

1 This Class Action Settlement Agreement (together with its exhibits, the “Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiffs Renee Young and Joycette
3 Goodwin, on behalf of themselves and the certified class in this action, and Defendant
4 Neurobrands, LLC (“Neurobrands”) to settle and compromise this action, according to the terms
5 and conditions herein.

6 RECITALS

7 WHEREAS, on September 26, 2018, Plaintiffs filed an action in the United States District
8 Court for the Northern District of California against Defendant Neurobrands. (Dkt. No. 1). On
9 December 17, 2018, Plaintiffs filed a First Amended Complaint bringing claims for violations of
10 California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”),
11 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”),
12 California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”), and causes
13 of action for fraud by omission, negligent misrepresentation, and breach of express and implied
14 warranties. (Dkt. No. 18).

15 WHEREAS, on January 14, 2019, Defendant filed a Motion to Dismiss Plaintiffs’ First
16 Amended Complaint. (Dkt. No. 29). Plaintiffs opposed the motion on January 28, 2019, and
17 Defendant filed a reply brief on February 4, 2019. (Dkt. Nos. 33-34). On February 19, 2019, the
18 Court denied Defendant’s Motion to Dismiss in its entirety. (Dkt. No. 37).

19 WHEREAS, on October 4, 2019, Plaintiffs filed a motion for class certification seeking
20 Rule 23(b)(2) certification of a Nationwide class and California sub-class. (Dkt. No. 43).

21 WHEREAS, on October 15, 2020, the Court granted in part and denied in part Plaintiffs’
22 Motion for Class Certification and certified a class of California consumers under Fed. R. Civ. P.
23 23(b)(2). (Dkt. No. 72). Class certification was granted with respect to Plaintiffs’ claims under the
24 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), the Unfair
25 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), the False Advertising Law,
26 Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”), fraud by omission, negligent misrepresentation,
27 and breach of express and implied warranties. (Dkt. No. 72). Additionally, the Court appointed
28 Plaintiffs Renee Young and Joycette Goodwin as class representatives and appointed the Law

1 Offices of Ronald A. Marron as class counsel. *Id.*

2 WHEREAS, on February 2, 2021, the Parties attended a full day mediation session before
3 the Honorable Judge Jay C. Gandhi (Ret.) of JAMS, where they agreed in principle to certain terms
4 of an injunctive relief class action settlement. Following the first mediation session, the Parties
5 participated in further telephonic sessions with Judge Gandhi.

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

10 **NOW THEREFORE**, subject to the final approval of the Court as required herein and by
11 applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises
12 and covenants contained herein, and for other good and valuable consideration, the sufficiency of
13 which is hereby acknowledged, that any released claims as set forth herein against any Released
14 Persons shall be settled, compromised and forever released upon the following terms and
15 conditions.

16 **TERMS AND CONDITIONS OF SETTLEMENT**

17 **I. DEFINITIONS**

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

19 1.1 “CAFA Notice” means the notice of this settlement to the appropriate federal and
20 state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C.
21 § 1715, and as further described in Section 5.7.

22 1.2 “Class” means the class certified in the Court’s October 15, 2020 order granting in
23 part Plaintiffs’ Motion for Class Certification; specifically, all California citizens who made retail
24 purchases of one of the following Products labeled as containing “natural flavors” and “no artificial
25 colors or flavors” in California on or after January 1, 2012 through October 15, 2020, for personal
26 use and not for resale, excluding Defendant and Defendant’s officers, directors, employees, agents
27 and affiliates, and the Court and its staff:

- 28 • NeuroSONIC Superfruit Infusion

- NeuroSONIC Orange Passion;
- NeuroBLISS White Raspberry;
- NeuroBLISS Citrus Berry;
- NeuroBLISS Tropical Lychee;
- NeuroPROTEIN Watermelon Mint;
- NeuroPROTEIN Cherry Vanilla;
- NeuroDAILY Tangerine Citrus; and
- NeuroGASM Passion Fruit.

1.4 “Class Counsel” means Plaintiffs’ counsel of record in the Litigation, the Law Offices of Ronald A. Marron, APLC.

1.5 “Class Member” means a Person who falls within the definition of the Class set forth in Section 1.2.

