

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement”) is made and entered into by and between Plaintiffs Lainie Rideout and Kathleen Hairston (the “Representative Plaintiffs”), on behalf of themselves and the certified classes in this action (collectively, the “Plaintiffs”), and Defendant Similasan Corporation (“Similasan” or “Defendant”), to settle and compromise this action, and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein. Plaintiffs and Similasan are collectively referred to herein as the “Settling Parties.”

RECITALS

1. PROCEDURAL BACKGROUND

1.1. WHEREAS, Plaintiffs filed an action in the United States District Court for the Southern District of California against Defendant, entitled *Allen, et al. v. Similasan Corp.*, No. 3:12-cv-00376, bringing claims under California’s Consumer Legal Remedies Act, (Civ. Code § 1750, *et seq.* [“CLRA”]), Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.* [“UCL”]), False Advertising Law (*id.* § 17500, *et seq.* [“FAL”]), violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.* [“MMWA”]), and Breach of Express and Implied Warranties.

1.2. WHEREAS, on March 30, 2015, the Court certified two classes in this case (Dkt. No. 143).

1.3. WHEREAS, on January 17, 2017, the Court denied in part Defendant’s motion for summary judgment (Dkt. 171) and motion to decertify the class (Dkt. No. 164), and denied Plaintiffs’ motion for leave to amend (Dkt. No. 174). (Dkt. No. 247).

1.4. WHEREAS, on March 6, 2017, the parties attended the Final Pre-Trial Conference with a trial scheduled to begin on April 11, 2017.

1.5. WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiffs and Defendant have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Agreement.

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

TERMS AND CONDITIONS OF THE SETTLEMENT

2. DEFINITIONS

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

2.2. As used herein, the term “Authorized Claimant” means any Class Member who validly and timely submits a Claim Form according to the terms of this Settlement Agreement and does not validly request exclusion from the Class.

2.3. “CAFA Notice” means the notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Paragraph 7.3.

2.4. As used herein, the term “Claim” means a request made by a Class Member in order to receive a Settlement Payment pursuant to the procedures stated below in Section 3.6.

2.5. As used herein, the term “Claim Form” means the form a Class Member must validly and timely submit to receive a Settlement Payment under this Agreement. The Claim Form must be substantially similar to the form attached as Exhibit D.

2.6. “Class” means all purchasers of all Similasan Corporation homeopathic Products nationwide for personal or household use and not for resale, as listed in **Exhibit A** to this Agreement, from February 10, 2008 to the present. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, including all parent companies, and their employees; and the judicial officers, their immediate family members and court staff assigned to this case.

2.7. “Class Period” means February 10, 2008 through the date the Judgment is entered.

2.8. “Class Counsel” means the Representative Plaintiffs’ and the Class’ counsel of record in the Litigation, the Law Offices of Ronald A. Marron, APLC, Gomez Trial Attorneys, and Law Offices of Dean Goetz.

2.9. “Class Member” means a Person who falls within the definition of the Class.

2.10. “Court” means the United States District Court for the Southern District of California.

2.11. “Defense Counsel” means Defendant’s counsel of record in the Litigation, Michelle Gillette of Crowell & Moring, LLP.

2.12. “Effective Date” means the first date by which any Judgment entered

pursuant to the Agreement becomes Final.

2.13. “FDA” means the United States Food and Drug Administration.

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

2.15. “Fund” means the total amount of money Similasan will deposit of not to exceed seven hundred thousand dollars (\$700,000.00), out of which all claims, costs, and fees associated with the Agreement will be had, including Settlement Payments, incentive awards, attorneys’ fees and costs, and costs of Notice and Notice or Claims administration.

2.16. “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

2.17. “Litigation” means Kimberly Allen, et al v. Similasan Corp., No. 3:12-cv-00376, pending in the U.S. District Court for the Southern District of California.

2.18. “Notice” means a document, substantially in the form of **Exhibit B** hereto (the “Long Form Notice”), and “Summary Notice” means a document substantially in the form of **Exhibit C** hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

2.19. “Notice Administrator” or “Claims Administrator” means Classaura LLC, the company jointly selected by the Parties and approved by the Court to provide notice to the Class, including CAFA and CLRA Notice.

