

**FIRST AMENDED JOINT STIPULATION OF SETTLEMENT**

**I. RECITALS**

A. This Joint Stipulation of Settlement (“Agreement”) is made and entered into by and among Plaintiffs Tanya Mayhew (“Mayhew”), Tanveer Alibhai (“Alibhai”) and Tara Festa (“Festa”) (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (defined below), by and through Class Counsel, and Defendant KAS Direct LLC (“KAS”) and Defendant S.C. Johnson & Son, Inc. (“S.C. Johnson”), (together “Defendants”) (together with Plaintiffs, the “Parties”), by and through their counsel of record in this Litigation, and resolves in full the Action. Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided herein, Plaintiffs and Defendant (“the Parties”) hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the Court of a Final Judgment and Order Finally Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

B. WHEREAS, on November 20, 2015 and January 26, 2016, Plaintiffs submitted demand letters to KAS and its attorneys in accordance with the California Consumer Legal Remedies Act, California Civil Code § 1750.

C. WHEREAS, on September 7, 2016, Plaintiffs filed a Complaint against Defendant in the United States District Court for the Southern District of New York.

D. WHEREAS, on August 3, 2017, Plaintiffs filed an Amended Complaint.

E. WHEREAS, in the Amended Complaint, Plaintiffs allege Defendants marketed their Babyganics line of home and personal care products (the “Products”) (1) with the brand name “Babyganics,” (2) in the case of certain sunscreens (the “Sunscreen Products”), with the term

“Mineral-Based,” and (3) with the term “Neonourish Natural Seed Oil.” Plaintiffs further allege that Defendants’ marketing of the Products was misleading and caused Plaintiffs to pay a price premium for the Products. The Complaint asserts causes of action on behalf of a nationwide class of purchasers and in the alternative, subclasses of purchasers, for: (1) violation of New York General Business Law §§ 349 and 350; (2) violation of California law, including, but not limited to, California Civil Code §§ 1750 *et seq.*, California Business & Professions Code §§ 17200 *et seq.*, and California Business & Professions Code §§ 17500 *et seq.*; and (3) common-law unjust enrichment. The Complaint seeks monetary and injunctive relief. Class Counsel conducted separate examinations and evaluations of the relevant law and facts to assess the merits of Plaintiffs’ claims and to determine how to best serve the interests of the members of the putative class.

F. WHEREAS, on March 15, 2017, Class Counsel, on behalf of their clients, entered into a Stipulation and Protective Order / Confidentiality Agreement with Defendants, pursuant to which, and for the purpose of settlement discussions only, Defendants agreed to produce certain sales and marketing information that would enable Class Counsel and their clients to better evaluate their position with respect to settlement.

G. WHEREAS, on August 10, 2016, Class Counsel, KAS, and KAS’s Counsel participated in a mediation conducted by David A. Rotman of Gregorio, Haldeman & Rotman of San Francisco, California, and on March 30, 2017, Class Counsel, Defendants and Defendants’ Counsel participated in a mediation conducted by Michael Young of JAMS in New York, New York. Before, during, and since the mediation, the Parties have engaged in protracted, extensive, and hard-fought settlement negotiations, including numerous telephonic negotiating sessions.

Some of the parties' post-mediation negotiations were assisted by Mr. Young; others were conducted independently.

H. WHEREAS, on May 31, 2017, the Parties reached a settlement in principle. For nearly eight weeks thereafter, the Parties continued to negotiate the terms of this settlement.

I. WHEREAS, on March 17, 2017, Proposed Intervenor, David Machlan, filed a Complaint against Defendants KAS Direct, LLC and S.C. Johnson & Son, Inc., in the Superior Court of California, County of San Francisco and the case was then removed to the North District of California in the United States District Court on April 28, 2017 (*Machlan v. S. C. Johnson & Son, Inc., et al.*, Case No. 3:17-cv-02442 N.D. Cal.);

J. WHEREAS, on June 2, 2017, Proposed Intervenor, Tarina Skeen, Cheyenne Blanus, Malissa Brown, Natalie Vidal, and Christina Timmermeier ("*Tear Free* Intervenor"), filed a Complaint against Defendant KAS Direct, LLC, in the United States District Court for the Southern District of New York (*Skeen, et al. v. KAS Direct, LLC d/b/a Babyganics*, Case No. 1:17-cv-04119-RJS S.D.N.Y.);

K. WHEREAS, on June 5, 2017, this Court entered its initial order with the briefing schedule for preliminary approval of this Settlement (Dkt. No. 31);

L. WHEREAS, on August 8, 2017, the Parties filed for Preliminary Approval of the Joint Stipulation of Settlement in this Court. The Settlement was a product of hard-fought, arm's-length negotiations.

M. WHEREAS, on August 10, 2017, Proposed Intervenor, Laura Carroll, Katherine Exo, Armand Ryden, and Katharine Shaffer ("*SPF* Intervenor"), filed a Complaint against Defendants S.C. Johnson & Son, Inc. and VMG Partners, LLC, in the United States District Court

for the Northern District of Illinois (*Carroll, et al. v. S. C. Johnson & Son, Inc., et al.*, Case No. 1:17-cv-5828 N.D. Ill.)

N. WHEREAS, the following Motions to Intervene were filed by the above-referenced Proposed Intervenor on the following dates:

1. On August 11, 2017, *Tear Free* Intervenor filed a Motion to Intervene (Dkt. No. 50);
2. On August 18, 2017, Proposed Intervenor Machlan filed a Motion to Intervene (Dkt. No. 52); and
3. On August 25, 2017, *SPF* Intervenor filed a Motion to Intervene (Dkt. No. 56).

O. WHEREAS, on October 5, 2017, the Parties participated in a continued mediation with Mr. Young, at which all intervenors were invited to participate.

P. WHEREAS, on October 10, 2017, Proposed Intervenor Machlan withdrew his Motion to Intervene (Dkt. No. 85), and filed a Notice of Voluntary Dismissal with Prejudice in *Machlan v. S. C. Johnson & Son, Inc., et al.*, Case No. 3:17-cv-02442 N.D. Cal.

Q. WHEREAS, counsel for all Parties have reached the resolution set forth in this Agreement, providing for, among other things, the settlement of the Action between and among Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants on the terms and subject to the conditions set forth below.

