

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CHARLES COPLEY, JASON EVANS,
HUMBERTO GARCIA, LUZ ANGELINA
GARCIA, JOAN MCDONALD, JOHN
PETERSON, BETTY PRESSLEY, NATALIE
ROBERTS, NORMAN SKARE, individually and as
personal representative for BETTY SKARE,
DAVID STONE, and KAYE WINK, individually
and as next of kin of DONALD WINK, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

BACTOLAC PHARMACEUTICAL, INC.;
NATURMED, INC. d/b/a INSTITUTE FOR
VIBRANT LIVING; and INDEPENDENT VITAL
LIFE, LLC,

Defendants.

No.: 2:18-cv-00575-FB-PK

Consolidated with

No. 2:20-cv-01338-FB-PK

JEFFREY FARIS, ANTONIA HAMPTON, RAUL
ROBLES, and KATHLEEN CANNON, Individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

BACTOLAC PHARMACEUTICAL, INC.;
NATURMED, INC. d/b/a INSTITUTE FOR
VIBRANT LIVING; and INDEPENDENT VITAL
LIFE, LLC,

Defendants.

CLASS SETTLEMENT AGREEMENT AND RELEASE

This Class Settlement Agreement and Release (the “Agreement”) is made and entered into as of the 22nd day of November, 2021, by, between and among Plaintiffs, on behalf of themselves and the Settlement Class Members, by and through Class Counsel, and the Settling Defendants, by and through their counsel of record in this Action. This Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein) as against

Defendants, subject to the approval of the Court and the terms and conditions set forth in this Agreement.

RECITALS

WHEREAS, Plaintiffs have asserted claims against the Defendants in this Action on behalf of several putative nationwide and statewide classes consisting of purchasers of one or more canisters of the dietary supplement product ADEG, which was manufactured by Bactolac and sold to consumers by NaturMed;

WHEREAS, Plaintiffs allege that 99 lots of ADEG manufactured in 2014 and 2015 contain ingredients not identified on the product label and omit certain ingredients required by the product formula, which caused the supplement product to be adulterated;

WHEREAS, Plaintiffs allege that the manufacture and sale of adulterated ADEG renders Bactolac and NaturMed liable under theories of breach of warranty, state consumer protection statutes, and under common law tort theories for monetary damages;

WHEREAS, Plaintiffs allege that IVL2 is a mere continuation of NaturMed and is liable for the wrongful acts committed by its predecessor;

WHEREAS, the Settling Defendants have denied and continue to deny Plaintiffs' allegations, and any alleged wrongdoing in connection with the manufacture and sale of ADEG; dispute the factual, legal, scientific, and other bases for Plaintiffs' claims and the appropriateness of certifying any putative class for litigation; and maintain that they have meritorious defenses to class certification and to the claims of liability and damages asserted by Plaintiffs; and

WHEREAS, after carefully considering the facts and applicable law and the risks, costs, delay, inconvenience, and uncertainty of continued and protracted litigation, and after engaging in extensive, arm's-length negotiations, with the assistance of a mediator, the Parties desire to settle the Action as to the Settling Defendants and the related claims of Plaintiffs and the Settlement Class on the terms and conditions stated herein, which Plaintiffs and Class Counsel believe are fair, reasonable, adequate, and beneficial to and in the best interests of the Settlement Class Members;

NOW THEREFORE, subject to approval by the Court pursuant to Federal Rule of Civil Procedure 23, the Parties hereby agree that, in consideration of the promises and mutual covenants set forth in this Agreement and upon occurrence of the Effective Date, the Action and the related claims of Plaintiffs and the Settlement Class shall be settled, compromised, dismissed on the merits and with prejudice, and released as to the Settling Defendants, and that NaturMed's Crossclaims shall be settled, compromised, dismissed on the merits and with prejudice, and released as to Bactolac, on the following terms and conditions:

1. **Definitions**

In addition to the terms defined at various points within this Agreement, the following defined terms shall apply throughout this Agreement:

- a. “**Action**” means the putative consolidated class action lawsuit captioned *Copley v. Bactolac Pharmaceutical, Inc. et al.*, No. 2:18-cv-575, currently pending in the Court, including the related lawsuit captioned *Faris v. Bactolac Pharmaceutical, Inc. et al.*, No. 1:20-cv-1338, also currently pending in the Court.
- b. “**ADEG**” means, for purposes of this Agreement only, the dietary supplement All Day Energy Greens and All Day Energy Greens Fruity, which was manufactured by Bactolac and sold to consumers by NaturMed.
- c. “**Agreement**” means the Class Settlement Agreement and Release between and among Plaintiffs, on behalf of themselves and the Settlement Class Members, and the Settling Defendants, and between NaturMed and Bactolac, including all exhibits and addenda thereto.
- d. “**Alternative Payment**” means the cash payment of \$5.00 that a Settlement Class Member may elect to receive in lieu of a Settlement Credit under the Agreement.
- e. “**Alternative Payment Fund**” means the total amount of monies available to pay Alternative Payments to eligible Settlement Class Members. The Alternative Payment Fund shall equal \$100,000.
- f. “**Bactolac**” means Bactolac Pharmaceutical, Inc.
- g. “**CAFA Notice**” means the notice to be disseminated to appropriate federal and state officials pursuant to the requirements of 28 U.S.C. § 1715(b) and in accordance with Section 9 of this Agreement.
- h. “**Claims Administrator**” means Postlethwaite & Netterville (“P&N”), the claims administrator for the Settlement Class. The Claims Administrator will be responsible for performing duties related to dissemination of Class Notice, administration of the Escrow Account, and administration of the Settlement Fund in accordance with this Agreement, as well as determining the eligibility of Settlement Class Members and providing Settlement Class Members with benefits under the Agreement. Class Counsel and Settling Defendants may, by agreement, substitute a different organization as Claims Administrator, subject to approval by the Court if the Court has previously entered the Preliminary Approval Order or Final Approval Order. In the absence of agreement, either Class Counsel or any Settling Defendant may move the Court to substitute a different organization as Claims Administrator, upon a showing that the responsibilities of the Claims Administrator have not been adequately executed by the incumbent.
- i. “**Claim Form**” means the form in substantially the same form as Exhibit B to this Agreement that must be completed by any Person seeking to receive benefits under the Agreement as a Settlement Class Member.
- j. “**Claimant**” means any Person who timely submits a Claim Form to the Claims Administrator.

