owner,  
8 attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns,  
9 representative of any kind, shareholder, partner, director, employee or affiliate, shall release and  
10 forever discharge the Released Parties from any and all actions, causes of actions, claims,  
11 administrative claims, demands, rights, damages, obligations, suits, debts, liens, penalties, fines,  
12 contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every  
13 nature and description, whether known or unknown, suspected or unsuspected, existing now or  
14 arising in the future that were or could have been asserted in the Action regarding the labeling,  
15 advertising, or formulation of the Products (the "Released Claims").

16 (b) With respect to the released claims set forth in paragraph 9.2(a), each  
17 Class Member shall be deemed to have waived and relinquished, to the fullest extent  
18 permitted by law, the provisions, rights and benefits conferred by any law of any state of the  
19 United States, or principle of common law or otherwise, which is similar, comparable, or  
20 equivalent to section 1542 of the California Civil Code, which provides:

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

24 The Class Members understand and acknowledge the significance of these waivers of California  
25 Civil Code section 1542 and any other applicable federal or state statute, case law, rule or  
26 regulation relating to limitations on releases. In connection with such waivers and  
27 relinquishment, the Class Members acknowledge that they are aware that they may hereafter  
28 discover facts in addition to, or different from, those facts that they now know or believe to be

1 true with respect to the subject matter of the Settlement, but that it is their intention to release  
2 fully, finally, and forever all Released Claims with respect to the Released Parties, and in  
3 furtherance of such intention, the release of the Released Claims will be and remain in effect  
4 notwithstanding the discovery or existence of any such additional or different facts.

5 (c) The Parties shall be deemed to have agreed that the release set forth herein  
6 will be and may be raised as a complete defense to and will preclude any action or proceeding  
7 based on the Released Claims.

8 (d) Nothing in this paragraph 9.2 shall operate to bar or release any claim  
9 for personal injury or property damage arising out of the use of the Product, nor shall anything in  
10 this paragraph 9.2 operate to bar any defense, cross-claim or counter-claim in any action initiated  
11 by any of the Released Parties against any Class Member.

12 **9.3** Plaintiffs, on behalf of themselves and all Class Members, agree that the  
13 consideration provided under this Agreement, including the Injunctive Relief set forth in Part III  
14 of the Agreement, satisfies and resolves all allegations in the Action relating to deceptive  
15 labeling and advertising of the Products as “Made from Real Ginger.”

16 **9.4** Effectuation of Settlement. None of the above releases include releases of causes  
17 of action to enforce the terms of the Settlement.

## 18 **X. FINAL JUDGMENT AND SETTLEMENT APPROVAL**

19 This Agreement is subject to and conditioned upon the issuance by the Court of the Final  
20 Approval Order that grants final approval of the Agreement, and provides the relief specified  
21 herein, which relief shall be subject to the terms and conditions of the Agreement and the  
22 Parties’ performance of their continuing rights and obligations hereunder.

## 23 **XI. REPRESENTATIONS AND WARRANTIES**

24 Each Party represents and warrants to, and agrees with, the other Party as follows:

25 **11.1** Each Party has had the opportunity to receive, and has received, independent legal  
26 advice from his or her or its attorneys regarding the advisability of making the Settlement, the  
27 advisability of executing this Agreement, and the legal and income tax consequences of this  
28 Agreement, and fully understands and accepts the terms of this Agreement.

1           **11.2** Defendants represent and warrant: (a) that they have the requisite corporate power  
2 and authority to execute, deliver, and perform the Agreement and to consummate the  
3 transactions contemplated hereby; (b) that the execution, delivery, and performance of the  
4 Agreement and the consummation by them of the actions contemplated herein have been duly  
5 authorized by necessary corporate action on the part of Defendants; and (c) that the Agreement  
6 has been duly and validly executed and delivered by Defendants and constitutes their legal, valid,  
7 and binding obligations.

8           **11.3** Class Representatives represent and warrant that they are entering into the  
9 Agreement on behalf of themselves individually and as proposed representatives of the Class  
10 Members, of their own free will and without the receipt of any consideration other than what is  
11 provided in the Agreement or disclosed to, and authorized by, the Court. Each Class  
12 Representative represents and warrants that he/she has reviewed the terms of the Agreement in  
13 consultation with Class Counsel and believes them to be fair and reasonable, and covenants that  
14 he/she will not file an Opt-Out request from the Class or object to the Agreement.

15           **11.4** Plaintiffs represent and warrant that no portion of any claim, right, demand,  
16 action, or cause of action against any of the Released Parties that Plaintiffs have or may have  
17 arising out of the Action or pertaining to their purchase and/or use of the Product and/or the  
18 design, manufacture, testing, advertising, promoting, marketing, labeling, packaging, or sale of  
19 the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement  
20 to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for  
21 Plaintiffs in any manner; and no Person other than Plaintiffs has any legal or equitable interest in  
22 the claims, demands, actions, or causes of action referred to in this Agreement.