1.6 “Court” means the United States District Court for the Northern District of California.

1.7 “Defendant” means Neurobrands, LLC.

1.8 “Defense Counsel” means Defendant’s counsel of record in the Litigation, Covington & Burling LLP.

1.9 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final, as provided in Section 1.10 of this Agreement.

1.10 “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 any appeals from the Judgment are filed, the date such appeal(s) and any proceedings on remand from a decision of an appeals court are complete; or (c) if a petition for a writ of certiorari is filed and denied, the date the petition is denied; or (d) if a petition for a writ of certiorari is filed and granted, the date that the review proceeding initiated by the petition for a writ of certiorari and any proceedings on remand are complete. A modification or reversal on appeal of the amount of the fees, costs, and expenses awarded by the Court to plaintiffs’ counsel, or the amount of any incentive awards, shall not prevent this Settlement from becoming Final if all other aspects of the final judgment have

1 been affirmed.

2 1.11 “Judgment” means the judgment to be entered by the Court pursuant to Rule 23(e)
3 of the Federal Rules of Civil Procedure.

4 1.12 “Litigation” means *Young v. Neurobrands, LLC*, Case No. 4:18-cv-05907-JSW,
5 pending in the U.S. District Court for the Northern District of California.

6 1.13 “Notice” means a document, substantially in the form of **Exhibit A** hereto (the
7 “Long Form Notice”), and “Summary Notice” means a document substantially in the form of
8 **Exhibit B** hereto, to be disseminated in accordance with the Preliminary Approval Order,
9 informing Class Members of, among other things, the pendency of the Litigation, the material
10 terms of the proposed Settlement and their options with respect thereto.

11 1.14 “Notice Plan” means the method of providing the Class with notice of the
12 Settlement, as approved by the Court.

13 1.15 “Notice Administrator” means the company selected by the Parties and approved
14 by the Court to provide notice to the Class and CAFA Notice.

15 1.16 “Objection Deadline” means the date that is the end of the period to object to the
16 Settlement, as established by the Court in the Preliminary Approval Order and set forth in the
17 Notice and Section 7.5 of this Agreement.

18 1.17 “Parties” means the Representative Plaintiffs and Defendant.

19 1.18 “Person” means an individual, corporation, partnership, limited partnership,
20 association, joint stock company, estate, legal representative, trust, unincorporated association,
21 government or any political subdivision or agency thereof, any business or legal entity, and such
22 individual’s or entity’s parents, subsidiaries, spouse, heirs, predecessors, successors,
23 representatives, and assignees.

24 1.19 “Preliminary Approval Order” means an order, providing for, among other things,
25 preliminary approval of the Settlement and dissemination of the Notice to the Class according to
26 the Notice Plan.

27 1.20 “Products” means the Neurobrands products listed below manufactured and/or
28 distributed by Defendant and sold in any variation, format, weight, or packaging:

- NeuroSONIC Superfruit Infusion
- NeuroSONIC Orange Passion;
- NeuroBLISS White Raspberry;
- NeuroBLISS Citrus Berry;
- NeuroBLISS Tropical Lychee;
- NeuroPROTEIN Watermelon Mint;
- NeuroPROTEIN Cherry Vanilla;
- NeuroDAILY Tangerine Citrus; and
- NeuroGASM Passion Fruit.

1.22 “Released Persons” means Defendant Neurobrands, LLC, each, any and all of its respective past, present, and future heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, divisions, joint ventures, entities in which the Defendant has a controlling interest, holding companies, employees, agents, consultants, marketing partners, resellers, lead generators, telemarketers, independent contractors, insurers, reinsurers, directors, officers, partners, principals, attorneys, accountants, financial advisors, investors, investment bankers, underwriters, shareholders, auditors, legal representatives; and each and all of the past, present, and future parents, subsidiaries, affiliates, officers, directors, principals, representatives, employees, agents, shareholders, attorneys, successors, executors, and assigns of any of the foregoing entities.

1.23 “Representative Plaintiffs” means Renee Young and Joycette Goodwin.

1.24 “Settling Parties” means, collectively, Defendant, the Representative Plaintiffs, and all Class Members.