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

S. WHEREAS, based upon Class Counsel's investigation and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel agreed to settle the Litigation pursuant to the provisions of this Stipulation after considering, among other things: (1) the substantial benefits available to the putative class under the terms of this Stipulation; (2) the attendant risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Agreement promptly to provide effective relief to Plaintiffs and the putative class and to end the alleged conduct at issue.

T. WHEREAS, Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Complaint. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against it arising out of or relating to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants believe they have meritorious defenses to all of Plaintiffs' claims, and that Plaintiffs will be unable to certify nationwide or subclasses relating to the challenged marketing of the Products.

U. WHEREAS, Defendants, to avoid the costs, disruption, and distraction of further litigation, and without admitting the truth of any allegations made in the Action, or any liability with respect thereto, have concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Agreement.

V. NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants, and agreements contained herein and for value received, the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be settled and

compromised as between Plaintiffs and the Settlement Class on the one hand, and Defendants on the other hand; and (2) upon final approval of the Agreement, the Final Judgment and Order Approving Settlement shall be entered dismissing the Action with prejudice and releasing all Released Claims against the Released Parties.

## **II. DEFINITIONS**

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

1. “Action” means the lawsuit captioned *Mayhew, et. al v. KAS Direct, LLC*, Case No. 7:16-cv-06981-VB, pending in the United States District Court for the Southern District of New York.

2. “Advertising” means all acts and practices calling public attention to the Products, including, but not limited to, marketing materials, billboards, point of sale materials, online posts, websites, and Facebook and Twitter accounts used by Defendants to promote the Products.

3. “Agreement” means this Joint Stipulation of Settlement (including all exhibits attached hereto).

4. “Attorneys’ Fees and Expenses” means such attorneys’ fees and expenses as may be awarded by the Court based on this Agreement to compensate Class Counsel and all other Plaintiffs’ Counsel as agreed upon by the Parties (subject to Court approval), as described more particularly in Section VIII of this Agreement.

5. “Authorized Claimant(s)” means any Settlement Class Member who submits a valid Claim Form.

6. “Award” means the relief obtained by Settlement Class Members pursuant to Section IV of this Agreement.

7. “Claim” means a request for relief submitted by a Settlement Class Member on a Claim Form to the Settlement Administrator in accordance with the terms of the Agreement.

8. “Claim Form” means the form to be used by a Settlement Class Member to submit a Claim to the Settlement Administrator. The proposed Claim Form is subject to Court approval and attached hereto as Exhibit A.

9. “Claims Deadline” means the date by which all Claim Forms must be postmarked or submitted online to the Settlement Administrator to be considered timely. The Claims Deadline shall be stated in the Class Notice, on the Settlement Website, and in the Claim Form, and shall be no later than ninety (90) days from the date of the first publication of the Long-form Notice or Short-form Notice, whether online, via print publication, or via press release, whichever is earlier.

10. “Claim Period” means the time period during which Settlement Class Members may submit a Claim Form to the Settlement Administrator for review. The Claim Period shall run for a period of time ordered by the Court, and last at least ninety (90) calendar days from the date of the first publication of the Long-form Notice or Short-form Notice, whether online, via print publication, or via press release, whichever is earlier.

11. “Class Counsel” means the following law firms and individuals:

Melissa S. Weiner  
Halunen Law  
1650 Ids Center, 80 So. 8th Street  
Minneapolis, MN 55402  
(612) 605-4098

Charles Joseph LaDuca  
Katherine Van Dyck  
Cuneo Gilbert & LaDuca, LLP  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
(202) 789-3960

Jason P. Sultzer  
The Sultzer Law Group PC  
77 Water Street, 8th Floor  
New York, NY 10005  
(646) 722-4266

12. “Class Notice” or “Notice” means the forms of notice to be disseminated to Settlement Class Members informing them about the Settlement Agreement. A copy of the proposed Long-form Notice is attached as Exhibit B, and a copy of the proposed Short-form Notice is attached as Exhibit C.

13. “Class Period” means the period beginning on (and including) September 7, 2010 and ending on (and including) the date the Court enters the Preliminary Approval Order.

14. “Class Representatives” or “Plaintiffs” means Tanya Mayhew, Tanveer Alibhai, and Tara Festa.

15. “Court” means the United States District Court for the Southern District of New York, in which the Action was filed and where the Parties will seek approval of the Settlement.

16. “Covered Product(s)” means any Babyganics product, regardless of product line, scent, and/or unit size, marketed and sold by Defendants in the United States.

17. “Defendants” means KAS Direct LLC (d/b/a Babyganics) and S.C. Johnson & Son, Inc.



18. “Effective Date” means the date on which all of the conditions of settlement have been satisfied.

19. OR “Effective Date” means:

(a) if no appeal is taken from the Order and Final Judgment, thirty-five (35) days after the Court enters the Order and Final Judgment of this Class Settlement Agreement; or

(b) if an appeal is taken from the Order and Final Judgment, the date on which all appellate rights (including petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for certiorari or any other form of review, and proceedings in the United States Supreme Court or any other appellate court) have expired, been exhausted, or been finally disposed of in a manner that affirms the Order and Final Judgment.

20. “Eligible Claims” means claims submitted by Authorized Claimants against the Settlement Fund.

21. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement.

22. “Final Judgment and Order Approving Settlement” means the order to be entered by the Court (which will be agreed upon by the Parties and submitted prior to the Final Approval Hearing) approving the Settlement as fair, adequate, and reasonable, confirming the certification of the Settlement Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement.

23. “Household” means a residence in which one or more Class Members may reside. Class Members may be part of only one Household for purposes of submitting a Claim.

24. “Initial Claim Amount” means the amount a Settlement Class Member claims on a Claim Form that is timely, valid, and approved by the Settlement Administrator. The value basis of the Initial Claim Amount is described in Section IV.B of this Stipulation. Pursuant

to Section IV.B.2 of this stipulation, the Initial Claim Amount is subject to *pro rata* increase or decrease, depending on the value of all approved Claims submitted.

25. “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiffs and not opposed by Defendant, for Preliminary Approval of this Agreement.

26. “Notice and Claim Administration Expenses” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses, the cost of administering the notice program, and the costs of processing all Claims made by Settlement Class Members. These costs and expenses shall be paid out of the Settlement Fund.

27. “Objection Date” means the date by which Settlement Class Members must file and serve objections to the Settlement and shall be no later than 30 days before the date first set for the Final Approval Hearing or as required by applicable law.