k. “**Class Counsel**” means:

James J. Bilborrow
WEITZ & LUXENBERG, P.C.
700 Broadway
New York, New York 10003

as counsel for Plaintiffs, and any other attorney or law firm that represents any of the Plaintiffs and seeks to receive any portion of the attorneys’ fees that may be awarded by the Court in connection with this Settlement.

l. “**Class Notice**” means the notice of the Settlement that will be provided to prospective Settlement Class Members in accordance with Section 10 of this Agreement.

m. “**Complaint**” collectively refers to the Amended Class Action Complaint filed at Docket No. 57 in Case No. 2:18-cv-00575-FB-PK and the Amended Class Action Complaint filed at Docket No. 27 in Case 2:20-cv-01338-JMA-ARL in United States District Court for the Eastern District of New York.

n. “**Confidential Opt-Out Agreement**” means the agreement that must be executed by Plaintiffs and the Settling Defendants contemporaneously with the execution of this Agreement, which permits any Settling Defendant to withdraw from and terminate this Agreement if the number of Persons in the Settlement Class that validly exclude themselves pursuant to Section 11 exceeds the number agreed to by the Parties in the Confidential Opt-Out Agreement.

o. “**Court**” means the United States District Court for the Eastern District of New York, the Honorable Frederic Block presiding.

p. “**Crossclaims**” means all of the crossclaims that NaturMed alleges against Bactolac in the Action.

q. “**Defendants**” means Bactolac, NaturMed, and IVL2.

r. “**Effective Date**” means the date on which the last of the following has occurred: (1) twenty-one (21) days following the expiration of the deadline for appealing the Final Approval Order, if no timely appeal is filed; (2) if an appeal of the Final Approval Order is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom (including all petitions for certiorari), have been finally resolved without the Final Approval Order having been materially changed, reversed, vacated, or otherwise overturned in whole or in part, such that no future appeal is possible, except that the Effective Date shall not be delayed by a modification of or appeal from those parts of the Final Order and Judgment that pertains to the Fee and Expense Award; or (3) such date as the Parties otherwise agree in writing.

- s. **“Enrollment Period”** means the period within which potential Settlement Class Members must submit a Claim Form so that the Claims Administrator may determine whether they are eligible to receive benefits under the Agreement. The Enrollment Period shall commence thirty (30) calendar days after Preliminary Approval and shall conclude one hundred (100) days from the Notice Date. Claim Forms postmarked on the date the Enrollment Period closes shall be deemed timely submitted so long as received by the Claims Administrator within ten (10) days thereof.
- t. **“Escrow Account”** means the account established and administered by the Claims Administrator, into which the Settlement Payment, will be deposited as set forth in Section 2(c).
- u. **“Excluded Persons”** means (i) any such Person who has timely and validly excluded himself, herself or themselves from the Settlement Class, in accordance with Section 11 of this Agreement, (ii) the Settling Defendants, any entity or division in which the Settling Defendants have a controlling interest, their legal representatives in this Action, and their officers, directors, assigns and successors, (iii) the judge to whom this Action is assigned, any member of the judge’s immediate family and the judge’s staff, or any other judicial officer or judicial staff member assigned to this case, (iv) any Class Counsel, including their partners, members, and shareholders, and any immediate family members of Class Counsel, (v) any State, including without limitation the United States, or any of its agencies, and (vi) any Person who purchased one or more canisters of ADEG manufactured from a Recalled Lot and who previously received either (a) a full refund for his or her purchase, or (b) Replacement Product.
- v. **“Execution Date”** means the date on which Class Counsel and the Settling Defendants execute this Agreement.
- w. **“Final Approval”** means the date that the Court enters the Final Approval Order.
- x. **“Final Approval Hearing”** means the hearing at which the Court will consider whether to give final approval to the Settlement and make such other rulings as are contemplated in the Final Approval Order, including determining the amount of attorneys’ fees and costs awarded to Class Counsel, any Settlement Administration Costs, and the amount of any Service Awards to the Plaintiffs.
- y. **“Final Approval Order”** means the Court’s order (a) granting final approval to the Settlement; (b) directing that the Agreement be implemented in accordance with its terms; (c) dismissing the Action as against each of the Settling Defendants with prejudice, and without costs; (d) determining pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing entry of a final judgment as to the Settling Defendants; (e) ruling that each of the Releasing Parties has expressly, intentionally, fully, finally, and forever released, waived, compromised, settled, and discharged all Released Claims; (f) barring each of the Releasing Parties from asserting any of the Released Claims against any of the Released Parties; (g) finding that each of the Settling Defendants has complied with

and otherwise discharged its obligations under the Class Action Fairness Act, 28 U.S.C. § 1715(a); (h) awarding any attorneys' fees, costs, and expenses payable in connection with the Settlement or the Action; (i) finding that the Class Notice complied with Federal Rule of Civil Procedure 23 and the U.S. Constitution; and (j) reserving exclusive and continuing jurisdiction over the Settlement Fund and the interpretation, performance, implementation, administration, and enforcement of this Agreement and the Court's orders in the Action.

