CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement, including any attached Exhibits, which are incorporated by this reference (the "Agreement"), is entered into by and between Plaintiff Jane Loomis ("Loomis"), individually, and in her representative capacity on behalf of all others similarly situated ("the Settlement Class"), on the one hand, and Defendant Slendertone Distribution, Inc. ("Slendertone"), on the other hand. Loomis and Slendertone are jointly referred to herein as the "Parties." Capitalized terms used herein are defined in Section 1 or indicated in parentheses elsewhere in the Agreement.

RECITALS

A. WHEREAS, on January 28, 2016, Loomis filed a putative class action complaint ("Complaint") in the Southern District of California entitled *Jane Loomis v. Slendertone Distribution, Inc.*, Case No. 19-CV-854-MMA-KSC (the "Action"), in which Loomis stated on behalf of herself, all other similarly situated individuals, and the general public, claims against Slendertone for violations of California's Consumers Legal Remedies Act, Unfair Competition Law, and False Advertising Law, and for Breaches of Express and Implied Warranty;

B. WHEREAS, after the Court's November 6, 2019 Order granting in part and denying in part Slendertone's motion to dismiss, on December 6, 2019, Slendertone answered the Complaint and asserted various affirmative defenses;

C. WHEREAS, the Parties conducted a factual investigation and analyzed the relevant legal issues with regard to the claims and potential defenses in the Action; Loomis contends that the claims asserted in the Action have merit, and that she and the putative class members are entitled to restitution and damages; Slendertone contends the claims asserted in the Action do not have merit, that Slendertone has defenses that could eliminate or reduce liability and monetary recovery in this case, and that neither Loomis nor the putative class have been damaged;

D. WHEREAS, the Parties recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, possible appeals, and ancillary actions, and have taken into account the uncertain outcome and the risk of any litigation, especially in multi-party actions such as this proceeding, as well as the difficulties and delays inherent in such litigation;

E. WHEREAS, on February 27, 2020, the Parties engaged in an Early Neutral Evaluation with the Hon. Karen S. Crawford, but were unable to reach a resolution, but continued to engage in arm's-length negotiations and, on July 10, 2020, reached an agreement on the material terms of the Settlement embodied in this Agreement; and

F. WHEREAS the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes settlement and compromise of disputed claims and is not an admission of wrongdoing or liability on the part of any Party, and desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein;

NOW THEREFORE, subject to Court approval as hereinafter provided, the Parties agree that, in consideration of the promises and covenants set forth in this Agreement and upon the entry

by the Court of a Final Approval Order and the occurrence of the Final Effective Settlement Date, the Action, including the claims asserted by Loomis, individually and on behalf of the Class Members as defined herein, shall be settled and compromised upon the terms and conditions contained herein.

1. DEFINITIONS

In addition to the terms defined above, the below-listed terms shall be defined for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in this section.

1.1. "**Agreement**" means this Settlement Agreement and Release, including any Exhibits attached hereto.

1.2. "**Claims Administrator**" means or refers to the professional claims administrator chosen to effectuate the Agreement.

1.3. "**Class**" or "**Class Members**" means all persons who, while residing in California during the Class Period, purchased the Slendertone Flex Belt, the product described and defined in the Complaint, for personal or household use. Excluded from the Class are: (a) persons or entities who purchased the Flex Belt for the purpose of resale or distribution; (b) persons who are directors and Officers of Slendertone or its parent, subsidiary, or affiliate companies; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class as provided in the Agreement; and (e) persons who signed a release of Slendertone for compensation for the claims arising out of the facts or claims asserted in the Action; and (f) and any judge to whom this matter is assigned, and his or her immediate family (spouse, domestic partner, or children).

1.4. "**Class Period**" means May 7, 2015 to the date of preliminary approval of this Agreement.

1.5. "**Class Representative**" means Loomis in her representative capacity on behalf of the general public and the Class.