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

II. DENIAL OF WRONGDOING

Defendant denies the 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

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

8 RENEE YOUNG and JOYCETTE GOODWIN,
9 individually and on behalf of all others similarly
10 situated,

11 Plaintiffs,

12 v.

13 NEUROBRANDS, LLC, a Delaware limited
14 liability company;

15 Defendant.
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) Case No. 4:18-cv-05907-JSW

) **CLASS ACTION**

) **CLASS ACTION SETTLEMENT**
) **AGREEMENT**

) Judge: Hon. Jeffrey S. White

Litigation. Similarly, this Agreement provides for no admission of wrongdoing or liability by Defendant, its past, present and future officers, directors, employees, shareholders, subsidiaries, parents, affiliates, accountants, advisers, agents, contractors, legal counsel, successors, heirs, and assigns. This Settlement is entered solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

III. THE BENEFITS OF SETTLEMENT

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.

IV. SETTLEMENT CONSIDERATION

4.1 Injunctive Relief

Defendant will provide the Class with injunctive relief by way of reformulation of the Products and/or by modification of the label and packaging for the Products as set forth in this Agreement. Specifically, Defendant will implement the following modifications:

4.1.1 Defendant will use its best efforts to reformulate all Products that contain DL-malic acid by removing DL-malic acid.

4.1.2 Defendant will switch to the new formulations provided they pass requisite research and development and/or regulatory testing (e.g. stability testing) and are commercially feasible.

4.1.3. Product reformulation research and development and testing must be completed within seven months of the date the Court issues a Preliminary Approval Order.

4.1.4 If the new formulations pass requisite testing and are commercially feasible, Defendant will begin switching to the new formulations within 30 days of the completion of such

1 testing. For avoidance of doubt, the distribution or sales by Defendant of residual Product
2 manufactured prior to the implementation of the changes described in sections 4.1.1-4.1.3; or the
3 distribution or sales by third parties of residual Product manufactured prior to the implementation
4 of the changes described in sections 4.1.1-4.1.3, shall not constitute a violation of this Agreement
5 or the injunction issued pursuant hereto.

6 4.1.5 After Defendant's efforts to reformulate are complete, Defendant will provide a
7 declaration to Class Counsel confirming that best efforts were used.

8 4.1.6 Defendant estimates that to effectuate these reformulations, at least one current
9 employee will need to devote substantial time to this project until testing is complete. Defendant
10 agrees to provide a sworn declaration affirming this statement prior to final approval.

11 4.2 If after using best efforts, Defendant determines that one or more of the
12 reformulated Products are not scientifically or commercially feasible, Defendant will not be
13 obligated to switch to such reformulated Product but agrees to modify its packaging, labeling and
14 advertising for such Products as described below:

15 4.2.1 Within 30 days of determining one or more of the reformulated Products are not
16 scientifically or commercially feasible, and no later than eight months after the date the Court
17 issues a Preliminary Approval Order, Defendant agrees to add "(DL-malic acid)" after "malic
18 acid" in the ingredient list of all such Products that contain dl-malic acid as an ingredient. All
19 promotional and marketing materials for such Products that reference malic acid as an ingredient
20 must follow suit.

21 4.2.2 Within 30 days of determining that one or more of the reformulated Products are
22 not scientifically or commercially feasible, and no later than eight months after the date the Court
23 issues a Preliminary Approval Order, Defendant will modify its website to disclose that such
24 Products may also contain synthetic malic acid or other acidulants.

25 4.2.3 Within 30 days of determining one or more reformulated Products are not
26 scientifically or commercially feasible, Defendant will modify the labelling of all such Products
27 that contain dl-malic acid as an ingredient to add an asterisk or similar reference after or adjacent
28 to the "natural flavors" representation that appears on the top front of each such Product label,

1 which directs the consumer to the statement “*Learn More at [the URL or webpage of the
2 Neurobrands website (appearing elsewhere on the packaging) containing the disclosure described
3 in Section 4.2.2].”

4 4.2.4 Within 30 days of determining that one or more reformulated Products are not
5 scientifically or commercially feasible, and no later than eight months after the Court issues a
6 Preliminary Approval Order, Defendant will replace the phrase “no artificial colors or flavors”
7 with “no artificial colors” from the labeling and advertising of all such Products that contain dl-
8 malic acid as an ingredient. All promotional and marketing materials for such Products that
9 reference malic acid as an ingredient must follow suit.