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

2.21. “Opt-Out Date” means the date that is the end of the period to request exclusion from the Class established by the Court and set forth in the Notice.

2.22. “Parties” means the Representative Plaintiffs, on behalf of themselves

and the classes, and Defendant.

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

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

2.25. “Products” means all homeopathic products distributed by Defendant, as identified in **Exhibit A**, in any variation, format, dosage, dilution, or packaging.

2.26. “Released Claims” means, with the exception of claims for personal injury, any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal and/or state law, including without limitation a waiver of all rights under Section 1542 of the California Civil Code, that the Representative Plaintiffs and/or any Class Member has or may have against the Released Persons arising out of, in connection with, or related in any way, directly or indirectly, to Defendant’s advertising, marketing, packaging, labeling, promotion, sale, or distribution of the Products, that have been brought, could have been brought, or are currently pending, by any Class Member against Released Persons, in any forum in the United States (including territories and Puerto Rico).

2.27. “Released Persons” means Defendant, its respective parent companies, subsidiary companies, affiliated companies, past, present, and future officers (as of the Effective Date), directors, shareholders, employees, predecessors, principals, insurers, administrators, agents, accountants, consultants, advisers, independent contractors, distributors, subcontractors, vendors, buyers, experts, servants, successors, trustees, co-conspirators, buyers, attorneys, representatives, heirs, executors, and assigns of all of the foregoing persons and entities.

2.28. “Representative Plaintiffs” means Kathleen Hairston and Lainie Rideout.

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

2.30. “Settlement Amount” means the total amount Defendant agrees to pay for settlement of this matter, inclusive of all payments to the class, class notice and administration costs, and all other costs and attorneys’ fees, including incentive awards.

2.31. “Settling Parties” means, collectively, Defendant, the Representative

Plaintiffs, and all Class Members.

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

3. DENIAL OF WRONGDOING AND LIABILITY

3.1. Defendant denies the material factual allegations and legal claims asserted by the Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. This Settlement is entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

4. THE BENEFITS OF SETTLEMENT

4.1. Class Counsel and the Representative Plaintiffs recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent problems of proof under the claims and possible defenses to the claims asserted in the Litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Representative Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Representative Plaintiffs and the Class.

5. SETTLEMENT CONSIDERATION

5.1. Monetary Consideration

5.1.1. **Award to the Settlement Class.** Each Authorized Claimant is entitled to receive a Settlement Payment. To be entitled to receive a Settlement Payment, a Class Member must timely submit a valid and complete Claim Form and any supporting documentation required. The manner for submitting a timely, valid, and complete Claim Form is specified in Section 6.2 below. Payments shall be made by check to the Authorized Claimants by the Claims Administrator.

5.1.2. **Funding Settlement Payments.** Similasan will establish a Fund, not to exceed seven hundred thousand dollars (\$700,000.00), out of which all claims, costs, and fees associated with the Agreement will be had, including Settlement Payments, incentive awards, attorneys' fees and costs, and costs of Notice and Notice administration. The total amount of monetary payment by Similasan will be contingent upon final approval by the Court, not to exceed \$700,000.00 total

payment. Similasan will only be obligated to pay the amount approved by the Court.

5.1.3. Incentive Awards to Named Plaintiffs. Plaintiff will make an application for incentive awards of up to \$2,500.00 for each Representative Plaintiff, Lainie Rideout and Kathleen Hairston, for a total of up to \$5,000.00 with such amount subject to Court approval. Representative Plaintiffs will not seek an amount greater than those amounts for this Litigation. Representative Plaintiffs' incentive awards are to be paid from the Fund.

5.1.4. Attorneys' Fees and Costs. Class Counsel will apply to the Court for reimbursement of all costs and for attorneys' fees of not more than 25% of the Fund, subject to Court approval. All attorneys' fees and costs awarded by the Court will be paid from the common fund by the Claims Administrator within 10 days of the Effective Date.