- z. **"IVL2"** means Independent Vital Life, LLC.
- aa. **"Long Form Notice"** means the long-form notice that shall be posted on the Settlement Website created by the Claims Administrator, as set forth in Section 10 of this Agreement. The Long Form Notice is attached hereto as Exhibit A to this Agreement.
- bb. **"NaturMed"** means NaturMed, Inc. d/b/a Institute for Vibrant Living.
- cc. **"NaturMed Recall"** means the March 2016 voluntary product recall of ADEG conducted by NaturMed with the knowledge of the Food and Drug Administration, in which customers were offered cash refunds or Replacement Product.
- dd. **"Net Settlement Fund"** means the portion of the Settlement Fund available for payment to the Settlement Class Members (in accordance with this Agreement) after the payment of any Settlement Administration Costs, attorneys' fees, any tax-related expenses, any Court-approved Service Award to the Plaintiffs, and other costs and expenses payable from the Settlement Fund.
- ee. **"Notice Date"** means the deadline set by the Court by which the Claims Administrator must send the Class Notice or, if the Court sets no such deadline, thirty (30) calendar days after Preliminary Approval.
- ff. **"Notice Program"** means the methods provided for in Section 10 of this Agreement for giving notice to potential Settlement Class Members.
- gg. **"Objection"** means a challenge to the Settlement asserted by a Settlement Class Member pursuant to Section 12 of this Agreement.
- hh. **"Objection Deadline"** means the deadline to submit an Objection set by the Court or, if the Court sets no such deadline, sixty (60) days after the Notice Date.
- ii. **"Opt Out"** means the choice of a Settlement Class Member to exclude himself, herself, or itself (in an individual or representative capacity, as appropriate) from the Settlement in accordance with Section 11 of this Agreement.
- jj. **"Opt Out Deadline"** means the deadline to Opt Out set by the Court or, if the Court sets no such deadline, sixty (60) days after the Notice Date.
- kk. **"Party"** means any one of the Plaintiffs or any one of Bactolac, NaturMed, and IVL2.

- ll. “**Parties**” means all of the Plaintiffs, on behalf of themselves and the Settlement Class Members, and all of Bactolac, NaturMed, and IVL2.
- mm. “**Person**” means a natural person, guardian, estate, legal representative, or their respective spouses, heirs, predecessors, successors, executors, administrators, representatives, or assigns.
- nn. “**Plaintiffs**” means any of Charles Copley, Jason Evans, Humberto Garcia, Luz Angelina Garcia, Joan McDonald, John Peterson, Natalie Roberts, Donald Skare, individually and as personal representative for Betty Skare, David Stone, Kaye Wink, individually and as next of kin of Donald Wink, Jeffrey Faris, Antonia Hampton, Raul Robles, and Kathleen Cannon.
- oo. “**Preliminary Approval**” means the date that the Court enters the Preliminary Approval Order.
- pp. “**Preliminary Approval Order**” means the Court’s order (i) granting preliminary approval to the Settlement; (ii) approving the Class Notice; (iii) finding that it will be likely to certify the Settlement Class under Federal Rule of Civil Procedure 23; (iv) appointing Plaintiffs as class representatives; (v) appointing Class Counsel to represent the Settlement Class; and (vi) setting the Opt Out Deadline, the Objection Deadline, the date and time for the Final Approval Hearing, and other appropriate deadlines; which order will be proposed in substantially the same form as Exhibit E and as agreed upon by the Parties.
- qq. “**Recalled Lots**” means the 99 lots included in the NaturMed Recall that are the subject of this Action. The lot numbers for the 99 Recalled Lots are set forth in Exhibit C.
- rr. “**Recalled Lots Customer List**” means the list of customers who, according to IVL2’s records, purchased one or more canisters of ADEG from the Recalled Lots, were mailed a recall letter by NaturMed in March 2016, and did not receive either a cash refund or Replacement Product in the NaturMed Recall.
- ss. “**Recalled Lots Refund List**” means the list of customers who, according to IVL2’s records, received cash refunds for a canister of ADEG purchased from the Recalled Lots.
- tt. “**Released Claims**” means any and all claims and damages (statutory, contract, tort, equitable, punitive, interest, or any other relief) that the Releasing Parties may have against the Released Parties, or that NaturMed may have against Bactolac, arising out of or related to the allegations in the Complaint or NaturMed’s Crossclaims. Without limiting the foregoing, the Released Claims include any and all claims that were, or that could have been, asserted in the Action or Crossclaims. The release shall extend to and include Defendants and their affiliates, subsidiaries, predecessors, successors, officers, directors, employees, insurers, and attorneys. The release also shall extend to and include all claims, demands, actions, causes of action, allegations, rights, obligations, costs, losses, and damages arising in whole or in part at any time from

January 1, 2014 through the Effective Date from or in connection with the acts or omissions of Defendants or any of the other Released Parties of any and every kind or nature, whether in law or in equity, whether in tort or contract, whether arising under common law, statute, or regulation, whether known or Unknown Claims, based upon the claims that were, or could have been, asserted in the Action or Crossclaims. “Released Claims” does not include claims relating to the enforcement of this Agreement.