10 4.2.5 For avoidance of doubt, the distribution or sales by Defendant of residual Product
11 manufactured prior to the implementation of the labeling changes described in sections 4.2.1-4.2.4;
12 or the distribution or sales by third parties of residual Product manufactured prior to the
13 implementation of the labeling changes described in sections 4.2.1-4.2.4, shall not constitute a
14 violation of this Agreement or the injunction issued pursuant hereto.

15 4.2.6 Defendant estimates that the cost to effectuate labeling modifications (which will
16 be required whether Defendant introduces new formulations or not) is \$20,000. Defendant agrees
17 to provide a sworn declaration affirming this statement prior to final approval.

18 4.3 All injunctive relief modifications in Sections 4.2 are permanent, unless and until
19 Defendant changes its product formulation to remove all dl-malic acid from the Products.

20 **V. NOTICE**

21 5.1 All costs and expenses of providing Notice in accordance with the Preliminary
22 Approval Order (“Notice Costs”) shall be paid by Defendant to the Notice Administrator as
23 approved by the Court through its approval of the Notice Plan.

24 5.2 Notice Costs incurred by the Notice Administrator shall not be chargeable to the
25 Class and shall be borne solely by Defendant.

26 5.3 Defendant shall retain the Notice Administrator (including subcontractors) to help
27 implement the terms of the Settlement Agreement.

28 5.4. The Notice Administrator will facilitate the notice process by assisting the Parties

1 in the implementation of the Notice Plan, as well as providing CAFA Notice.

2 5.5 The Notice Administrator shall be responsible for providing the Parties with
3 assistance, as necessary, such as by preparing affidavits of work it has performed with respect to
4 implementing the Class Notice, and providing regular updates to the Parties' counsel about the
5 status of the Notice process.

6 5.6 **Class Settlement Website**

7 5.6.1 The Notice Administrator will create and maintain a class settlement website (the
8 "Class Settlement Website"), to be activated within fifteen (15) calendar days of its receipt of the
9 Preliminary Approval Order. The Notice Administrator's responsibilities will also include
10 securing an appropriate URL, such as www.NeurobrandsClassAction.com. The Class Settlement
11 Website will contain Settlement information and case-related documents such as the Agreement,
12 the Long-Form Notice, Preliminary Approval Order, the First Amended Complaint, the Order
13 Granting in Part Plaintiffs' Motion for Class Certification, and notices from the Court. In addition,
14 the Class Settlement Website will include procedural information regarding the status of the Court-
15 approval process, such as an announcement of the Final Approval Hearing date, as described in
16 Section 7.1, when the Final Approval Order and Judgment have been entered, and when the
17 Effective Date has been reached, including any appeal(s), if any.

18 5.6.2 The Class Settlement Website will terminate (be removed from the internet) and no
19 longer be maintained by the Notice Administrator thirty (30) days after either (a) the Effective
20 Date or (b) the date on which the Agreement is terminated or otherwise not approved by a court,
21 whichever is later.

22 5.7 **CAFA Notice**

23 5.7.1 The Parties agree that the Notice Administrator shall serve notice of the Settlement
24 Agreement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal
25 and state officials no later than ten (10) days after the filing of this Settlement Agreement with the
26 Court.

27 5.7.2 Defendant will provide Class Counsel with any substantive responses received in
28 response to any CAFA Notice.

1 5.8 **Notice Plan**

2 5.8.1 The Class Notice shall conform to all applicable requirements of the Federal Rules
3 of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any
4 other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties
5 and approved by the Court.

6 5.8.2 No later than thirty (30) days after preliminary approval by the Court of this
7 Settlement, the Notice Administrator shall commence providing Notice to the Class according to
8 the Notice Plan as attached in **Exhibit C**, except that the Class Settlement Website shall require
9 earlier publication, as discussed in Section 5.6.

10 5.8.3 The Parties agree to the content of the Notice, substantially in the forms attached to
11 this Agreement as **Exhibit A** (Long Form Notice) and **Exhibit B** (Summary Notice), and as
12 approved by the Court.