23           **11.5** No Party relies or has relied on any statement, representation, omission,  
24 inducement, or promise of the other party (or any officer, agent, employee, representative, or  
25 attorney for any other party) in executing this Agreement, or entering the Settlement provided for  
26 herein, except as expressly stated in this Agreement.

27 **XII. NO ADMISSIONS OF FAULT**

28           The Agreement and every Agreement and term contained in it is conditioned upon final

1 approval of the Court and is made for settlement purposes only. Whether or not consummated,  
2 this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or  
3 deemed to be, evidence of a presumption, concession or an admission by Plaintiffs, Defendants,  
4 any Class Member, or any Released Party, of the truth of any fact alleged or the validity of any  
5 claim or defense that has been, could have been, or in the future might be asserted in any  
6 litigation, or the deficiency of any claim or defense that has been, could have been, or in the  
7 future might be asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of  
8 such Party.

9 **XIII. MISCELLANEOUS PROVISIONS**

10 **13.1 Termination of Agreement.** Should the Class Members submit more than one  
11 million Valid Claims in this Settlement (regardless of the dollar amount of such claims),  
12 Defendants shall have the unconditional right, but not the obligation, to terminate this  
13 Agreement. For avoidance of doubt, claims submitted in the 49-State Settlement shall not be  
14 counted towards the limit set forth in the prior sentence. This Agreement may also be terminated  
15 prior to final approval of this Agreement by the Court, upon the mutual agreement of the Parties  
16 by and through their respective counsel; or as specifically set forth in this Agreement.

17 **13.2 Entire Agreement.** This Agreement, together with the Exhibits hereto, constitutes  
18 the entire agreement between the Parties with respect to the subject matter of the Settlement and  
19 supersedes all prior negotiations, communications, memoranda, and agreements between the  
20 Parties. Neither the Plaintiffs nor Defendants are entering into this Agreement in reliance upon  
21 any representations, warranties, or inducements other than those contained in this Agreement.

22 **13.3 Change of Time Periods.** The time periods and/or dates described in this  
23 Agreement with respect to the giving of notices and hearings are subject to approval and change  
24 by the Court or by the written agreement of Plaintiffs' Counsel and Defendants' Counsel,  
25 without notice to Class Members except that the Settlement Administrator shall ensure that such  
26 dates are posted on the Settlement Website.



1           **13.4**   Extension of Time. The Parties reserve the right, by agreement and subject to the  
2 Court's approval, to grant any reasonable extension of time that might be needed to carry out any  
3 of the provisions of this Agreement.

4           **13.5**   Media and Contact of Class Members. To avoid contradictory, incomplete, or  
5 confusing information about the Settlement, the Parties agree that if they make any written press  
6 releases or statements to the media about the Settlement before the conclusion of the Claim  
7 Period, such releases or statements will either be in the form of the Publication Notice and will  
8 be approved by the Parties in advance and, where desired by the other Party, made jointly.  
9 Nothing in this section shall prevent Class Counsel from answering inquiries by Class Members  
10 and communicating with Plaintiffs. Both Parties and their Counsel shall be entitled to post  
11 information on their websites about the Settlement (provided such postings accurately describe  
12 the Settlement) and may truthfully and accurately describe public facts about the Settlement.

13           **13.6**   Cooperation. Defendants, Plaintiffs, and their respective counsel agree to prepare  
14 and execute any additional documents that may reasonably be necessary to effectuate the terms  
15 of this Agreement. The Parties shall cooperate with the Settlement Administrator to the extent  
16 reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its  
17 duties and responsibilities. The Parties will also cooperate so that Class Counsel may have such  
18 confirmatory discovery as is reasonably necessary in connection with this Agreement.

19           **13.7**   Plaintiffs' Authority. Class Counsel represent and warrant that they are  
20 authorized to take all appropriate actions required or permitted to be taken by or on behalf of the  
21 Plaintiffs and, subsequent to an appropriate Court Order, the Class in order to effectuate the  
22 terms of this Agreement and are also authorized to enter into appropriate modifications or  
23 amendments to this Agreement on behalf of the Plaintiffs and, subsequent to an appropriate  
24 Court Order, the Class Members.

25           **13.8**   Governing Law. This Agreement shall be construed and governed in accordance  
26 with the laws of the State of California, without regard to California's conflict-of-laws  
27 principles.  
28

1           **13.9** Construing the Agreement. This Agreement shall not be construed more strictly  
2 against one Party than another merely by virtue of the fact that it may have been initially drafted  
3 by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-  
4 length negotiations between the Parties and it is acknowledged that all Parties have contributed  
5 substantially to the preparation of this Agreement.