28. “Opt-Out Date” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class and shall be no later than 30 days before the date first set for the Final Approval Hearing.

29. “Plaintiffs’ Counsel” means Melissa S. Weiner of Halunen Law; Charles Joseph LaDuca and Katherine Van Dyck of Cuneo Gilbert & LaDuca, LLP.; and Jason P. Sultzer of The Sultzer Law Group PC.

30. “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form of Exhibit D, preliminarily approving the Settlement, certifying the Settlement Class, setting the date of the Final Approval Hearing, approving the Notice Program, Class Notice, and Claim Form, and setting the Opt-Out Date, Objection Date, and Notice Date.

31. “Proof of Purchase” shall mean a valid receipt or other document reflecting a purchase of a specific Covered Product during the Class Period.

32. “Released Claims” means, with the exception of claims for personal injury, any and all suits, actions, claims, liens, demands, actions, causes of action, obligations, rights, damages, or liabilities of any nature whatsoever, contingent or absolute, matured or unmatured, including Unknown Claims (as defined below), whether arising under any international, federal, state, or local statute, ordinance, common law, regulation, principle of equity or otherwise, that actually were, or could have been, asserted in the Litigation, including, but not limited to, claims which are based on any assertion or contention that the packaging of Covered Products, including the labels, or Advertising based on the content of those labels were inaccurate, misleading, false, deceptive or fraudulent. Released Claims include claims or potential claims arising from any purchases of the Covered Products from September 7, 2010 to the date of the Court’s preliminary approval. Released claims also specifically include the claims raised in the lawsuits captioned *Machlan v. S.C. Johnson, Inc.*, Case No. CGC-17-557613 (Sup. Ct. CA), later removed on April 28, 2017 to the District Court of the Northern District of California, No. 3:17-cv-02442, concerning a subset of the Covered Products (certain Babyganics pre-moistened wipes with “plant”-related labeling); *Skeen v. KAS Direct, LLC, d/b/a/ Babyganics*, No. 1:17-cv-04119 (S.D.N.Y.) concerning a subset of the Covered Products (certain Babyganics products with “tear-free”-related labeling); and *Carroll v. S. C. Johnson & Son, Inc.*, Case No. 1:17-cv-5828, (N.D. Ill.) concerning a subset of the Covered Products (certain Babyganics and mineral-based sunscreen products with SPF 50+ labeling). Settlement Class Members can opt out of the Settlement on or before the Opt-Out Date.

33. “Released Persons” means and includes Defendants and their direct and indirect corporate parents, subsidiaries and affiliates, divisions, as well as its distributors, wholesalers, retailers, suppliers, customers and licensors, including the officers, directors, employees, shareholders, principals, agents, successors, insurers, attorneys, spokespersons, public relations firms, advertising and production agencies, and assigns of all such Persons.

34. “Request(s) for Exclusion” means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

35. “Residual Settlement Amount” means the funds remaining in the Settlement Fund after the payment of all Eligible Claims and escrow charges and any taxes related to the Settlement Fund.

36. “Service Award(s)” means the payment, subject to Court approval, of \$3,500 each to Plaintiffs Tanya Mayhew, Tanveer Alibhai, and Tara Festa.

37. “Settlement Administrator” means Angeion Group, LLC, which has been retained by the Parties and, subject to approval by the Court, shall design and implement the program for disseminating Notice to the Class, administer the claims portion of this Settlement, and perform overall administrative functions. The Settlement Administrator has agreed, as a condition of being retained in this matter, to cap all Notice and Claim Administration Expenses to \$416,475.50.

38. “Settlement Class” means all persons or entities in the United States who made retail purchases of Covered Products during the Settlement Class Period. Specifically excluded from the Settlement Class are: (a) Defendants’ employees, officers, directors, agents, and representatives; (b) those who purchased Covered Products for the purpose of re-sale; (c)

federal judges who have presided over this case; and (d) all Persons who have been properly excluded from the Settlement Class.

39. “Settlement Class Member(s)” or “Member(s) of the Settlement Class” means a member of the Settlement Class.

40. “Settlement Fund” means the amount of \$2,215,000 to be funded by Defendants and from which all Eligible Claims, Attorneys’ Fees and Expenses, Notice and Claim Administration Expenses, and Service Awards are to be paid.

41. “Settlement Website” means the website to be created for this settlement that will include information about the Litigation and the settlement, relevant documents, and electronic and printable forms relating to the settlement, including the Claim Form which can be submitted online or printed and mailed. The Settlement Website shall be activated no later than ten (10) days after the Preliminary Approval Order is entered and shall remain active until 101 days after the Court enters the Judgment. A link to the Settlement Website shall also be available on the websites Defendants maintain for United States consumers of Babyganics Products during the same time period and, at Class Counsel’s option, on Class Counsel’s websites.

42. “Stipulation” means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel for Defendant.

43. “Unknown Claims” means any and all Released Claims that a Settlement Class Member does not know to exist against any of the Released Parties which, if known, might have affected his or her decision to enter into or to be bound by the terms of this Stipulation. The Plaintiffs and the Settlement Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the

subject matter of this Stipulation, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may hereafter exist, or heretofore have existed which relate in any way to any assertion or contention that the packaging of Babyganics Products, including the labels or Advertising based on the content of those labels were inaccurate, misleading, false, deceptive, or fraudulent, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties. The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law, by the Plaintiffs and the Settlement Class Members of any and all rights under California Civil Code § 1542 [set forth in bold *infra*] and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542.

B. Other capitalized terms in this Agreement but not defined in Section II.A shall have the meanings ascribed to them elsewhere in this Agreement.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS AND DISMISSAL OF ACTION**

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

1. Defendants hereby consent, solely for purposes of the settlement set forth herein, to (1) the certification of the Settlement Class on a nationwide basis, (2) to the appointment of Class Counsel as counsel for the Settlement Class, and (3) to the conditional approval of Plaintiffs as adequate representatives of the Settlement Class. However, if this Agreement, as drafted, fails to receive Court approval or otherwise fails to be consummated, including, but not limited to, the Judgment not becoming final as provided in Section IX of this Agreement, or a change to the scope of the release as provided in Section VII, then Defendants retain all rights they had immediately preceding the execution of this Agreement. Defendants' retained rights include the right to object to the maintenance of this Litigation as a class action by Class Counsel. In that

event, nothing in this Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, whether the allegations in the Amended Complaint have any merit, whether the purported class is ascertainable, or whether Class Counsel or the Plaintiffs can adequately represent the Settlement Class Members under applicable law.