13 5.8.4 The Notice Administrator shall also publish the Summary Notice in a newspaper
14 in a manner sufficient to meet California Government Code § 6064 and Civil Code § 1781.

15 **VI. RELEASES**

16 6.1 Upon the Effective Date, the Representative Plaintiffs and their respective past and
17 present directors, officers, employees, agents, trustees, fiduciaries, guardians, servants,
18 consultants, underwriters, attorneys, advisors, representatives, estate trustees, heirs, executors,
19 administrators, predecessors, successors and assigns, and any other Person claiming by, through
20 or on behalf of them hereby release and discharge the Released Persons from any and all liabilities,
21 claims, causes of action, damages (whether actual, compensatory, statutory, punitive, or of any
22 other type), penalties, losses, or demands, whether known or unknown, existing, suspecting, or
23 unsuspected, that were or reasonably could have been asserted based on the factual allegations in
24 this Litigation.

25 6.2 Upon the Effective Date, each Class Member and their respective past and present
26 directors, officers, employees, agents, trustees, fiduciaries, guardians, servants, consultants,
27 underwriters, attorneys, advisors, representatives, estate trustees, heirs, executors, administrators,
28 predecessors, successors and assigns, and any other Person claiming by, through or on behalf of

1 them hereby release and discharge the Released Persons from any and all claims for injunctive
 2 relief, other similar equitable relief, or any relief available under Federal Rule of Civil Procedure
 3 23(b)(2) (which does not include any potential claims for monetary damages of any kind), whether
 4 known or known, existing, suspected, or unsuspected, that were or reasonably could have been
 5 asserted based on the factual allegations in this Litigation. The released claims expressly do not
 6 include any personal injury claims regarding the Products.

7 6.3 With respect to the released claims set forth in Section 6.1-6.2, each Representative
 8 Plaintiff and Class Member shall be deemed to have waived and relinquished, to the fullest extent
 9 permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and
 10 equivalent, comparable, or analogous provisions of the laws of the United States or any state or
 11 territory thereof, or of the common law). **Section 1542 provides:**

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

15 **VII. SETTLEMENT HEARING**

16 7.1 Promptly after execution of this Agreement, the Representative Plaintiffs will
 17 submit the Agreement together with its exhibits to the Court and will request that the Court grant
 18 preliminary approval of the Settlement; issue the Preliminary Approval Order; and schedule a
 19 hearing on whether the Settlement should be granted final approval and whether Class Counsel’s
 20 application for fee award and expenses, and for incentive awards to the Representative Plaintiffs
 21 (“Fee Application”) should be granted (“Final Approval Hearing”). The Parties shall request the
 22 Court schedule the Fee Application to be filed no later than thirty-five (35) calendar days prior to
 23 the Objection Deadline, or earlier, if the Court deems it necessary.

24 7.2 Defendant shall cooperate in good faith in Plaintiffs’ preparation of an unopposed
 25 motion for preliminary approval of the Settlement, including by providing Class Counsel with the
 26 declarations and information described in Section 4.1 above.

27 7.3 Defendant shall not oppose Plaintiffs’ assertion, in papers filed in furtherance of
 28 this Settlement, that the Class satisfies each of the elements required under Federal Rules of Civil

1 Procedure 23(a) and (b)(2): The Class is so numerous that joinder of all members is impracticable;
2 there are questions of law or fact common to the Class; the claims of Plaintiffs are typical of the
3 Class; and Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class.

4 7.4 The Parties agree to the form and substance of the proposed Preliminary Approval
5 Order, attached hereto as **Exhibit D**, to be lodged with the Court with the unopposed motion for
6 preliminary approval of the Settlement Agreement.

7 7.5 **Procedures for Objecting to the Settlement**

8 7.5.1. Class Members shall have the right to appear and show cause, if they have any
9 reason why the terms of this Agreement should not be given final approval, subject to each of the
10 sub-provisions contained in this Section 7.5. Any objection to this Agreement, including any of
11 its terms or provisions, must be in writing, be submitted to the Court either by mailing the written
12 objection to the Class Action Clerk, United States District Court for the Northern District of
13 California, Oakland Division or by filing the written objection in person at any location of the
14 United States District Court for the Northern District of California, and must be postmarked no
15 later than thirty (30) calendar days prior to the Final Approval Hearing date. Class Members may
16 object either on their own or through an attorney hired at their own expense.