- uu. “**Released Parties**” means Defendants and their insurers; their respective predecessors, successors, heirs, assignors, and assignees; and any past and present affiliates, directors, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, and affiliates of the foregoing persons or entities.
- vv. “**Releasing Parties**” means Plaintiffs and the Settlement Class Members; their predecessors, successors, heirs, assignors, and assignees; and any past and present affiliates, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, and affiliates of such persons or entities.
- ww. “**Replacement Product**” means any NaturMed product received in exchange for recalled ADEG during the NaturMed Recall.
- xx. “**Service Award**” means any Court-approved payment to Plaintiffs for serving as class representatives, which is in addition to any benefits due to Plaintiffs under this Agreement as members of the Settlement Class.
- yy. “**Settlement**” means the settlement and compromise reflected in this Agreement.
- zz. “**Settlement Administration Costs**” means the costs and fees of the Claims Administrator to effectuate the Notice Program and to determine the eligibility of potential Settlement Class Members and to administer the Settlement Class, as well as any cost associated with Opt Outs or Objectors.
- aaa. “**Settlement Class**” means all Persons in the United States who purchased one or more canisters of ADEG that were manufactured as part of the Recalled Lots, except for Excluded Persons.
- bbb. “**Settlement Class Member**” means a member of the Settlement Class who has not timely and validly excluded himself, herself, or itself (in an individual or representative capacity, as appropriate) from the Settlement Class, in accordance with Section 11 of this Agreement.
- ccc. “**Settlement Credit(s)**” means the \$10 credit that IVL2 will make available to each Settlement Class Member who timely submits a Claim Form and elects to receive this benefit.
- ddd. “**Settlement Fund**” means the common fund or account established pursuant to and approved by an order of the Court to resolve and satisfy the Released Claims as a

qualified settlement fund within the meaning of 26 C.F.R. § 1.468B-1(a) and (c), to receive the Total Settlement Payment, and to make payments authorized by this Agreement.

- eee. **“Settlement Website”** means the website that the Claims Administrator will establish as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the operative Complaint, Plaintiffs’ motion seeking Preliminary Approval, Preliminary Approval Order, Plaintiffs’ motion seeking Final Approval, the Final Approval Order, and the Claim Form and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website for at least six months after Final Approval. The Settlement Website shall also include the capability for Settlement Class Members to file a Claim Form via online portal. The Settlement Website’s URL will be www.NaturMedIVLSettlement.com.
- fff. **“Settling Defendant”** means any one of Bactolac, NaturMed, and IVL2.
- ggg. **“Settling Defendants”** means Bactolac, NaturMed, and IVL2.
- hhh. **“Short Form Notice”** means the form of notice that shall be provided by mail to Settlement Class Members, as set forth in Section 10 of this Agreement. The Short Form Notice is attached hereto as Exhibit B.
- iii. **“Total Settlement Payment”** means the \$1,725,000 total cash payment that the Settling Defendants collectively are obligated to make under the terms of this Settlement in accordance with Section 2 of this Agreement.
- jjj. **“Total Settlement Value”** means the value of the Total Settlement Payment plus the value of the Settlement Credits made available to eligible Settlement Class Members.
- kkk. **“Unknown Claims”** means any Released Claims that any Plaintiff or any member of the Settlement Class does not know or suspect to exist in his, her or its favor at the time of the release, which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this settlement or seek exclusion from this settlement.

2. **Settlement Payment and Settlement Funds**

- a. Settlement Administration.
 - i. In connection with the motion for Preliminary Approval of the Settlement, Class Counsel has selected and shall propose P&N (whose qualifications are set forth in Exhibit A to the Declaration of Bradley Madden Regarding Administration, to be filed herewith) to serve as an independent, third-party Claims Administrator, to administer the Settlement Fund and the Notice Program. Settling Defendants do not object to Class Counsel’s proposal for the Claims Administrator.

b. Settlement Consideration.

- i. Within twenty (20) days of Preliminary Approval, Settling Defendants shall pay \$1,725,000 (one million seven hundred and twenty-five thousand dollars) in cash into the Escrow Account to create the Settlement Fund for the benefit of the Settlement Class Members and to pay Settlement Administration Costs prior to the Effective Date. Following the Effective Date, the Settlement Fund shall be used to fund Alternative Payments, as provided in Section 4; to pay any and all attorneys' fees and costs awarded to Class Counsel; to pay any Service Award to Plaintiffs; and to pay all remaining Settlement Administration Costs. All funds held by the Claims Administrator shall remain subject to the jurisdiction of the Court until distributed pursuant to this Agreement.
- ii. All costs of the Notice Program and of other Settlement Administration Costs shall be paid from the Settlement Fund. Prior to the Effective Date, any Settlement Administration Costs must be approved by Class Counsel before incurred.

c. Nature of the Settlement Payment and Settlement Funds.