B. Dismissal of Action

Upon final approval of the Settlement by the Court, the Final Judgment and Order Approving Settlement will be entered by the Court, providing for the dismissal of the Action with prejudice.

**IV. SETTLEMENT RELIEF**

A. Settlement Fund and Cash Payments

1. Defendants shall establish the Settlement Fund in the amount of \$2,215,000 by depositing with the Settlement Administrator this amount in an account no later than ten (10) court days after the Effective Date. Timing of payment of Attorneys' Fees and Expenses is governed by Section VIII.B.1. Until such time as these funds have been deposited with the Settlement Administrator, Defendants shall be responsible for payment of any costs of administration, with any such amounts paid to be deducted from the \$2,215,000 deposited with the Settlement Administrator.

2. The Settlement Fund will at all times be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendants or their counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund"

for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), will be paid out of the Settlement Fund. Defendants and their counsel, and Plaintiffs and Class Counsel, will have no liability or responsibility for any of the Taxes. The Settlement Fund will indemnify and hold Defendants and their counsel, and Plaintiffs and Class Counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

B. Settlement Class Members’ Cash Recovery

1. Settlement Class Members shall be entitled to a cash refund in the amount of one hundred percent (100%) of any purchase of a Covered Product for which a Proof of Purchase during the Class Period is provided.

2. If a Class Member does not have Proof of Purchase, the Class Member is entitled to recover for up to eight (8) Eligible Product purchases during the Class Period. On the Claim Form, a Class Member must select the Eligible Products purchased and the number of Eligible Products purchased during the Class Period. The Initial Claim Amount depends on the number and type of Eligible Products purchased as described below, and is subject to *pro rata* upward or downward adjustment as described in Section IV.C. The Settlement Administrator will be provided a list of Eligible Products and the value of the Eligible Products based upon the MSRP. For the purposes of this Agreement, the parties agree that, if litigation continued, the damages available to Plaintiffs, if any, would be based in part on a “price premium” theory, whereby Plaintiffs would have attempted to recover the premium paid for the Eligible Products due to the complained-of labeling as opposed to the price paid without the complained-of labeling.

(a) Subject to *pro rata* upward or downward adjustment pursuant to Section IV.C, a Class Member who purchased an Eligible Product that is valued between \$1.99 and \$9.99 will receive \$5.00 per Eligible Product in that range.



(b) Subject to *pro rata* upward or downward adjustment pursuant to Section IV.C, a Class Member who purchased an Eligible Product that is valued between \$10.00 and \$19.99 will receive \$10.00 per Eligible Product in that range.

(c) Subject to *pro rata* upward or downward adjustment pursuant to Section IV.C, a Class Member who purchased an Eligible Product that is valued between \$20.00 and \$29.99 will receive \$15.00 per Eligible Product in that range.

(d) Subject to *pro rata* upward or downward adjustment pursuant to Section IV.C, a Class Member who purchased an Eligible Product that is valued between \$30.00 and \$39.99 will receive \$20.00 per Eligible Product in that range.

(e) Subject to *pro rata* upward or downward adjustment pursuant to Section IV.C, a Class Member who purchased an Eligible Product that is valued over \$40.00 will receive \$25.00 per Eligible Product in that range.

C. Disbursements from the Settlement Fund

1. In accordance with the payment schedule set forth in this Agreement, money from the Settlement Fund shall be applied as follows:

a. First, to pay the Notice and Claims Administration Expenses and the Attorneys' Fees and Expenses and Service Awards, all as approved by the Court; and

c. Next, to pay Eligible Claims.

The money remaining in the Settlement Fund after the Notice and Claims Administration Expenses, Attorneys' Fees and Expenses, and Service Awards is the "Net Settlement Fund."

2. If the total amount of the timely, valid, and approved Eligible Claims submitted by Settlement Class Members exceeds the available relief, considering any fees, payments, and costs set forth in this Agreement that must also be paid from the Settlement Fund, each eligible Settlement Class Member's Initial Claim Amount shall be proportionately reduced

on a *pro rata* basis, such that the aggregate value of the cash payments does not exceed the Settlement Fund balance.

3. If, after the payment of all valid Claims, Notice and Administration Expenses, Attorneys' Fees and Expenses, Service Awards, and any other claim, cost, or fee specified by this Agreement, value remains in the Settlement Fund, it shall be called the Residual Settlement Amount.

4. The Residual Settlement Amount shall be used to increase eligible Settlement Class Members' relief on a *pro rata* basis. The Settlement Administrator shall determine each authorized Settlement Class Member's *pro rata* share based upon each Settlement Class Member's Claim Form and the total number of valid Claims. *Pro Rata* distributions from the Residual Settlement Amount shall first be paid to Class Members with a valid proof of purchase, up to 100% value in total of their Claim. If any Residual Settlement Amount remains after that distribution, the remainder will be distributed on a *pro rata* basis to Class Members without a Proof of Purchase, up to up to 100% value in total of their Claim. Accordingly, the actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all Claims have been calculated.

5. It is the Parties intent to distribute all Settlement Funds to Class Members. However, if there are any funds remaining in the Settlement Fund Balance following the calculation pursuant to the above Sections IV.B or IV.C above, including any checks that were not cashed, then the Settlement Administrator shall distribute the Residual Funds to the following non-profit organization: National Consumer Law Center. An affidavit from National Consumer Law Center is attached as Exhibits E. The Residual Funds will not be returned to Defendants. Defendants represent and warrant that any payment of Residual Funds to any charities, non-profit

organizations, or government entities shall not reduce any of their donations or contributions to any entity, charity, charitable foundation or trust, and/or non-profit organization.

6. To receive Settlement relief, each Settlement Class Member must submit a valid and timely Claim Form either by mail or electronically. The actual amount paid to individual Settlement Class Members will depend upon the number of valid Claims made for Covered Products purchased and a representation made under the penalty of perjury that the purchase(s) occurred in the United States during the Class Period.

7. For claims without Proof of Purchase, each Settlement Class Member submitting a Claim Form shall sign (either by hand or electronic signature if the claim is submitted online) and submit a Claim Form that states, to the best of his or her knowledge, the total number and type of Covered Products that he or she purchased and the approximate date(s) of his or her purchases. The Claim Form shall be signed under an affirmation stating the following or substantially similar language: “I declare, under penalty of perjury, that the information in the Claim Form is true and correct to the best of my knowledge, and that I purchased the Covered Product(s) claimed above in the United States during the Class Period for personal or household use and not for resale. I understand that my Claim Form may be subject to audit, verification, and Court review.”