17 7.5.2 If a Class Member hires an attorney to represent him or her at the Final Approval
18 Hearing, he or she must do so at his or her own expense. No Class Member represented by an
19 attorney shall be deemed to have objected to the Agreement unless an objection signed by the
20 Class Member is also filed with the Court pursuant to Section 7.5.1

21 7.5.3 Any objection regarding or related to the Agreement shall contain a caption or title
22 that identifies it as “Objection to Class Settlement in *Young v. Neurobrands, LLC*, Case No. 4:18-
23 cv-05907-JSW” and also shall contain information sufficient to identify and contact the objecting
24 Class Member (or his or her attorney, if any), as well as a clear and concise statement of the Class
25 Member’s objection, documents sufficient to establish the basis for their standing as a Class
26 Member, i.e., verification under oath as to the approximate date(s) and location(s) of their
27 purchase(s) of the Products, the facts supporting the objection, and the legal grounds on which the
28 objection is based. Any objections not submitted to the Court at least thirty (30) days prior to the

Final Approval Hearing are deemed waived (unless the Court sets a different deadline for any such objection). If an objecting party chooses to appear at the hearing, that party must file with the Court, at least thirty (30) days before the Final Approval Hearing, a notice of intent to appear and that notice must list the name, address and telephone number of the attorney, if any, who will appear on behalf of that party (unless the Court sets a different deadline for any such notice of intent to appear).

7.5.4 Any Class Member who does not object to the Agreement in compliance with the provisions set forth herein, is deemed to be a Class Member and bound by the Agreement upon final approval of the Settlement.

7.6 Right to Respond to Objections

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, or on such other date as set forth in the Preliminary Approval Order, or any subsequent Court order(s) modifying the briefing schedule for 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), Class Counsel and Defense Counsel, to the extent the objector or their counsel do not receive notice of electronic filing via the Court's ECF filing system.

VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD

8.1 In accord with Federal Rule of Civil Procedure 23(h) and relevant case law, Plaintiffs will petition the Court for attorneys' fees and costs in a total amount not to exceed \$750,000.00, an incentive award to Plaintiff Renee Young not to exceed \$5,000.00, and an incentive award to Plaintiff Joycette Goodwin not to exceed \$5,000.00.

8.2 Upon appropriate Court Order so providing, all attorneys' fees and costs awarded to Class Counsel shall be paid by Defendant to Class Counsel in equal monthly installments over a period of 11 months following the Effective Date.

8.3 Upon appropriate Court Order so providing, the incentive awards to the Class Representatives, as set forth in Section 8.1 above, shall be paid by Defendant to Class Counsel

1 within thirty (30) days of the Effective Date.

2 8.4 Defendant shall bear its own attorneys' fees and costs.

3 8.5 The attorneys' fees and costs awarded by the Court as set forth under Section 8.1-
4 8.3 shall be the total obligation of Defendant to pay attorneys' fees and costs of any kind to Class
5 Counsel in connection with the Litigation and this Agreement. Any incentive awards awarded by
6 the Court as set forth in Section 8.3 shall be the total obligation of Defendant to pay money to any
7 Representative Plaintiff in connection with the Litigation and this Agreement.

8 **IX. MOTION FOR FINAL JUDGMENT AND ORDER**

9 9.1 In accord with the Court's schedule for the Final Approval Hearing, as set in the
10 Preliminary Approval Order, the Class Representatives shall file a motion for final approval of the
11 Settlement Agreement, in consultation with Defendant, and Defendant agrees not to oppose such
12 motion to the extent consistent with the terms of this Agreement.

13 9.2 Defendant shall cooperate in good faith with Plaintiffs' preparation of the motion
14 for final approval of the Settlement Agreement, including by providing Class Counsel with the
15 declarations and then-available information described in Section 4.1 above.