- i. The Settlement Fund at all times is intended to be a "qualified settlement fund" within the meaning of United States Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 and shall be established pursuant to an order of the Court and will be subject to the continuing jurisdiction of the Court for the life of the Settlement Fund. Neither the Parties nor the General Administrator shall take a position in any filing or before any tax authority that is inconsistent with such treatment. Each Settling Defendant is a "transferor" within the meaning of United States Treasury Regulation § 1.468B-1(d)(1) to the Settlement Fund. The Claims Administrator shall be the "administrator" of the Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-2(k)(3) and, as the administrator, the Claims Administrator shall: (a) timely make or join in any and all filings or elections necessary to make the Settlement Fund a qualified settlement fund at the earliest possible date (including, if requested by any Settling Defendant, a relation-back election within the meaning of United States Treasury Regulation § 1.468B-1(j)); (b) timely file all necessary or advisable tax returns, reports, or other documentation required to be filed by or with respect to the Settlement Fund; (c) timely pay any taxes (including any estimated taxes, and any interest or penalties) required to be paid by or with respect to the Settlement Fund; and (d) comply with any applicable information reporting or tax withholding requirements imposed by applicable law, in accordance with United States Treasury Regulation § 1.468B-2(l). Any such taxes, as well as all other costs incurred by the General Administrator in performing the obligations created by this subsection, shall be paid out of the Settlement Fund. Settling Defendants shall provide the Claims Administrator with the combined statement described in United States Treasury Regulation § 1.468B-3(e)(2)(ii).

3. **Class Enrollment and Eligibility**

a. Submission of Claims Form and Review.

- i. To become eligible to receive benefits pursuant to this Agreement, Claimants must submit a Claim Form to the Claims Administrator during the Enrollment Period. The Claims Administrator shall review the Claim Form and any supporting documentation and determine whether the Claimant is an eligible Settlement Class Member. A Claim Form postmarked after the Enrollment Period concludes will be rejected by the Claims Administrator as untimely, and the Claimant submitting such Claim Form cannot qualify to receive benefits pursuant to this Agreement.
- ii. The Claim Form shall be in substantially the same form as Exhibit B attached hereto. The Claim Form shall be available on the Settlement Website, which will also feature a portal to allow a Claim Form to be filed online. To become eligible to receive benefits pursuant to this Agreement, Claimants may be required to submit certain qualifying documentary support, as set forth below. The Claims Administrator shall be entitled to verify the identity of any Claimant and any information required by the Claim Form.
- iii. If the Claims Administrator determines that a Claimant has submitted insufficient proof of eligibility, the Claims Administrator will provide an opportunity for the Claimant to cure the submission to the extent practicable.
- iv. Settlement Credits provided to Settlement Class Members who demonstrate eligibility as determined by the Claims Administrator shall be transferred as set forth in Section 4. Alternative Payments to Settlement Class Members who demonstrate eligibility as determined by the Claims Administrator and this Agreement shall be paid from the Settlement Fund as set forth in Section 4. The Claims Administrator shall use reasonable efforts to complete transfer of all Settlement benefits due in accordance with this Agreement within 90 days of the Effective Date.

b. Eligibility Determination.

- i. On or before the filing of a motion for preliminary settlement approval, IVL2 will provide the Claims Administrator with the Recalled Lots Customer List, Recalled Lots Refund List, and a list of customers who received Replacement Product. The Claims Administrator shall determine Claimant eligibility exclusively by referencing these three lists except as set forth below.
- ii. During the Enrollment Period, Claimants shall complete a Claim Form, electing whether they choose to receive Settlement Credit or Alternative Payments. If a Claimant fails to make an election of Settlement Credit or an Alternative Payment on their Claim Form, the Claims Administrator shall award Settlement Credit.

- iii. If the Claims Administrator is able to identify a Claimant as an eligible Settlement Class Member by referencing the Recalled Lots Customer List, then no further efforts at verification are necessary and the Claimant shall be deemed eligible. If the Claims Administrator is unable to determine whether the Claimant is an eligible Settlement Class Member solely by referencing the Recalled Lots Customer List, then the Claim Administrator shall require some supporting information to verify the Claimant's eligibility. Such supporting information may include, *inter alia*, ADEG invoices or receipts, photographs of recalled ADEG canisters, proof of identity such as a driver's license, or any other documents or information the Claims Administrator deems sufficiently reliable to verify a Claimant's eligibility and identity. If the Claimant is not included on the Recalled Lots Customer List, the burden is on the Claimant to establish their eligibility.
- iv. After verifying that a Claimant is included on the Recalled Lots Customer List or, if the Claimant was not included on the Recalled Lots Customer List, that the Claimant is eligible to receive benefits under the Agreement, the Claims Administrator must determine whether that Claimant is identified on the Recalled Lots Refund List or on the list of customers receiving Replacement Product. If a Claimant is included on the Recalled Lots Refund List or the list of customers receiving Replacement Product, he or she is an Excluded Person. A Claimant may dispute that he or she is an Excluded Person if he or she (a) did not in fact receive a full refund for an ADEG canister purchased from the Recalled Lots, and/or (b) did not in fact receive Replacement Product in exchange for an ADEG canister purchased from the Recalled Lots, and (c) submits a statement to the Claims Administrator explaining that a full refund or Replacement Product was not received. If the Claimant submits such a statement to the Claims Administrator, he or she is eligible to receive a Settlement Credit, but not an Alternative Payment, under the Agreement. In the event it is ambiguous whether a Claimant is included on the Recalled Lots Refund List or the list of customers receiving Replacement Product, the Claims Administrator shall find the Claimant eligible.