5.1.5. Pro Rata Claims. If there is money remaining in the Fund after all Claims have been made and paid and after the Court determines an amount for incentive awards and attorneys' fees and costs, and all costs of Notice and Notice administration have been paid, such remaining funds will be equally distributed pro rata to each Authorized Claimant who submitted a valid Claim Form. There will be no cy pres or reversion fund.

5.2. Non-Monetary Consideration

5.2.1. Similasan acknowledges that it has or will be updating its website to provide important information to consumers, which has been or will be done in part as a result of the Lawsuit. Specifically, Similasan will add to its website a link to FDA Compliance Policy Guide section 400.400 to provide consumers with more information about the regulation of homeopathic products.

5.2.2. Similasan acknowledges that it has or will be making label changes, which has been or will be done in part as a result of the Litigation. Specifically, Similasan will place the following language on the same outer label or package panel on the Products that bears the Drug Facts box: "These statements are based upon traditional homeopathic principles. They have not been reviewed by the Food and Drug Administration."

5.2.3. To the extent that any state and/or federal statute, regulation, policies, and/or code may at any time impose other, further, different and/or conflicting obligations or duties on Defendant with respect to the labeling and advertisement of the Products, this Agreement and any Judgment that may be entered pursuant thereto, as well as the Court's continuing jurisdiction with respect to implementation and enforcement of the terms of this Agreement, shall cease as to Defendant's conduct covered by that statute, regulation, and/or code as of the effective date of such statute, regulation, and/or code.

5.2.4. Nothing in this Agreement will prohibit Defendant from making any representation in the labeling, advertising, or marketing of the Products that is permitted by applicable law, regulations, or policies promulgated by FDA or other state or federal agency.

5.2.5. Defendant shall be bound by any labeling laws or regulations that restrict or expand the scope of claims for which the Products are eligible, and any laws or regulations that have a bearing on the labeling or advertising of the Products shall supersede any terms of this Agreement to the extent they are inconsistent with such terms.

6. CLASS SETTLEMENT PROCEDURES

6.1. **Cooperation to Obtain Court Approval.** The Parties will jointly take reasonable steps necessary to secure the Court's approval of this Settlement Agreement and the Settlement.

6.2. **Claims Procedure.** To be eligible to receive a Settlement Payment, Class Members must accurately complete and submit a Claim Form with any required documentation specified on the Claim Form and deliver that form and any required supporting documentation to the Claims Administrator no later than 30 days following Final Approval Hearing, or September 7, 2017. The Claim Form and any supporting documentation required may be submitted electronically or by U.S. postal mail. The delivery date is deemed to be the date (a) the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. mail, or (b) in the case of submission electronically through the Settlement Website, the date the Claims Administrator receives the Claim Form, as evidenced by the transmission receipt. Any Class Member who fails to submit a valid and timely Claim Form will not receive any benefits under this Settlement Agreement. The eligibility and any documentation requirements for each category of Settlement Payment are specified on the Claim Form.

7. ADMINISTRATION AND NOTICE

7.1. Appointment and Retention of Notice and Claims Administrator

7.1.1. The Parties shall jointly retain the Notice and Claims Administrator(s) ("Administrator") (including subcontractors) to help implement the terms of the Settlement Agreement.

7.1.2. The Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice, although Defendant shall retain ultimate responsibility for effecting CAFA notice within the required time.

7.1.3. The Administrator shall be responsible for providing the Parties with assistance, as necessary, such as by preparing affidavits of work it has performed with respect to implementing the Class Notice, and providing regular updates to the Parties' counsel about the status of the claims process.

7.1.4. All fees, costs, and expenses of the Administrator related to this Settlement will be paid out of the Settlement Amount.

7.2. Class Settlement Website

7.2.1. The Notice Administrator will create and maintain the Class Settlement Website, to be activated within fifteen (15) calendar days of its receipt of the Preliminary Approval Order. The Notice Administrator's responsibilities will also include securing an appropriate URL, such as www.SimilasanClassActionSettlement.com. The Class Settlement Website will contain Settlement information and case-related documents such as the Settlement Agreement, the Long-Form Notice, the Preliminary Approval Order, Class Counsel's motion for fees, costs, and incentive awards for the Representative Plaintiffs, and Notices from the Court. In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment has been entered, and when the Effective Date has been reached.