8. The Claim Form shall advise Settlement Class Members that, while Proof of Purchase is not required to submit a claim, the Settlement Administrator has the right to request verification or more information regarding the purchase of the Covered Products for the purpose of preventing fraud. If the Settlement Administrator requests such verification and the Settlement Class Member does not comply in a timely manner or is unable to produce documents or additional

information to substantiate the information on the Claim Form and the claim is otherwise not approved, the Settlement Administrator may disqualify the claim.

9. Claim Forms that do not meet the requirements set forth in this Settlement and in the Claim Form instructions may be rejected. The Settlement Administrator will determine a Claim Form's validity. Where a good-faith basis exists, the Settlement Administrator may reject a Claim Form for, among other reasons: (i) failure to attest to the purchase of the Covered Products; (ii) failure to provide adequate verification or additional information about the Claim pursuant to a request of the Settlement Administrator; (iii) failure to fully complete and/or sign the Claim Form; (iv) failure to submit a legible Claim Form; (v) submission of a fraudulent Claim Form; (vi) submission of a Claim Form that is duplicative of another Claim Form; (vii) submission of a Claim Form by a person who is not a member of the Settlement Class; (viii) request by a person submitting the Claim Form to pay funds to a person or entity that is not the member of the Settlement Class for whom the Claim Form is submitted; (ix) failure to submit a Claim Form by the end of the Claim Period; or (x) failure to otherwise meet the requirements of this Settlement.

D. Injunctive Relief

In connection with this Settlement, the service of the CLRA letters, and the filing of the Action, and as a result thereof, Defendants have agreed to the following labeling and advertising changes regarding the Covered Products to address concerns raised by Plaintiffs and the proposed intervenors beginning no later than the Label Change Date and continuing for a period of three years thereafter. The Label Change Date shall be July 1, 2018, unless the Court grants final approval to this settlement prior to that date, in which case the Label Change Date shall be six months after the date of such final approval.

1. For as long as Defendants market the Covered Products as “Babyganics” on the front labels, Defendants will include a statement on the front label referring consumers to the back label for clarification of which ingredients are organic and which are not, subject to Section X *infra*.

2. Defendant will remove the word “natural” from the front label of all Covered Products, subject to Section X *infra*.

3. For as long as Defendants market the Sunscreen Products as “mineral-based,” Defendants will define “mineral-based” on the product page on websites that Defendants maintain to explain that “mineral-based” Sunscreen Products combine the protections of both mineral and non-mineral barriers. The back labels of the Sunscreen Products will also provide references to Defendants’ website

4. For all Sunscreen Products labeled SPF 50+, Defendants will conduct testing of each batch of applicable sunscreen to determine the levels of active ingredients in the batch. Consistent with FDA requirements, including tolerance levels, the results of such batch testing shall match or exceed the active ingredient and levels expressed on front of package prior to expiration. Each year for three years, starting on July 15, 2018 or the date of final order (whichever is later) and on every anniversary of the applicable date for the three-year period, Defendants shall send to Plaintiffs’ Counsel an affirmation that they are in compliance with this provision. If Defendants fail to affirm that they are in compliance, Plaintiffs’ Counsel shall send a letter by certified mail or courier to Defendants’ counsel notifying them of the failure to affirm. Defendants will have 60 days from receipt of this notification to cure by way of an affirmation that Defendants have complied with this provision.

5. For Babyganics Chamomile Verbena Conditioning Shampoo + Body Wash, Fragrance-Free Conditioning Shampoo + Body Wash, Fragrance-Free Bubble Bath, Chamomile Verbena Bubble Bath, Fragrance-Free Moisturizing Therapy Cream Wash, Chamomile Verbena Squeeze & Foam Shampoo + Body Wash, Orange Blossom Night Time Bubble Bath, Fragrance-Free Shampoo +Body Wash, Chamomile Verbena Shampoo + Body Wash and Orange Blossom Night Time Shampoo + Body Wash labeled “tear free”, Defendants will clarify on the back label that product should not be applied directly to the eye, that eyes should be flushed with water if product is applied to the eye, and that the product should be kept out of the reach of children absent adult supervision

6. Defendants will not use a label statement “Plant-Based Ingredients” on pre-moistened wipes (including Babyganics Face, Hand, and Baby Wipes; All Purpose Surface Wipes; Toy, Table, and Highchair Wipes; Flushable Wipes; and Hand and Face Wipes, but excluding sunscreen wipes governed by FDA disclosure obligations) unless (1) the wipes substrate are made entirely from a material derived from plants or (2) the package lists the ingredients of the wipes substrate.

7. Nothing in this settlement requires Defendants to conduct a recall or otherwise prohibit them from selling inventory in existence and bearing pre-settlement labeling as of the date of the Label Change Date.

**V. NOTICE TO THE SETTLEMENT CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS MEMBERS AND REDEMPTION OF SETTLEMENT RELIEF**

A. Class Notice

1. Defendants shall pay Notice and Claim Administration Expenses up to \$416,475.50, to be included as part of the Settlement Fund, including, *inter alia*, reimbursement and/or payment of the total costs reasonably and actually incurred by the Class Action Settlement

Administrator in connection with providing notice to and locating Settlement Class Members, providing and processing Claim Forms, receiving requests for exclusions, assisting Settlement Class Members with filing claims, and administering claims. Any Notice and Claim Administration Expenses that exceed \$416,475.50 shall be paid out of the Settlement Fund, and Defendants shall not bear further responsibility for such additional expenses.