6           **13.10** Evidentiary Preclusion. The Parties agree that, to the fullest extent permitted by  
7 law, neither this Agreement nor the Settlement, nor any act performed nor document executed  
8 pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be  
9 or may be used as an admission of, or evidence of, the validity of any claim or of any  
10 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used  
11 as an admission of, or evidence of, any fault or omission of any Released Party or the  
12 appropriateness of class certification in any civil, criminal, or administrative proceeding in any  
13 court, administrative agency, or other tribunal. In addition, any failure of the Court to approve  
14 the Settlement and/or any objections or interventions may not be used as evidence in the Action  
15 or any other proceeding for any purpose whatsoever. However, the Released Parties may file the  
16 Agreement and/or the Final Approval Order in any action or proceeding that may be brought  
17 against them in order to support a defense or counterclaim based on principles of res judicata,  
18 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory  
19 of claim preclusion or issue preclusion or similar defense or counterclaim. Although the  
20 California Action and the 49-State Settlement will use a combined Media Plan, the ruling in one  
21 Court shall not be used as a basis to seek disapproval of the settlement in the other Court.

22           **13.11** Effect of Non-Approval. In the event that this Agreement is not approved by the  
23 Court in substantially its present form, any Objection to the Settlement is sustained by the Court,  
24 or the Settlement does not become final for any reason including Termination pursuant to  
25 paragraphs 8.2 or 13.1 above, the terms and provisions of this Agreement shall have no further  
26 force and effect with respect to the Parties or the Class Members, and shall not be used in this  
27 Action or in any other action or proceeding for any purpose, and any order or judgment entered  
28 by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro

1 tunc. In such event, this Agreement and all negotiations, proceedings, documents prepared, and  
2 statements made in connection with this Agreement shall be without prejudice to any Party or  
3 Class Member and shall not be admissible or offered into evidence in any action or proceeding,  
4 and shall not be deemed, asserted, or construed to be an admission or confession by any Party or  
5 any other Person or entity of any fact, matter, or proposition of law, and shall not be used or  
6 asserted in any other manner or for any purpose, and all Parties and Class Members shall stand in  
7 the same position as if this Agreement and Settlement had not been negotiated, made, or  
8 submitted to the Court.

9 **13.12 Signatures.** This Agreement may be executed in counterparts, and, when so  
10 executed, shall constitute a binding original; each of which shall be deemed an original but all of  
11 which together shall constitute one and the same instrument. Facsimile signatures or signatures  
12 sent by email shall be deemed original signatures and shall be binding.

13 **13.13 Notices.** Whenever this Agreement requires or contemplates that one Party  
14 shall or may give notice to the other, notice shall be provided in writing by United States First  
15 Class Mail and email to:

16 If to Plaintiffs or Class Counsel:

17 Adam J. Gutride  
18 GUTRIDE SAFIER LLP  
19 100 Pine Street, Suite 1250  
20 San Francisco, CA 94111  
adam@gutridesafier.com,  
with copy to canadadrygingerale@gutridesafier.com.

21 If to Defendant or Defendants' counsel:

22 Van H. Beckwith  
23 BAKER BOTTS LLP  
24 2001 Ross Avenue  
25 Suite 900  
Dallas, Texas 75201  
van.beckwith@bakerbotts.com

26 **13.14 Good Faith.** The Parties agree that they will act in good faith to promote the  
27 consummation of this Settlement and achievement of an Effective Date and will not engage in  
28 any conduct that will or may frustrate the purpose of this Agreement.

1           **13.15 Protective Orders.** All orders, settlement agreements and designations  
2 regarding the confidentiality of documents and information (“Protective Orders”) remain in  
3 effect, and all Parties and counsel remain bound to comply with the Protective Orders, including  
4 the provisions to certify the destruction of “Confidential” documents.

5           **13.16 Binding on Successors.** This Agreement shall be binding upon the heirs,  
6 executors, administrators, successors, and assigns of the Plaintiffs, Class Members, and  
7 Defendants.

8           **13.17 Arms-Length Negotiations.** The determination of the terms and conditions  
9 contained herein and the drafting of the provisions of this Agreement have been by mutual  
10 understanding after negotiation, with consideration by, and participation of, the Parties hereto  
11 and their counsel and under the supervision of, and upon specific recommendations provided by,  
12 JAMS mediators Robert A. Meyer and the Honorable Wayne R. Andersen (Ret.).

13           **13.18 Waiver.** The waiver by one Party of any provision or breach of the  
14 Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

15           **13.19 Variance.** In the event of any variance between the terms of this Agreement  
16 and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the  
17 Exhibit(s).

18           **13.20 Exhibits.** All Exhibits to this Agreement are material and integral parts  
19 hereof and are incorporated by reference as if fully rewritten herein.