16 9.3 Defendant shall not oppose Plaintiffs' assertion, in papers filed in furtherance of
17 the Settlement Agreement, that the Court should affirm its rulings granting Preliminary Approval
18 of the Settlement and grant final approval of the Settlement.

19 9.4 The Parties agree to the form and substance of the proposed Final Judgment and
20 Order, attached hereto as **Exhibit E**, to be lodged with the Court with the motion for final approval
21 of the Settlement Agreement.

22 **X. EFFECT OF TERMINATION**

23 10.1 If this Agreement is not approved by the Court or the Settlement is terminated or
24 fails to become effective in accordance with the terms of this Agreement, the Settling Parties will
25 be restored to their respective positions in the Litigation as of the date the Motion for Preliminary
26 Approval was filed. In such event, the terms and provisions of this Agreement will have no further
27 force and effect with respect to the Settling Parties and will not be used in this Litigation or in any
28 other proceeding for any purpose, and any Judgment or order entered by the Court in accordance

1 with the terms of this Agreement will be treated as vacated.

2 10.2 No order of the Court or modification or reversal on appeal of any order of the
3 Court concerning any award of attorneys' fees, expenses, or costs to Class Counsel, or incentive
4 award to the Representative Plaintiffs, will constitute grounds for cancellation or termination of
5 this Agreement.

6 **XI. MISCELLANEOUS PROVISIONS**

7 11.1 The Parties acknowledge that it is their intent to consummate this Agreement, and
8 they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms
9 and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing
10 terms and conditions of this Agreement.

11 11.2 The Parties intend the Settlement to be a final and complete resolution of all
12 disputes between them with respect to the Litigation. The Settlement compromises claims that are
13 contested and will not be deemed an admission by any Settling Party as to the merits of any claim
14 or defense.

15 11.3 The Parties agree that the consideration provided to the Class and the other terms
16 of the Settlement were negotiated at arm's length, in good faith by the Parties, and reflect a
17 settlement that was reached voluntarily, after consultation with competent legal counsel, and with
18 the extensive assistance of an independent, neutral mediator, Judge Jay C. Gandhi (Ret.) of JAMS.
19 The Litigation was filed in good faith, was not frivolous and was in compliance with Rule 11 of
20 the Federal Rules of Civil Procedure. This Agreement is entered solely to eliminate the
21 uncertainties, burdens and expenses of protracted litigation.

22 11.4 Neither this Agreement nor the Settlement, nor any act performed or document
23 executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to
24 be or may be used as an admission of, or evidence of, the validity of any released claim, or of any
25 wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission
26 of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative
27 proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may
28 file this Agreement and/or the Judgment in any action that may be brought against it in order to

1 support any defense or counterclaim, including without limitation those based on principles of res
2 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other
3 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4 11.5 Any and all Exhibits to this Agreement are material and integral parts hereof and
5 are fully incorporated herein by this reference.

6 11.6 This Agreement may be amended or modified only by a written instrument signed
7 by or on behalf of all Parties or their respective successors-in-interest.

8 11.7 This Agreement and any exhibits attached hereto constitute the entire agreement
9 among the Parties, and no representations, warranties, or inducements have been made to any Party
10 concerning this Agreement or its exhibits other than the representations, warranties, and covenants
11 covered and memorialized in such documents. Except as otherwise provided herein, the Parties
12 will bear their own respective costs.

13 11.8 Class Counsel, on behalf of the Class, is expressly authorized by the Representative
14 Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to
15 this Agreement to effectuate its terms, and is expressly authorized to enter into any modifications
16 or amendments to this Agreement on behalf of the Class that Class Counsel deems appropriate.

17 11.9 Each counsel or other Person executing this Agreement or any of its Exhibits on
18 behalf of any Party hereby warrants that such Person has the full authority to do so.

19 11.10 This Agreement may be executed in one or more counterparts. All executed
20 counterparts and each of them will be deemed to be one and the same instrument. A complete set
21 of original counterparts will be filed with the Court.

22 11.11 This Agreement will be binding upon, and inure to the benefit of, the successors
23 and assigns of the Settling Parties.

24 11.12 The Court will retain jurisdiction with respect to implementation and enforcement
25 of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for
26 purposes of implementing and enforcing the Settlement and any Exhibits attached thereto.