7.2.2. The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Notice Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later. The Notice Administrator will then transfer ownership of the URL to Defendant.

7.2.3. All costs and expenses related to the Class Settlement Website shall be paid out of the Settlement Amount, as approved by the Court.

7.3. CAFA Notice

7.3.1. The Parties agree that the Notice Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

7.3.2. Notwithstanding 7.3.1, Defendant shall have ultimate responsibility to ensure that CAFA notice is in fact accomplished consistent with the statutory requirements.

7.3.3. All costs and expenses related to the CAFA Notice shall be paid out of the Settlement Amount.

7.3.4. Defendant will file a certification with the Court stating the date(s) on which the CAFA notices were sent. Defendant, as assisted by the Notice Administrator, will provide Class Counsel with any substantive responses received in response to any CAFA notice.

7.3.5. The Notice Administrator shall also publish the Summary Notice in a newspaper in a manner sufficient to meet California Government Code § 6064 and Civil Code § 1781, which cost shall be paid out of the Settlement Amount.

7.4. Notice Plan

7.4.1. Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

7.4.2. As part of the Notice Plan, Similasan agrees to include a sentence on its website (www.similasanusa.com) with its “satisfaction guarantee” that if a consumer purchased a product from 2008 to the end of the class period and did not obtain any relief from use of the Product, they could “click here” to be directed to the Class Settlement Website. The exact language of the statement will be agreed upon by the parties.

7.4.3. Within thirty (30) days after preliminary approval by the Court of this Settlement, the Settlement Administrator shall commence providing Notice to the Settlement Class according to the Notice Plan as attached in **Exhibit E**.

7.4.4. The Parties agree to the content of the Notices, substantially in the forms attached to this Agreement as **Exhibit B** and **Exhibit C**, as approved by the Court.

7.5. Other Administration and Notice Provisions

7.5.1. Declarations of Compliance. The Notice Administrator shall prepare a declaration attesting to compliance with the publication requirements set forth in the Class Notice Plan. Such declaration shall be provided to Class Counsel and Defendant’s Counsel and filed with the Court no later than 10 days prior to the Final Approval Hearing.

7.5.2. Best Notice Practicable. The Parties agree, and the Preliminary Approval Order shall state, that compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of all applicable law.

7.5.3. Report On Requests For Exclusion. Not later than ten days before the Final Approval Hearing, the Notice Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and Defendant's Counsel, a report stating the total number of Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class, and the names of such Persons.

7.5.4. Inquiries From Settlement Class Members. It shall be the responsibility of Class Counsel to establish procedures for receiving and responding to all inquiries from Settlement Class Members with respect to this Settlement. Defendant and Defendant's counsel may, but are not required, to respond to such inquiries.

7.5.5. Taxes

7.5.6. The Representative Plaintiffs and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement.

7.5.7. Class Members shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement.

7.5.8. Taxes due in connection with the Notice Plan shall be paid by the Notice Administrator from the funds provided to it to effectuate the Notice Plan.

8. RELEASES

8.1. Upon the Effective Date, the Representative Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims, meaning, with the exception of claims for personal injury, any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal and/or state law, including without limitation a waiver of all rights under Section 1542 of the California Civil Code, that the Representative Plaintiffs and/or Class Member has or may have against the Released Persons arising out of, in connection with, or related in any way, directly or indirectly, to Defendant's advertising, marketing, packaging, labeling, promotion, sale, and/or distribution of the Products, that have been brought, could have been brought, or are currently pending, up to the date of the Effective Date, by any Class Member against Released Persons, in any forum in the United States (including their territories and Puerto Rico). Class Members do not waive their right to contact, in any way or for any purpose, any state or federal agency regarding the activities of any party, nor do they waive any right to enjoy benefits

obtained by a state or federal agency.