1.6. "**Class Counsel**" means:

Jack Fitzgerald
Trevor M. Flynn
Melanie R. Persinger
The Law Office of Jack Fitzgerald, PC
Hillcrest Professional Building
3636 Fourth Avenue, Ste. 202
San Diego, California 92103
P | 619-692-3840

1.7. "**Court**" means the United States District Court for the Southern District of California.

1.8. "**Common Fund**" means a qualified settlement fund (QSF) formed solely for purposes of effectuating this Agreement.

1.9 **"Complaint"** means the Complaint filed in this Action on May 7, 2019.

1.10 "**Slendertone's Counsel**" or "**Defendant's Counsel**" means:

Gary A. Wolensky Esq.
Paul A. Alarcon, Esq.
Christopher C. Hossellman, Esq.
BUCHALTER, A Professional Corporation
18400 Von Karman Ave., Suite 800
Irvine, CA 92612-0514
P | (949) 760-1121

1.11 "**Fairness Hearing**" means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

1.12 "**Final Approval Order**" means the Court order finally certifying the Class for settlement purposes only and approving the settlement and this Agreement, as contemplated in this Agreement. "Final Approval" occurs on the date that the Court enters, without material change, the Final Approval Order.

1.13 "**Final Effective Settlement Date**" shall be the date a judgment in the Action becomes final and non-appealable.

1.14 "**Full Class Notice**" means the legal notice of the terms of the proposed Settlement, as approved by the Court and agreed to by the Parties, to be distributed according to a Notice Plan approved by the Court.

1.15 "**Notice Date**" means thirty (30) calendar days after entry of the Preliminary Approval Order.

1.16 "**Notice Plan**" means the plan approved by the Court, and agreed to by the Parties, for providing Notice to the Class.

1.17 "**Preliminary Approval Order**" means an order issued by the Court in response to a motion for preliminary approval filed by Loomis or by the Parties.

1.18 "**Request for Exclusion/Opt Out**" means any Class Member's request to be excluded from the terms of this Agreement, by way of the procedures set forth in Section 3.6 herein.

1.19 **"Settlement**" means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are set forth in this Agreement and any attached exhibits, which are incorporated by reference herein.

1.20 "**Settlement Class**" means those persons who are members of the Class who have not properly and timely opted out of the Settlement.

1.21 "**Settlement Website**" means the website established by the Claims Administrator to aid in the administration of the Settlement.

2. SETTLEMENT TERMS

2.1. Certification of the Class. For the purposes of Settlement and the proceedings contemplated herein only, and subject to Court approval, the Parties stipulate and agree that the Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 in accordance with the definition contained herein, that Loomis shall represent the Class for settlement purposes and shall be the Class Representative, and that Class Counsel shall be appointed as counsel for the Class.

2.2 Advertising Changes. In its Order on Slendertone's motion to dismiss, the Court found that Slendertone's "website appears to provide contradictory language that could plausibly deceive a reasonable person," specifically:

- "For those looking for a convenient way to tone, strengthen and flatten the abdominal area;"
- "Who Should Use the Flex Belt®? . . . Anyone that wants more attractive abs, regardless of current fitness levels."

Slendertone warrants that it has changed its advertising to omit these written statements, and has otherwise revised its website to address the issues identified by the Court in its Order.

2.3 Common Fund for Class. Within thirty (30) days after the Preliminary Approval Order, Slendertone (or any other entity acting on its behalf), shall deposit one-hundred seventy-five thousand dollars ($175,000.00) into a Common Fund administered by the Claims Administrator, to be held in trust, with any interest on the money inuring to the benefit of the Class. The Common Fund shall be used to cover all expenses associated with the Settlement, namely, notice and administration costs, attorneys' fees and costs awarded by the Court, an incentive payment awarded to Loomis by the Court, and Class Member claims. The balance of the Common Fund after deducting notice and administration costs and any fees, costs, and incentive payment awarded by the Court, shall be paid to those Class Members who submit a valid claim, as determined by the Claims Administrator, within forty-five (45) days after commencement of the

distribution of the Full Class Notice. Class Members who have their claims validated by the Claims Administrator, will be reimbursed on an equal, pro-rata basis for each Class Product purchased, with proof of purchase required to receive reimbursement for more than one unit.