4. **Distribution of Class Member Benefits**

- a. For Claimants who elect to receive Settlement Credit, following the Effective Date, the Claims Administrator shall issue a credit to each Settlement Class Member in substantially the same form as Exhibit D. A Settlement Credit shall be redeemable for any available IVL2 product and shall be valid for three years from the Effective Date.
- b. For Claimants who elect to receive an Alternative Payment, each Settlement Class Member shall be entitled to a cash payment of \$5. If, however, the number of Claimants choosing to receive an Alternative Payment exceeds the Alternative Payment Fund, then each Settlement Class Member electing an Alternative Payment shall receive a pro rata share. If monies remain in the Alternative Payment Fund after payment of \$5 to each Settlement Class Member electing an Alternative Payment,

the excess will be distributed pro rata to all such Settlement Class Members. The Claims Administrator shall use good faith efforts to make payments under this provision within 90 days of the Effective Date.

5. Attorneys' Fees, Costs, and Expenses

- a. Class Counsels' Fees and Costs. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund no later than twenty-eight (28) days after the Effective Date. Class Counsel may apply for an award of attorneys' fees up to one-third of the Total Settlement Value, and reimbursement of reasonable litigation costs of two hundred thousand two hundred and ten thousand and one hundred thirty-six dollars and thirty cents (\$210,136.30), to be approved by the Court. Settling Defendants agree not to oppose an application for attorneys' fees and costs in those amounts.
- b. Service Awards. Subject to Court approval, each Plaintiff shall be entitled to receive a Service Award of up to \$5,000 each for his or her role as a class representative. The Service Awards shall be paid from the Settlement Fund no later than twenty-eight (28) days from the Effective Date.
- c. Administrative Fees and Costs. Settlement Administration Costs shall be paid from the Settlement Fund within ten (10) days after invoicing to and written approval by Class Counsel. Absent exceptional circumstances, total Settlement Administration Costs shall not exceed \$325,000.
- d. Excess Funds. To the extent any monies remain in the Settlement Fund after payment of attorneys' fees and costs, Service Awards, and Settlement Administration Costs, such monies shall be added to the Alternative Payment Fund for distribution to those electing to receive an Alternative Payment.

6. Dismissal, Release of Claims, and Related Provisions

- a. Dismissal. In the motion for final approval of the Settlement, Plaintiffs, on behalf of themselves and the Settlement Class, shall request that the Final Approval Order dismiss the Action with prejudice as to the Settling Defendants and enter a final judgment as to them. NaturMed will request that the Final Approval Order also dismiss its Crossclaims with prejudice and it will file any other necessary papers ordered by the Court to effectuate dismissal with prejudice of the Crossclaims.
- b. Release. Upon the Effective Date, the Released Parties, individually and collectively, shall be fully, finally and forever released from the Released Claims of the Class Members and other Releasing Parties who are not excluded from the Settlement Class by virtue of a timely and properly submitted Opt Out request or other Court order, and such Releasing Parties shall be prohibited and enjoined from asserting or prosecuting any Released Claims against any Released Parties. Upon the Effective Date, Bactolac will also be fully, finally, and forever released from NaturMed's Crossclaims, and NaturMed shall be prohibited and enjoined from asserting or prosecuting any Released Claim against Bactolac.

Upon the Effective Date and for the consideration provided for herein, each and every Class Member who participates in the Settlement (a) agrees and covenants to the maximum extent permitted by law that, in addition to the foregoing release of the Released Claims, he or she shall not, at any time, directly or indirectly cooperate in the filing or prosecution of any suit or proceeding, in any forum based upon or related to any Released Claims against the Released Parties and (b) acknowledges that the foregoing covenant shall apply and have effect by virtue of this Agreement and by operation of the Judgment. Each Class Member who participates in the Settlement and Plaintiffs' Counsel further agree and acknowledge that the covenants not to sue provided for in this paragraph are made to inure to the benefit of, and are specifically enforceable by, each of the Released Parties. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall limit or preclude the Releasing Parties' rights to enforce any provision of this Agreement.

Releasing Parties are aware of California Civil Code §1542 and they expressly waive and relinquish any rights or benefits potentially available to them under this statute. The Releasing Parties stipulate and agree that, upon the Effective Date, and by operation of the Judgment, Releasing Parties shall expressly waive the provisions, rights, and benefits of California Civil Code §1542 and any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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.

Releasing Parties may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, disclosed or undisclosed, matured or unmatured, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Releasing Parties acknowledge that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

- c. Dismissal: Upon the Effective Date, Plaintiffs and the Settlement Class (with Court approval) will move to dismiss all claims in the Action with prejudice. Also upon the Effective Date, NaturMed will move to dismiss all of its Crossclaims against Bactolac with prejudice. However, any continuing obligations arising from the Settlement

shall survive any partial or later complete dismissal of the Action until they are determined by the Court to have been fully performed, and the Court, along with any appellate court with power to review the Court's orders and rulings in the Action, will retain exclusive and continuing jurisdiction over this Action for purposes of enforcing this Settlement Agreement and any issues associated therewith.