27 11.13 None of the Settling Parties, or their respective counsel, will be deemed the drafter
28 of this Agreement or its exhibits for purposes of construing the provisions thereof. The language

1 in all parts of this Agreement and its exhibits will be interpreted according to its fair meaning, and
2 will not be interpreted for or against any of the Settling Parties as the drafter thereof.

3 11.14 This Agreement shall be deemed the “proposed agreement” filed with the Court
4 within the meaning of 28 U.S.C. § 1715 as of the date on which preliminary approval is granted
5 by the Court.

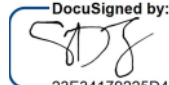
6 11.15 This Agreement and any exhibits hereto will be construed and enforced in
7 accordance with, and governed by, the internal, substantive laws of the State of California without
8 giving effect to that State’s choice-of-law principles. Any provision of California Evidence Code
9 §§ 1115-1128 notwithstanding, this Agreement may be enforced by any Party hereto by a motion
10 under Code of Civil Procedure § 664.6 or by any other procedure permitted by California law. The
11 provisions of the confidentiality agreement entered into with respect to the mediation process
12 concerning this matter are waived solely for purposes of such enforcement.

13 11.16 If the Agreement is rejected by the Court, the Parties agree to negotiate in good
14 faith regarding the elimination or revision of any provisions in the Agreement that resulted in Court
15 rejection, with the goal of reaching a formal settlement agreement that will be accepted by the
16 Court and thereafter to immediately submit a revised settlement agreement to the Court for
17 approval, and all other terms and conditions herein shall continue in full force and effect until
18 approval by the Court of the revised settlement agreement. The fees and expenses of any mediator
19 incurred for the purposes of this provision shall be shared equally between Defendant and the
20 Class. Each Party shall bear its own attorneys’ fees and costs of such renegotiation.

21 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be
22 executed by themselves, approved as to form and content by their respective attorneys.
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5/18/2021

Dated: May __, 2021

DocuSigned by:

23E34179225D48C

Name: Sanela Diana Jenkins

Title: Founder/CEO

On Behalf of Defendant Neurobrands, LLC

Dated: May __, 2021


Renee Young
Plaintiff

Dated: May __, 2021

Joycette Goodwin
Plaintiff


APPROVED AS TO FORM AND CONTENT:

Dated: May 18, 2021



Ronald Marron
LAW OFFICES OF RONALD MARRON
Counsel for Plaintiffs and the Class

Dated: May 18, 2021

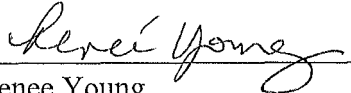


Cortlin H. Lannin
COVINGTON & BURLING LLP
Counsel for Defendant Neurobrands, LLC

1 Dated: May __, 2021

Name: Sanela Diana Jenkins
Title: Founder/CEO
On Behalf of Defendant Neurobrands, LLC

2
3
4 Dated: May 17, 2021


Renee Young
Plaintiff

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6
7
8 Dated: May __, 2021

Joycette Goodwin
Plaintiff

9
10
11 APPROVED AS TO FORM AND CONTENT:

12
13
14 Dated: May __, 2021

Ronald Marron
LAW OFFICES OF RONALD MARRON
Counsel for Plaintiffs and the Class

15
16
17
18
19 Dated: May __, 2021

Cortlin H. Lannin
COVINGTON & BURLING LLP
Counsel for Defendant Neurobrands, LLC

1 Dated: May __, 2021

2 Name: Sanela Diana Jenkins
3 Title: Founder/CEO
4 On Behalf of Defendant Neurobrands, LLC

5 Dated: May __, 2021

6 Renee Young
7 Plaintiff

8 Dated: May 18, 2021


9 Joycette Goodwin
10 Plaintiff

11 APPROVED AS TO FORM AND CONTENT:
12
13

14 Dated: May __, 2021

15 Ronald Marron
16 LAW OFFICES OF RONALD MARRON
17 Counsel for Plaintiffs and the Class

18
19 Dated: May __, 2021

20 Cortlin H. Lannin
21 COVINGTON & BURLING LLP
22 Counsel for Defendant Neurobrands, LLC
23
24
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