8.2. After entering into this Settlement Agreement, the Representative Plaintiffs or the Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. The Representative Plaintiffs and the Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent equitable claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3. All Parties to this Settlement Agreement, including the Representative Plaintiffs and the Class Members, specifically acknowledge that they have been informed of Section 1542 of the California Civil Code by their legal counsel via the Notice, and they expressly waive and relinquish any rights or benefits available to them under this statute. California Civil Code § 1542 provides:

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

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

9. CLASS CERTIFICATION

9.1. The Parties agree that, for settlement purposes only, this Litigation shall be re-certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) with Representative Plaintiffs as Class Representatives and Class Counsel as counsel for the Settlement Class, defined as follows:

9.2. All persons in the United States who purchased the Products as defined in Paragraph 2.6 and **Exhibit A**, within the Class Period as defined in Paragraph 2.6. The Class expressly excludes Defendant and its present and former officers, directors, employees and immediate families; and the Court, its officers and their immediate families.

9.3. In the event the Settlement is terminated or for any reason the Settlement is not effectuated, the certification of the Settlement Class shall be vacated and the Litigation shall proceed with the classes as certified by the Court on March 30, 2015 (Dkt. No. 143).

10. SETTLEMENT HEARING

10.1. Promptly after execution of this Agreement, the Parties will submit the Agreement together with its Exhibits to the Court and will request that the Court grant preliminary approval of the Settlement, as of the date of which the settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715, and issue the Preliminary Approval Order. The Court has scheduled a Final Approval Hearing for **August 7, 2017, at 10:30 a.m.**, which may be modified as required, to determine whether the Settlement should be granted final approval and whether the Fee Application should be granted (“Final Approval Hearing”). The Parties shall request the Court schedule the Fee Application to be filed no later than seven (7) calendar days prior to the Opt-Out and Objection deadline.

10.2. Defendant shall cooperate in good faith in Plaintiffs’ preparation of the motion for preliminary approval of the Settlement as necessary, including by providing Class Counsel with then-available details of the payment of the out-of-pocket costs of label changes, corrective advertising, and other measures and relief such as implementing web site changes, and any and all other costs associated with implementing the provisions of this Agreement; and will provide signed declarations of appropriate corporate officers of Defendant, if necessary.

10.3. Defendant shall not oppose Plaintiffs’ assertion, in papers filed in furtherance of this Settlement, that the Class satisfies each of the elements required under Federal Rules of Civil Procedure 23(a) and (b). Defendant shall not oppose the following when done for Settlement Purposes: certification of the Class, and the appointment of Hairston and Rideout as Class Representatives and their counsel as Class Counsel, as set forth herein.

10.4. The Parties agree to the form and substance of the proposed Preliminary Approval Order, attached hereto as **Exhibit F**, to be lodged with the Court with the motion for preliminary approval of the Settlement Agreement.

10.5. Procedures for Objecting to the Settlement

10.5.1. Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval, subject to each of the sub-provisions contained in Paragraph 10.5. Any objection to this Agreement, including any of its terms or provisions, must be in writing, filed with the Court, with a copy served on Class Counsel, Counsel for Defendant, and the Notice Administrator at the addresses set forth in the Class

Notice, and postmarked no later than thirty (30) days prior to the Final Approval Hearing Date. Class Members may object either on their own or through an attorney hired at their own expense.

10.5.2. If a Class Member hires an attorney to represent him or her at the Final Approval Hearing, he or she must do so at his or her own expense. No Class Member represented by an attorney shall be deemed to have objected to the Agreement unless an objection signed by the Class Member is also filed with the Court and served upon Class Counsel, Counsel for Defendant, and the Notice Administrator at the addresses set forth in the Class Notice thirty (30) days before the Final Approval Hearing.

10.5.3. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in Allen v. Similasan, No. 12-cv-00376 CAB” and also shall contain information sufficient to identify and contact the objecting Class Member (or his or her attorney, if any), as well as a clear and concise statement of the Class Member’s objection, documents sufficient to establish the basis for their standing as a Class Member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of the Products, the facts supporting the objection, and the legal grounds on which the objection is based. Any objections not submitted to the Court at least thirty (30) days prior to the Final Approval Hearing are deemed waived. If an objecting party chooses to appear at the hearing, that objecting party must file with the Court, at least thirty (30) days before the Final Approval Hearing, a notice of intent to appear, which must list the name, address, and telephone number of the attorney, if any, who will appear on behalf of that objecting party.