- d. Deceased or Incompetent Absent Class Members: It is contemplated by the Parties that legal representatives of deceased or incompetent Settlement Class Members shall have authority to sign Claim Forms and releases on behalf of the Settlement Class Members they represent. Where a legal representative of a deceased or incompetent Settlement Class Member submits a Claim Form on that Settlement Class Member's behalf, that legal representative shall attest to their authority to act for the deceased or incompetent absent Settlement Class Member. With respect to incompetent Settlement Class Members identified during the claims process, Class Counsel shall apply for an Order from the Court providing authority for such legal representative to sign the Claim Form and release on behalf of the incompetent Settlement Class Member he or she represents. It is contemplated by the Parties that an Order from the Court finally approving the Settlement shall effectuate a settlement under N.Y. C.P.L.R. § 1207 for all absent incompetent Settlement Class Members.
- e. Exclusive Remedy: The relief provided for in this Agreement shall be the sole and exclusive remedy for all Releasing Parties with respect to any Released Claims, and the Released Parties shall not be subject to liability or expense of any kind with respect to any Released Claims other than as set forth in this Agreement.
- f. Covenant Not To Sue: Each of the Releasing Parties shall forever refrain from instituting, maintaining, prosecuting, or continuing any suit, action, arbitration, or proceeding against any of the Released Parties with respect to the Released Claims.

7. **Preliminary Approval**

- a. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for a Preliminary Approval Order. The proposed Preliminary Approval Order shall be attached to the motion, or otherwise filed with the Court, and shall be in a form attached hereto as Exhibit E.
- b. The motion for Preliminary Approval shall, among other things, request that the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) find that it will be likely to certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23, for settlement purposes only, appoint the Plaintiffs as class representatives, and appoint Class Counsel as counsel for the Settlement Class; (3) approve the Notice Program set forth herein and approve the form and content of the Class Notice; (4) approve the procedures set forth herein in Sections 11 and 12 for Settlement Class Members to Opt-Out or object to the Settlement; (5) provide the authority for legal representatives of absent or incompetent Settlement Class Members, to sign Claim Forms and releases on behalf of the Settlement Class Members they represent; (6) stay further proceedings against

Settling Defendants pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Settling Defendants, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsels' application for attorneys' fees and costs and for a Service Award to Plaintiffs.

- c. In Plaintiffs' motion seeking Preliminary Approval, Plaintiffs shall request that the Court approve the Short Form Notice and the Long Form Notice attached at Exhibits A and B and approve the Notice Program. The Court will ultimately determine and approve the content and form of the notice forms to be distributed to the Settlement Class Members.
- d. The Parties further agree that in Plaintiffs' motion seeking Preliminary Approval, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (1) deadline for commencing Class Notice (the Notice Date): thirty (30) days from Preliminary Approval; (2) Opt-Out Deadline: sixty (60) days from the Notice Date; (3) Objection Deadline: sixty (60) days from the Notice Date; (4) deadline for filing motions for approval of Plaintiffs' Service Awards and attorneys' fees and costs awards: ninety (90) days from the Notice Date; (5) Final Approval Hearing: one-hundred twenty (120) days from the Notice Date, or as soon thereafter as is mutually convenient.

8. **Class Certification for Settlement Purposes**

- a. In the motion for preliminary approval of the Settlement, Plaintiffs shall propose certification of the Settlement Class, solely for purposes of the Settlement, pursuant to Federal Rules of Civil Procedure 23(b)(3) and 23(e), with Plaintiffs as the proposed class representatives, which the Settling Defendants will not oppose.
- b. If this Agreement is terminated or the Court (or an appellate court) declines to approve the Settlement as proposed by the Plaintiffs, the Settling Defendants shall retain all of the rights to oppose class certification (and assert all other arguments and defenses) that they had prior to execution of this Agreement.

9. **CAFA Notice**

- a. Within ten (10) days after Plaintiffs file the motion for preliminary approval of the Settlement, each Settling Defendant shall provide CAFA Notice to the appropriate officials of the United States, the State of New York, the other forty-nine states, and the territories. Settling Defendants shall bear the costs of such notice. The Parties will request the Court to set a Final Approval Hearing for a date not sooner than ninety (90) days after Defendants issue notice as contemplated by CAFA.
- b. When each Settling Defendant provides CAFA Notice in accordance with Section 9(a) of this Agreement, it shall provide copies of the CAFA Notice to Plaintiffs.

10. **Class Notice**

- a. Within thirty (30) days of Preliminary Approval, or by the time specified by the Court, the Claims Administrator shall commence the Notice Program, including by mailing the Short Form Notice, in such form as is approved by the Court, to all individuals identified in the Recalled Lots Customer List.
- b. The Claims Administrator shall maintain a Settlement Website containing the operative Complaint, this Agreement, the Short Form Notice and Long Form Notice, Plaintiffs' motion seeking Preliminary Approval, the Preliminary Approval Order, Plaintiffs' motion seeking Final Approval, the Final Approval Order, the Claim Form, an online portal to file Claim Forms, and such other documents as the Parties agree to post or that the Court orders posted. These documents shall remain on the Settlement Website for at least six months after Final Approval. The Settlement Website's URL will be NaturMedIVLSettlement.com.
- c. The Claims Administrator shall send the Short Form Notice Form with attached Claim Form by mail to any potential Settlement Class Member who requests a copy. It will be conclusively presumed that the intended recipients received the Short Form Notice if the Short Form Notice Form has not been returned to the Claims Administrator as undeliverable within fifteen (15) calendar days of mailing.
- d. The Parties may by mutual written consent make non-substantive changes to the Short Form Notice and Long Form Notice without Court approval after the Court's approval of these forms.
- e. A Spanish-language translation of the Long Form Notice and Short Form Notice shall be available on the Settlement Website and will be provided to Settlement Class Members who request it from the Claims Administrator.