2.4 Attorneys' Fees and Expenses, and Incentive Award. No later than twenty-eight (28) days before the Fairness Hearing, or at such other time as ordered by the Court, Class Counsel shall apply to the Court for an award, from the Common Fund, of attorney's fees and expenses incurred in prosecuting the Action; and Loomis shall apply to the Court for an incentive award. The Parties have not agreed to any particular amounts that Class Counsel or Loomis may seek. Slendertone may, but is not obligated to respond to Class Counsel's and Loomis' applications. In the event the Court does award fewer attorneys' fees and costs than requested by Class Counsel, or a smaller incentive award than requested by Loomis, this shall not be a basis for rendering the entire Settlement null, void or unenforceable, provided however, that Class Counsel and Loomis retain the right to appeal any decision by the Court regarding attorneys' fees and costs, and an incentive award. The cost of any such appeal shall be borne exclusively by Class Counsel and Loomis, and Slendertone shall have no obligation to participate in such an appeal or pay any attorneys' fees or costs incurred by Class Counsel and Loomis in prosecuting such an appeal.

3. CLASS SETTLEMENT PROCEDURES

3.1. Preliminary Settlement Approval. As soon as reasonably practicable after this Agreement is fully executed, Loomis shall prepare and file an application seeking an Order from the Court: (1) preliminarily approving of this Agreement as fair, reasonable, and adequate; (2) certifying the Settlement Class; (3) approving and appointing the Claims Administrator; (4) approving the form, manner, and content of the Class Notice and Notice Plan; (5) setting the date and time of the Fairness Hearing and related proceedings; and (6) appointing Loomis as Class Representative and her counsel as Class Counsel. Slendertone shall join in or indicate its non-opposition to the motion.

3.2. Full Class Notice. Subject to Court approval, the Parties agree that no later than thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator will commence providing the Class with Notice of the Settlement in the manner approved by the Court and agreed to by the Parties.

3.3. Claims Administration

i. The Claims Administrator will administer the claims process and oversee the distribution of Settlement proceeds to Class Members in accordance with the terms and conditions of this Agreement and related orders of the Court.

ii. The Claims Administrator will review and validate all claims submitted by Class members and shall have the discretion to review claims with the objectives of efficiency and effecting substantial justice to the Parties and Class Members. The Claims Administrator shall have the right to contact Class Members to validate claims.

3.4. Objections. Any Class Member who wishes to object to the Settlement must either file a written objection with the Court or serve copies on Class Counsel and Defense Counsel (who shall than file the objection) no later than fourteen (14) days before the Fairness Hearing (or other date required by the Court). Written objections must set forth the following:

i. The name of this Action ("*Jane Loomis v. Slendertone Distribution, Inc.*, Case No. 19-cv-854-MMA-KSC");

ii. The full name, address, and telephone number of the person objecting;

iii. The word "Objection" at the top of the document;

iv. An explanation of the basis upon which the person claims to be a Class member;

v. The legal and factual arguments supporting the objection;

vi. The identity (name, address, and telephone number) of any counsel representing the person who will appear at the Fairness Hearing;

vii. A statement of whether the person intends to personally appear and/or testify at the Fairness hearing; and the person's signature or the signature of the person's duly authorized counsel or other duly authorized representative; and;

viii. include copies of any other documents that the objector wishes to submit in support of his or her position

Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process.