10.5.4. Any Class Member who does not object to the Agreement, or who does not opt out in compliance with the opt out provision in Paragraph 10.7 below, is deemed to be a Class Member and bound by the Settlement Agreement or any further orders of the Court in this Litigation.

10.5.5. Any Settlement Class Member wishing to object to or to oppose the approval of this Settlement and/or the Fee and Cost Application shall file a written objection (with a statement of reasons) with the Court and serve it on the Parties at least twenty-one days before the date of the Final Approval Hearing. Any Settlement Class Member that fails to do so shall be foreclosed from making such objection or opposition. The Representative Plaintiffs will file with the Court their brief in support of final settlement approval, in support of final certification of the Settlement Class, and in response to any objections at least seven days before the date of the Final Approval Hearing. Any Settlement Class Member that fails to file a timely written objection and to appear and speak at the final approval hearing shall have no right to file an appeal relating to the approval of this Settlement.

10.6. Right to Respond to Objections

10.6.1. Class Counsel and Defendant shall have the right, but not the obligation, to respond to any objection, by filing opposition papers no later than seven (7) calendar days prior to the Final Approval Hearing. The Party responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, in the Party's discretion, to the objector (or counsel for the objector), with standard notice to Class Counsel and Defense Counsel.

10.7. Opt Outs

10.7.1. Any Class Member who does not wish to participate in this Settlement must write to the Claims Administrator stating an intention to be "excluded" from this Settlement. This written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than thirty (30) days before the date set for the Final Approval Hearing. The Request for Exclusion must be personally signed by the Class Member and may only be on behalf of such signing Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

10.7.2. Any Class Member who does not request exclusion from the Settlement has the right to object to the Settlement. Any Class Member who wishes to object must timely submit an objection as set forth in paragraphs 10.5.1 to 10.5.4 above. If a Class Member submits an objection and a written Request for Exclusion, he or she shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court. However, any objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement upon Final Approval of the Settlement.

11. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

11.1. In accord with F.R.C.P. 23(h) and relevant case law, the Representative Plaintiffs will petition the Court for attorneys' fees, expenses, and Class Representative incentive awards. Defendant shall have the option of responding to any such petition, including by contesting any fees, expenses, or incentive award requested, to the extent the petition requests (a) more than \$2,500 each as incentive awards for the Class Representatives or (b) reimbursement of an amount up to the total of Class Counsel's costs and fees but not to exceed twenty-five percent (25%) of the total Settlement Amount after excluding costs of Notice and any notice administration. The total amount of monetary payment from Similasan will be contingent upon final approval by the Court, but will not exceed \$700,000 total payment. Similasan will only be obligated to pay the amount approved by the Court. There will be no cy pres or reversion.

11.2. Upon appropriate Court order so providing, any incentive awards, attorneys' fees, and costs awarded to Class Counsel by the Court shall be paid to Class Counsel by Defendant ("Fee and Incentive Award"), notwithstanding the existence of any timely filed objections thereto, or appeal (actual or potential) therefrom, or collateral attack on the Settlement or any part thereof, within 30 business days of the Effective Date.

11.3. If after 60 days after payment of Settlement Claims, attorneys' fees, costs and incentive awards, funds still remain in the Fund, the Claims Administrator will distribute pro rate the remaining funds in the Fund to all Authorized Claimants.

11.4. Defendant shall bear its own attorneys' fees and costs.

11.5. In the event any person is successful in objecting to the Settlement, as evidenced in a written Court order, and the Parties subsequently revise the Settlement in a manner consistent with such successful objection, and the objecting person thereafter seeks attorneys' fees relating to that objection and the Court awards such fees, then such fees shall be paid out of the total amount paid by Defendant to Class Counsel as set forth in 11.1.