(a) The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Class Notice shall set forth the following information:

(b) General Terms. The Class Notice shall:

- i. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief under the proposed settlement;
- ii. contain a short, plain statement of the background of the Litigation, the Settlement Class certification, and the proposed settlement;
- iii. describe the proposed settlement relief outlined in this Stipulation;
- iv. explain the impact of the proposed settlement on any existing litigation, arbitration, or other proceeding; and
- v. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

(c) Notice of Exclusion and Objection Rights. The Class Notice shall inform Settlement Class Members:

- i. that they may exclude themselves from the Settlement Class by submitting a written exclusion request postmarked no later than 30 days before the date of the Final Approval Hearing;

ii. that any Settlement Class Member who has not submitted a written request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving, no later than thirty (30) days before the Final Approval Hearing, a written statement of objections along with either: (1) Proof of Purchase of a Covered Product; or (2) a statement, sworn to under penalty of perjury, pursuant to 28 U.S.C. § 1746, attesting to the fact that he or she purchased one or more Covered Products during the Settlement Class Period.

iii. that any Settlement Class Member who has filed and served written objections to the proposed settlement may, if he or she so requests, enter an appearance at the Final Approval Hearing either personally or through counsel;

iv. that any Judgment entered in the Litigation, whether favorable or unfavorable to the Settlement Class, shall include, and be binding on, all Settlement Class Members, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit, or proceeding pending against Defendant; and

v. of the terms of the release.

2. No later than ten (10) days following entry of the Preliminary Approval Order, to the extent that Defendants have contact information for Settlement Class Members, Notice and the Claim Form shall be disseminated to Settlement Class Members by U.S. mail or email (“Notice Mailing Date”).

3. No later than ten (10) days after entry of the Preliminary Approval Order, the Class Notice shall be posted on the Settlement Website and, at Class Counsel’s option, on the websites of Class Counsel. The Class Notice shall also be sent via electronic mail or regular mail to those Settlement Class Members who so request. The Class Notice shall remain available by these means until 101 days after the Court enters the Judgment.

**B. Publication Notice**

No later than ten (10) days after entry of the Preliminary Approval Order, the Class Action Settlement Administrator will cause to be published, in accordance with the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program attached as Exhibit F, the Short-form Notice, a copy of which is attached as Exhibit C. The Short-form Notice shall also be posted on the



Settlement Website until 101 days after the Court enters Judgment.

C. Retention of Class Action Settlement Administrator

1. Class Counsel shall, subject to the express written approval of Defendants' Counsel, retain the Class Action Settlement Administrator to help implement the terms of the proposed Stipulation. Subject to the terms set forth in Section V.A, Defendants shall pay all costs associated with the Class Action Settlement Administrator, including costs of providing notice to the Settlement Class Members and processing claims. Consistent with Paragraph V.A, *supra*, the Parties have agreed that the funds deposited in the Settlement Fund will be used to cover Notice and Claim Administration Expenses, that Defendants' responsibility for such expenses is capped at \$400,000, and that any additional Notice and Claim Administration Expenses will be paid out of the Settlement Fund and not by Defendants. The Settlement Administrator has agreed to cap its Notice and Claim Administration expenses at \$400,000 as a condition of being retained for this matter.

2. The Parties have retained Angeion Group, LLC (the "Settlement Administrator") to help implement the terms of the proposed Agreement, as provided herein.

3. The Class Action Settlement Administrator shall assist with various administrative tasks, including, without limitation: (a) mailing or arranging for the mailing or other distribution of the Class Notice and Claim Forms to Settlement Class Members; (b) arranging for publication of the Short-form Notice; (c) handling returned mail not delivered to Settlement Class Members; (d) attempting to obtain updated address information for Settlement Class Members and for any Class Notice packages returned without a forwarding address or an expired forwarding address; (e) making any additional mailings required under the terms of this Stipulation; (f) answering written inquiries from Settlement Class Members and/or forwarding

such inquiries to Class Counsel or their designee; (g) receiving and maintaining, on behalf of the Court and the Parties, any Settlement Class Member correspondence regarding requests for exclusion to the settlement; (h) establishing the Settlement Website that posts notices, Claim Forms, and other related documents; (i) receiving and processing claims and distributing payments to Settlement Class Members; and (j) otherwise assisting with administration of the Stipulation.

4. The contract with the Class Action Settlement Administrator shall obligate the Class Action Settlement Administrator to abide by the following performance standards:

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

(b) The Class Action Settlement Administrator shall provide prompt, accurate, and objective responses to inquiries from Class Counsel or their designee, Defendants, and/or Defendants' Counsel.

5. The Settlement Administrator shall gather and review the Claim Forms received pursuant to the Agreement and fulfill valid claims. The Settlement Administrator shall have a rigorous fraud prevention screening program.

(a) Settlement Class Members who submit a timely and valid Claim Form shall be designated as Authorized Claimants. The Settlement Administrator shall examine the Claim Form before designating the Settlement Class Member as an Authorized Claimant to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable the mailing of the Settlement payment to the Settlement Class Member.

(b) No Settlement Class Member may submit more than one Claim Form. Claim Forms shall be limited to one per Household. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member (“Duplicate Claims”). The Settlement Administrator shall determine whether there is any duplication of claims, if necessary, by contacting the claimant(s) or their counsel. The Settlement Administrator shall designate any such Duplicative Claims as invalid Claims to the extent they allege the same damages or allege damages on behalf of the same Settlement Class Member.

(c) The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part, any Claim to prevent actual or possible fraud or abuse. The Claim Form shall not identify the suggested retail price of each Covered Product.

(d) By agreement of the Parties, the Parties can instruct the Settlement Administrator to take whatever steps they deem appropriate to preserve the Settlement Fund to further the purposes of the Agreement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse.

(e) The Settlement Administrator shall provide periodic reports to Class Counsel and Defendant’s counsel regarding the implementation of the Agreement and this protocol.

## **VI. OBJECTIONS, REQUESTS FOR EXCLUSION, AND MEDIA COMMUNICATIONS**

### **A. Objections**

1. Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. Any objection must be in writing; signed by the Settlement Class Member (and his or her attorney, if individually represented); and filed with the Court, with a copy delivered to Class Counsel and Defendants' Counsel at the addresses set forth in the Class Notice, no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a declaration submitted under penalty of perjury that the objector purchased Covered Products during the period of time described in the Settlement Class definition or receipt(s) reflecting such purchase(s); (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; (g) the name and case number of all objections to class action settlements made by the objector in the past five (5) years; and (h) the objector's signature.

2. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice, and to Defendant's Counsel, and file the notice of appearance with the Court, no

later than twenty (20) days before the Final Approval Hearing, or as the Court may otherwise direct.

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

Class Counsel shall have the right, and Defendants shall reserve their right, to respond to any objection no later than seven (7) days before the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court and shall serve a copy, by regular mail, hand, or overnight delivery, to the objecting Settlement Class Member or to the individually-hired attorney for the objecting Settlement Class Member; to all class Counsel; and Defendants' Counsel.