3.5. Requests for Exclusion. Any Class Member who wishes to be excluded from (or "opt out" of) the Settlement must submit a Request for Exclusion ("Opt-Out Form") to the Claims Administrator no later than forty-five (45) days following the Notice Date (or other date required by the Court) (the "Opt-Out Deadline"). Opt-Out Forms will be available for download on the Settlement Website, and must be filled out and personally signed by the Class Member who seeks to opt out, and returned to the Claims Administrator by the Opt-Out Deadline. Each Class Member who does not, on or before the Opt-Out Deadline, submit a Request for Exclusion substantially in compliance with this Section, shall be deemed to participate in the Settlement and all releases provided in this Agreement. For purposes of determining timeliness, Requests for Exclusion shall be deemed to have been submitted on the date postmarked by the postal service or other expedited delivery service.

3.6. Option to Terminate. The Parties agree that Slendertone may withdraw from or terminate this Settlement prior to the Fairness Hearing if more than five percent (5%) of the Settlement Class or more than One-Hundred (100) Class Members have submitted valid and timely Requests for Exclusion. For purposes of determining whether the conditions for withdrawal or termination of the Settlement Agreement have occurred, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to Slendertone's Counsel within three (3) days of receipt by the Claim Administrator but

in no event, later than ten (10) Court days before the Fairness Hearing. Moreover, the Claims Administrator will furnish a report concerning Requests for Exclusion to Class Counsel within the same time frame. In the event of a withdrawal from this Settlement Agreement in accordance with the terms of this paragraph, this Settlement Agreement shall become null and void and of no further force and effect (the provisions of paragraphs 5.1 and 5.2 that prohibit the use of the Settlement as an admission or concession by Slendertone with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever will remain in effect, even if the Agreement is deemed "null and void" as set forth herein).

3.7. CAFA NOTICE. Slendertone shall send all notices and information required by 28 U.S.C. § 1715 to the appropriate federal and state public officials in accordance with the time requirements set forth therein.

4. FINAL APPROVAL AND RELEASES.

4.1. Final Settlement Approval. No later than twenty-eight (28) days before the Fairness Hearing, or at such other time required by the Court, Loomis shall prepare and file an application seeking an Order from the Court finally approving of this Agreement as fair, reasonable, and adequate. Slendertone shall join in or indicate its non-opposition to the motion.

4.2. Release of Slendertone by All Class Members. Upon the Final Effective Settlement Date, Ms. Loomis and each member of the Settlement Class, and each of his or her successors, assigns, legatees, heirs, and personal representatives, hereby release and forever discharge Slendertone and its parents, sister and subsidiary corporations, affiliated entities, predecessors, successors and assigns, and any of their present and former directors, officers, employees, independent contractors, shareholders, agents, partners, licensors, privies, representatives, attorneys, accountants, insurers, manufacturers, retailers, distributors, advertisers or advertising agencies, marketers or marketing agencies, product reviewers, endorsers or any of them as well as persons or entities who purchased the Class Product for the purpose of resale or distribution, and persons who are directors and officers of Slendertone or its parent, subsidiary, or affiliate companies (collectively, "Released Parties"), from any action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, in law or equity, fixed or contingent, known or unknown, arising out of the conduct alleged in the Action, including any claim arising from the allegedly false and/or misleading advertising of the Class Product (hereinafter "Released Claims"). It is expressly understood that, to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third party beneficiaries of the Agreement. This Release is intended to comply with the "identical factual predicate" doctrine and should not be read more broadly. Loomis, on her behalf and not on behalf of the Class Members, expressly waives and relinquishes all claims or causes of action against the Released Parties to the fullest extent permitted by law. Loomis, on her behalf and not on behalf of the Class Members, expressly understands and acknowledges that through this Settlement Agreement Loomis only will be deemed by the Final Approval Order to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Loomis, on behalf of herself only, expressly waives and relinquishes any and all rights and benefits that she may have under, or that may be conferred upon her by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent she may lawfully waive such rights. Loomis and the Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and accompanying Judgment, Loomis and the Class Members fully, finally, and forever settle and release any and all of the Released Claims against the Released Parties. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

Loomis represents and warrants that she is the sole and exclusive owner of all claims that she personally is releasing under this Agreement. Loomis further acknowledges that she have has not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Loomis is not aware of anyone other than herself claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a timely and valid claim shall represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

4.3. Appeal. The Class Representative and Class Counsel agrees that they will be solely responsible for defending the Court's Final Approval Order in the event of an appeal. Any fees and/or costs incurred by the Class Representative or Class Counsel to defend any appeal from the Final Approval Order, or any fees and/or costs incurred to settle any claims by objectors, are the sole responsibility of the Class Representative and Class Counsel.