12. MOTION FOR FINAL JUDGMENT AND ORDER

12.1. The Court has set the final approval hearing to be held on **August 7, 2017, at 10:30 a.m.**, as set forth in the Preliminary Approval Order. The Parties shall file a motion for final approval of the Settlement Agreement by June 23, 2017.

12.2. Defendant shall cooperate in good faith with Plaintiffs' preparation of the motion for final approval of the Settlement as necessary, including by providing Class Counsel with then-available details of the payment of the out-of-pocket costs of label changes, corrective advertising, and other measures and relief such as implementing web site changes, and any and all other costs associated with implementing the provisions of the Settlement Agreement; providing signed declarations of appropriate corporate officers of Similasan or its parent entities, if necessary.

12.3. Defendant shall not oppose Plaintiffs' assertion in papers filed in furtherance of this Settlement that the Court should affirm its ruling granting Preliminary Approval of the Settlement.

12.4. The Parties agree to the form and substance of the proposed Final Judgment and Order, attached hereto as **Exhibit G**, to be lodged with the Court with the motion for final approval of the Settlement Agreement.

13. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

13.1. The Effective Date of this Agreement shall be the date the Judgment has become Final, as defined in Paragraph 2.12.

13.2. If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of the date the Motion for Preliminary Approval was filed. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

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

14. MISCELLANEOUS PROVISIONS

14.1. The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

14.2. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

14.3. The Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated at arms' length, in good faith by the Parties, and reflect a settlement that was reached voluntarily, after consultation with competent legal counsel. This Agreement is entered solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

14.4. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any party to this Litigation

may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14.5. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement.

14.6. Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

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

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

14.9. Class Counsel, on behalf of the Class, are expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class that Class Counsel deem appropriate.

14.10. Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

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

14.12. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

14.13. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

14.14. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will

14.15 This Agreement shall be deemed the “proposed agreement” filed with the Court within the meaning of 15 U.S.C. § 1715 as of the date on which Preliminary Approval is granted by the Court.

14.16 This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State’s choice-of-law principles. Any provision of Evidence Code § 1115-1128 notwithstanding, this Agreement may be enforced by any Party hereto by a motion under California Code of Civil Procedure § 664.6 or by any other procedure permitted by California law.

14.17 If the Agreement is rejected by the Court, the Parties agree to negotiate in good faith revisions to the Settlement Agreement. If the Parties reach a new agreement, it will be submitted to the Court for approval.

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by themselves, approved as to form and content by their respective attorneys, as of the date set forth below.

Dated: March 30, 2017


Kathleen Hairston
Representative Plaintiff

Dated: March ____, 2017

Lainie Rideout
Representative Plaintiff

Dated: March ____, 2017

Dan Quail
Vice President North America
On Behalf of Defendant Similasan Corp.

APPROVED AS TO FORM AND CONTENT:

Dated: March ____, 2017

Michelle Gillette
Crowell & Moring, LLP

For Defendant Similasan Corporation

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Dated: March ____, 2017

Kathleen Hairston
Representative Plaintiff

Dated: March 31st, 2017

Lainie Rideout
Representative Plaintiff

Dated: March ____, 2017

Dan Quail
Vice President North America
On Behalf of Defendant Similasan Corp.

APPROVED AS TO FORM AND CONTENT:

Dated: March ____, 2017

Michelle Gillette
Crowell & Moring, LLP

For Defendant Similasan Corporation

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Dated: March ____, 2017

Kathleen Hairston
Representative Plaintiff

Dated: March ____, 2017

Lainie Rideout
Representative Plaintiff


Dated: March 31, 2017



Dan Quail
Vice President North America
On Behalf of Defendant Similasan Corp.

APPROVED AS TO FORM AND CONTENT:


Dated: March 31, 2017



Michelle Gillette
Crowell & Moring, LLP

For Defendant Similasan Corporation

Dated: March 31, 2017

A handwritten signature in black ink, appearing to read 'Deborah Dixon', is written over a horizontal line.

Deborah Dixon
GOMEZ TRIAL ATTORNEYS

Ronald A. Marron
LAW OFFICES OF RONALD MARRON

Dean Goetz
LAW OFFICES OF DEAN GOETZ

Class Counsel