B. Requests for Exclusion

1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than Opt-Out Date. In order to opt out, a Settlement Class Member must send to the Settlement Administrator a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Settlement Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class.

2. Any Settlement Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders, and the Final Judgment and

Order Approving Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant relating to the Released Claims.

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

4. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final list of all timely Requests for Exclusion within five (5) business days after the Opt-Out Date. Plaintiffs shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

C. Media Communications

1. Following the issuance of a Preliminary Approval Order providing for dissemination of the Class Notice, the Parties agree that they may issue a joint press release. Defendants and Class Counsel may post the joint press release on Defendants' websites and Class Counsel's websites, if they so choose.

2. The Parties agree that representatives of Class Counsel are the sole people authorized to respond on behalf of Plaintiffs to media inquiries or requests for comments with respect to the Settlement or the underlying subject matter. Class Counsel will consult with Defendants' Counsel about the content of any such proposed response, and they will reach an agreement with respect to the same, which agreement shall be consistent with the content and purposes of this Agreement and the proposed Settlement. Nothing herein shall prevent Class

Counsel from responding to class member inquiries regarding the Settlement in a manner consistent with the terms and conditions of this Agreement.

## **VII. RELEASES**

A. As of the Effective Date, Plaintiffs and each Settlement Class Member who has not validly excluded himself or herself from the Settlement Class pursuant to Section VI.B of this Agreement shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. The Released Claims shall be construed as broadly as possible to effect complete finality over this litigation involving the advertising, labeling, and marketing of the Covered Products as set forth herein.

B. In connection with the Released Claims, each Settlement Class Member shall be deemed as of the Effective Date to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:

**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.**

C. Plaintiffs understand that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiffs and Class Counsel to be true and nevertheless agree that this Class Settlement Agreement and the Release shall remain effective notwithstanding any such difference in facts.

D. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this

Agreement, or any other action or claim that arises out of the same factual predicate or same set of operative facts as this Action.

**VIII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND CLASS REPRESENTATIVES' SERVICE AWARDS**

A. The award of Attorneys' Fees and Expenses will be paid from the Settlement Fund and as set forth in Section IV.A.1 above.

B. Class Counsel agrees to make, and Defendant agrees not to oppose, an application for the fee and expense award in the Litigation not to exceed a total of \$733,333.33 in attorneys' fees and reasonable, actual out-of-pocket expenses ("Fee and Expense Award").

1. Attorneys' fees and expenses awarded by the Court shall be payable as set forth above no more than 30 days after the Final Approval Order, provided that, pursuant to the terms of the undertaking attached as Exhibit G to this Agreement, any such Attorneys' Fees and Expenses will be repaid to Defendants by Class Counsel should the Effective Date not occur.

C. In the event of an objection to attorneys' fees by someone other than Defendants, and if Class Counsel makes representations to the Court about the basis for the fee request that Defendants do not agree with, Defendants reserve the right to make additional representations to the Court for purposes of correcting the record.

D. Class Counsel, in their sole discretion, shall allocate and distribute the Court's Fee and Expense Award in good faith among Class Counsel and Additional Plaintiffs' Counsel in this Litigation.

E. In addition to the amounts set forth above, Defendants agree not to oppose an application for Plaintiffs' Service Awards in the amount of \$3,500 to each of the Plaintiffs. The Service Awards to these Plaintiffs will be in addition to the other consideration to the Settlement Class Members, as set forth in Section IV.A above.



F. All fees and expenses awarded to Class Counsel and incentive awards awarded to Plaintiffs will be paid by Defendant from the \$2,215,000 Settlement Fund.

#### **IX. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

#### **X. PERMITTED CONDUCT**

A. Subject to the modifications set forth in this Agreement, Class Members and Class Counsel agree that nothing in this Agreement shall prevent Defendant from labeling, marketing, and advertising its products or its product's ingredient(s) as being "organic" when they are made of ingredients listed as "organic," "approved" "certified," or that have been validated or designated as "organic" by the United States Department of Agriculture (USDA) or in accordance with any like state law or regulation.

B. Nothing in this Agreement shall prohibit or limit Defendants' right or ability to use or permit others to use, in accordance with all applicable laws and regulations, its licenses, logos, taglines, product descriptors, or registered trademarks.

C. Nothing in this Agreement shall preclude Defendants from making "natural" claims in accordance with applicable FDA, USDA or other federal regulations, or federal agency policy statements, or in accordance with any like state law or regulations. Specifically, Defendant shall be permitted to use the term "natural" on its labeling of insect repellent provided that the insect repellent is a minimum risk pesticide under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 C.F.R § 152.25(f) (as amended). Nothing in this Agreement

shall preclude Defendants from making any product formulation, labeling, marketing, advertising, or packaging changes to its products that (i) Defendants reasonably believe are necessary to comply with any changes to any applicable statute, regulation, pronouncement, guidance, or other law of any kind (including but not limited to the Federal Food, Drug and Cosmetic Act; FDA regulations; U.S. Department of Agriculture regulations; Federal Trade Commission regulations; and/or the California Sherman Food, Drug, and Cosmetic Law); or (ii) are necessitated by product changes and/or reformulations to ensure that Defendants provide accurate product descriptions and do not significantly differ from the changes agreed to in this Agreement.

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

A. Defendants represent and warrant: (1) that they have the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendants; and (3) that the Agreement has been duly and validly executed and delivered by Defendants and constitutes its legal, valid, and binding obligation.

B. Plaintiffs represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will, and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair and reasonable. Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiffs.

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

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

The Agreement and every stipulation and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission by Plaintiffs, Defendants, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiffs, Defendants, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

## **XIII. MISCELLANEOUS PROVISIONS**

A. Entire Agreement: The Agreement, including all Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Defendants' Counsel and, if required, approved by the Court. The Parties contemplate that the Exhibits to the Agreement may be modified by subsequent agreement of Defendants' and Class Counsel, or by

the Court. The Parties may make non-material changes to the Exhibits to the extent deemed necessary, as agreed to in writing by all Parties.

B. Governing Law: The Agreement shall be construed under and governed by the laws of the State of New York, applied without regard to laws applicable to choice of law.