5. ADDITIONAL PROVISIONS

5.1 No Admission of Liability. This Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Agreement or its Exhibits, if any, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Loomis, or of any defense asserted by Slendertone, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on part of any Party, Defendant, Release Party, Class Member or their

respective counsel. This Agreement is not to be used in evidence except in connection with obtaining approval of this Settlement and enforcing the terms of the Agreement or except to the extent required by law as determined by a Court of competent jurisdiction.

5.2 No Admission of Class Allegations. Neither this Agreement nor any class certification pursuant to it shall constitute, in this or in any other proceeding, an admission by Slendertone, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' express understanding and agreement that (a) under applicable laws, it is appropriate that a class be certified for settlement purposes only; (b) Slendertone contests and denies that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than solely for the purposes of this Settlement; and (c) notwithstanding any other provisions of this Agreement, all actions and proceedings pursuant to it shall be consistent with the foregoing. This provision shall survive the expiration or voiding of the Agreement.

5.3 Agreement for Settlement Purpose Only. This Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered or a Final Approval Order is subsequently reversed by an appeal, the Parties agree to use their best efforts to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

5.4 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and notices of hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties.

5.5 Time Periods. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this agreement or by order of the Court, the day of the act, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this agreement, and to modify or supplement any notice contemplated hereunder.

5.6 Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.7 Entire Agreement. This Agreement and any Exhibits attached hereto contain the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

5.8 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect. The headings of the sections and paragraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

5.9 Modifications and Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties and approved by the Court, except as otherwise expressly provided herein.

5.10 Waiver. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this agreement shall not be deemed a waiver of any provision of this agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

5.11 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

5.12 Execution Date. This Agreement shall be deemed executed upon the last date of execution of all of the undersigned.

5.13 Continuing Jurisdiction. The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to approve awards of attorneys' fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement.

5.14 Representations, Warranties, and Covenants of the Class Representative and Class Counsel. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of the Class Representative, to execute, deliver, and perform this Agreement and to consummate all of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiff and constitutes their legal, valid, and binding obligation.

5.15 Representations, Warranties, and Covenants of Slendertone. Slendertone, through its undersigned attorneys, represents, and warrants that it has the authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Slendertone of this Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary

corporate action on the part of Slendertone. This Agreement has been duly and validly executed and delivered by Slendertone and constitutes its legal, valid, and binding obligation.

5.16 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages will be collected and annexed to one or more documents to form a complete counterpart. Photocopies or "pdfs" of executed copies of signatures shall have the same force and effect as originals.

5.17 Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the District Court that has jurisdiction over the underlying case, i.e., the United States District Court for the Southern District of California.

5.18 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of the Agreement. Such unenforceable provisions may be segregated from the Agreement by agreement of the Parties or an order of the Court on motion of one or both parties to this Agreement. The Parties further agree that any court of competent jurisdiction is expressly authorized to modify any invalid, void, or unenforceable provision by making any modifications necessary to carry out the original intent and agreement of the Parties. Any such modification shall become a part of and treated as though originally set forth in this Agreement.

5.19 Fees and Costs. Except as otherwise provided in this Agreement, each party to this Agreement shall bear his, her, or its own attorneys' fees and costs in relation to the Action.

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have so agreed.

Dated: 8/25/20

Plaintiff Jane Loomis, for herself and for the Class

Dated: 8-31-2020

Defendant Slendertone Distribution, Inc.

By (*print*): Michael J. Nohilly, V.P.
(name and title)