20           **13.21 Taxes.** No opinion concerning the tax consequences of the Agreement to  
21 any Class Member is given or will be given by Defendants, Defendants’ counsel, or Class  
22 Counsel; nor is any Party or their counsel providing any representation or guarantee regarding  
23 the tax consequences of the Agreement as to any Class Member. Each Class Member is  
24 responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

25           **13.22 Retain Jurisdiction.** The Court shall retain exclusive jurisdiction with respect to  
26 the implementation and enforcement of the terms of this Agreement, and all Parties hereto  
27 submit to the jurisdiction of the Court only for purposes of implementing and enforcing the  
28 agreements embodied in this Agreement.

1           **13.23 Attorneys' Fees.**       Notwithstanding any of the provisions herein, if any party  
2 finds it necessary to institute legal proceedings to enforce another party's obligation under this  
3 Agreement, the prevailing party in any such action shall be entitled to recover its reasonable  
4 attorneys' fees and costs.

5           **13.24 Support From The Parties.**    After a full investigation, discovery and arms-length  
6 negotiations, and after considering the risks and costs of further litigation, Plaintiffs and their  
7 counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable,  
8 adequate, and equitable, and that this Settlement is in the best interest of the Class Members.  
9 Defendants and their counsel agree that the settlement is fair, adequate, and reasonable in light of  
10 the merits and risks of the case. While continuing to deny all allegations of wrongdoing and  
11 disclaiming any liability with respect to any and all claims, Defendants consider it desirable to  
12 resolve the controversy on the terms stated herein and have therefore determined that this  
13 Settlement is in its best interests. The Parties further agree that they shall support motions for  
14 entry of the Preliminary Approval Order and Final Approval Order.

15           **13.25 Stay Pending Court Approval.** Class Counsel and Defendants' Counsel agree to  
16 stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and  
17 conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite  
18 the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to  
19 their prior positions in the Action, in accordance with Section 13.12 of this Agreement.

20           IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
21 by their duly authorized representatives.

22           Dated this 4th day of January 2019.

*Plaintiffs*

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*Jackie Fitzhenry-Russell*  
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\_\_\_\_\_  
Jackie Fitzhenry-Russell  
*On Behalf of Plaintiffs and the Class*

\_\_\_\_\_  
Gegham Margaryan  
*On Behalf of Plaintiffs and the Class*

*Defendants*


\_\_\_\_\_  
Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Dr Pepper/Seven Up, Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

*Plaintiffs*

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Jackie Fitzhenry-Russell  
*On Behalf of Plaintiffs and the Class*

  
\_\_\_\_\_  
Gegham Margaryan  
*On Behalf of Plaintiffs and the Class*

*Defendants*

\_\_\_\_\_  
Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Dr Pepper/Seven Up, Inc.

By: \_\_\_\_\_

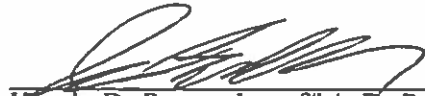
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1 *Plaintiffs*

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4 Jackie Fitzhenry-Russell  
5 *On Behalf of Plaintiffs and the Class*  
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7 Gegham Margaryan  
8 *On Behalf of Plaintiffs and the Class*

9 *Defendants*

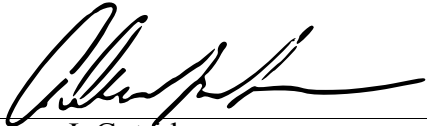
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12 Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc.  
13 By: Jim Baldwin  
14 Title: VP + CLO

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17 Dr Pepper/Seven Up, Inc.  
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*Class Counsel*

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Adam J. Gutride  
Gutride Safier LLP

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Hovanes Margarian  
Margarian Law Firm

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Daralyn Durie  
Durie Tangri LLP


Approved as to Form  
*Attorneys for Defendants*

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Van Beckwith  
Baker Botts LLP

1 *Class Counsel*

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4 Adam J. Gutride  
5 Gutride Safier LLP

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8 Hovanes Margarian  
9 Margarian Law Firm

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11 Daralyn Durie  
12 Durie Tangri LLP

13 Approved as to Form  
14 *Attorneys for Defendants*

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16 Van Beckwith  
17 Baker Botts LLP

*Class Counsel*

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Adam J. Gutride  
Gutride Safier LLP

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Hovanes Margarian  
Margarian Law Firm



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Daralyn Durie  
Durie Tangri LLP

Approved as to Form  
*Attorneys for Defendants*

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Van Beckwith  
Baker Botts LLP

*Class Counsel*

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Gutride Safier LLP

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Margarian Law Firm

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Durie Tangri LLP

Approved as to Form  
*Attorneys for Defendants*



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Baker Botts LLP