C. Execution in Counterparts: The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

D. Notices: Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class U.S. Mail and email to:

1. If to Plaintiffs or Class Counsel:

Melissa S. Weiner  
Halunen Law  
1650 IDS Center, 80 So. 8th Street  
Minneapolis, MN 55402  
(612)-605-4098  
weiner@halunenlaw.com

Charles Joseph LaDuca  
Katherine Van Dyck  
Cuneo Gilbert & Laduca, LLP  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
(202)-789-3960  
kvandyck@cuneolaw.com  
charles@cuneolaw.com

Jason P. Sultzer  
The Sultzer Law Group PC  
77 Water Street, 8th Floor  
New York, NY 10005  
646-722-4266  
sultzerj@thesultzerlawgroup.com

2. If to Defendants or Defendants' Counsel:

Hannah Y. Chanoine  
O'Melveny & Myers LLP  
7 Times Square  
New York, NY 10036  
hchanoine@omm.com; and

E. Stay of Proceedings: Upon the execution of this Agreement, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Settlement Agreement.

F. Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

G. Binding on Successors: The Agreement shall be binding upon, and inure to the benefit of, the heirs of the Released Parties.

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

I. Waiver: The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

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

K. Exhibits: All Exhibits to this Agreement are material and integral parts hereof and are incorporated by reference as if fully rewritten herein.

L. Taxes: No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendants, Defendants' Counsel, Class Counsel, or Plaintiffs' Counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

M. Implementation Before Effective Date: The Parties may agree in writing to implement the Agreement, or any portion thereof, after the entry of the Final Judgment and Order Approving Settlement, but prior to the Effective Date.

N. Modification in Writing: This Agreement may be amended or modified only by written instrument signed by one of Class Counsel and one of Defendant's Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

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

P. Retain Jurisdiction: The Court shall retain jurisdiction with respect to the 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 agreement embodied in this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Dated: November 21, 2017 By: [Signature]  
Hannah Y. Chanoiné  
O'Melveny & Myers LLP  
Attorneys for Defendants

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Manager, VP, and Secretary  
Defendant KAS Direct LLC

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Senior VP, General Counsel, and Secretary  
Defendant S.C. Johnson & Son, Inc.

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Melissa Wolchansky, Esq.  
Halunen Law  
Attorneys for Plaintiff Mayhew and Alibhai  
and the Settlement Class Members

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Katherine Van Dyck  
Attorneys for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members



IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Dated: \_\_\_\_\_

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

Hannah Y. Chanoine  
O'Melveny & Myers LLP  
Attorneys for Defendants

Dated: November 21, 2017

By: [Signature]

Gary R. Akavickas  
Manager, VP, and Secretary  
Defendant KAS Direct LLC

Dated: November 21, 2017

By: [Signature]

Gary R. Akavickas  
Senior VP, General Counsel, and Secretary  
Defendant S.C. Johnson & Son, Inc.

Dated: \_\_\_\_\_

By: /s/

Melissa Wolchansky, Esq.  
Halunen Law  
Attorneys for Plaintiff Mayhew and Alibhai  
and the Settlement Class Members

Dated: \_\_\_\_\_

By: /s/

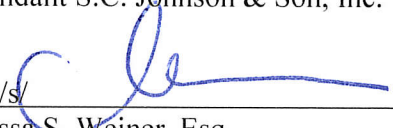
Katherine Van Dyck  
Attorneys for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

Dated: \_\_\_\_\_

By: /s/

Jason P. Sultzer  
Attorneys for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Dated: _____	By: _____ Hannah Y. Chanoine O'Melveny & Myers LLP Attorneys for Defendants
Dated: _____	By: _____ Gary R. Akavickas Manager, VP, and Secretary Defendant KAS Direct LLC
Dated: _____	By: _____ Gary R. Akavickas Senior VP, General Counsel, and Secretary Defendant S.C. Johnson & Son, Inc.
Dated: <u>November 21, 2017</u>	By:  _____ Melissa S. Weiner, Esq. Halunen Law Attorney for Plaintiff Mayhew and Alibhai and the Settlement Class Members
Dated: _____	By: <u>/s/</u> _____ Katherine Van Dyck, Esq. Attorney for Plaintiff Mayhew and Alibhai Tara Festa and the Settlement Class Members
Dated: _____	By: <u>/s/</u> _____ Jason P. Sultzer, Esq. Attorney for Plaintiff Mayhew and Alibhai Tara Festa and the Settlement Class Members

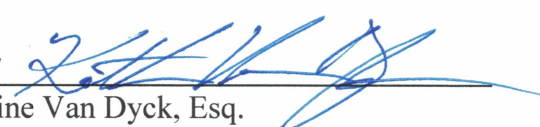
IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Hannah Y. Chanoine  
O'Melveny & Myers LLP  
Attorneys for Defendants

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Manager, VP, and Secretary  
Defendant KAS Direct LLC

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Senior VP, General Counsel, and Secretary  
Defendant S.C. Johnson & Son, Inc.

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Melissa S. Weiner, Esq.  
Halunen Law  
Attorney for Plaintiff Mayhew and Alibhai  
and the Settlement Class Members

Dated: 11-21-17 By: /s/  \_\_\_\_\_  
Katherine Van Dyck, Esq.  
Attorney for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Jason P. Sultzer, Esq.  
Attorney for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Hannah Y. Chanoine  
O'Melveny & Myers LLP  
Attorneys for Defendants

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Manager, VP, and Secretary  
Defendant KAS Direct LLC

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary R. Akavickas  
Senior VP, General Counsel, and Secretary  
Defendant S.C. Johnson & Son, Inc.

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Melissa S. Weiner, Esq.  
Halunen Law  
Attorney for Plaintiff Mayhew and Alibhai  
and the Settlement Class Members

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Katherine Van Dyck, Esq.  
Attorney for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

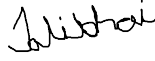
Dated: 11/21/17 By: /s/ \_\_\_\_\_  
Jason P. Sultzer, Esq.  
Attorney for Plaintiff Mayhew and Alibhai  
Tara Festa and the Settlement Class Members

Dated: 11/21/17 By: /s/ Tanya Mayhew  
Plaintiff Tanya Mayhew

Dated: \_\_\_\_\_ By: /s/  
Plaintiff Tanveer Alibhai

Dated: 11/21/17 By: /s/ Tara Festa  
Plaintiff Tara Festa

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Plaintiff Tanya Mayhew

Dated: 11/21/2017 \_\_\_\_\_ By: /s/  \_\_\_\_\_  
Plaintiff Tanveer Alibhai

Dated: \_\_\_\_\_ By: /s/ \_\_\_\_\_  
Plaintiff Tara Festa