11. **Opt Outs**

- a. A Settlement Class Member may Opt Out by submitting to the Claims Administrator a timely and valid request that complies with the Opt Out procedure described in the Class Notice. To be timely and valid, an Opt Out request must have a verified submission date on or before the Opt Out Deadline and must include (i) the full name, current address, and telephone number of the requestor; (ii) a statement of the facts that make the requestor a Settlement Class Member; (iii) a statement requesting exclusion from the Settlement Class; and (iv) the signature of the requestor.
- b. Any Settlement Class Member that submits a timely and valid Opt Out request shall not (i) be bound by any orders or judgments entered in the Action to implement and effectuate the Settlement and this Agreement; (ii) be entitled to any of the relief or other benefits provided under this Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to submit an Objection.
- c. Any Settlement Class Member that does not submit a timely and valid Opt Out request submits to the jurisdiction of the Court and shall be bound by the terms of

this Agreement and by all orders and judgments in the Action to implement and effectuate the Settlement and this Agreement.

- d. No “mass” or “class” Opt Out requests shall be valid, and no Settlement Class Member may submit an Opt Out request on behalf of any other Settlement Class Member.
- e. Any Settlement Class Member that submits an Opt Out request may revoke the request by submitting to the Claims Administrator a statement of revocation with a verified submission date no later than forty (40) days before the Final Approval Hearing; provided, however, that Class Counsel shall have discretion to extend this deadline on a case-by-case basis.
- f. As soon as practicable and no later than thirty (35) days before the Final Approval Hearing, the Claims Administrator shall furnish the Parties with a final list of all timely and valid Opt Out requests that have been submitted and not revoked.

12. **Objections**

- a. A Settlement Class Member may make an Objection by serving on the Parties a timely and valid statement of Objection that complies with the Objection procedure described in the Class Notice. Class Counsel shall file all such Objections with the Court at least twenty (20) days prior to the Final Approval Hearing.
- b. To be timely and valid, a statement of Objection must be postmarked or received on or before the Objection Deadline and must include (i) the full name, current address, and telephone number of the objector; (ii) a statement of the facts that make the objector a Settlement Class Member; (iii) a statement describing all of the objector’s challenges to this Agreement or the Settlement and the reasons for those challenges; (iv) all of the papers and evidence the objector intends to submit in support of those challenges; (v) a statement of whether the objector intends to appear at the Final Approval Hearing; (vi) the signature of the objector; (vii) a statement that the objector is willing to be deposed, upon request, on a mutually acceptable date at least ten (10) days before the Final Approval Hearing; (viii) the caption of each case in which the objector or counsel representing the objector has objected to a class action settlement within the preceding five years and a copy of all orders related to or ruling upon those objections; and (ix) all agreements that relate to the Objection, whether written or verbal, between or among the objector, counsel for the objector, and/or any other Person.
- c. No “mass” or “class” Objections shall be valid, and no Settlement Class Member may submit a statement of Objection on behalf of any other Settlement Class Member.
- d. Unless the Court orders otherwise, only those Settlement Class Members whose statements of Objection express an intention to appear at the Final Approval Hearing shall have the right to present their Objections orally at the Final Approval Hearing.

- e. Plaintiffs and the Settling Defendants shall have the right, but not the obligation, to respond to any timely filed objection no later than seven (7) days prior to the Final Approval Hearing. Any Party who wishes to respond shall file a copy of the written response with the Court, and shall serve a copy, by hand or overnight delivery, to the objecting Settlement Class Member (or his or her counsel) and by email to counsel for Plaintiffs and/or the Settling Defendants.
- f. A Settlement Class Member that does not submit a timely and valid Objection shall have waived, and shall be foreclosed from making, any challenge to this Agreement or the Settlement in the Action or any other proceeding.

13. Final Approval and Entry of Final Judgment

- a. The Parties shall jointly seek a Final Approval Order and entry of final judgment (“Judgment”) from the Court that:
 - i. Approves the Settlement Agreement in its entirety pursuant to Federal Rule of Civil Procedure 23(e) as fair, reasonable, and adequate;
 - ii. Certifies the Settlement Class, for settlement purposes only;
 - iii. Confirms appointment of the Claims Administrator;
 - iv. Confirms the appointment of Class Counsel;
 - v. Finds that the Class Notice has satisfied the requirements set forth in Federal Rule of Civil Procedure 23(c)(2)(B);
 - vi. Bars and enjoins each Settlement Class Member from commencing, asserting, and/or prosecuting any and all Released Claims against any Released Party;
 - vii. Dismisses with prejudice all claims in the operative Complaint asserted against Settling Defendants, without further costs, including claims for interest, penalties, costs, and attorneys’ fees;
 - viii. Enters final judgment as to the Settling Defendants and the claims against them in the Action pursuant to Federal Rule of Civil Procedure 54(b);
 - ix. Confirms that each of the Settling Defendants has complied with and otherwise discharged its obligations under the Class Action Fairness Act, 28 U.S.C. § 1715(a);
 - x. Confirms that it retains continuing jurisdiction over the Settlement Fund; and
 - xi. Expressly incorporates the terms of this Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members, and this Agreement, to interpret, implement, administer and enforce the Agreement in accordance with its terms.

- b. The motion for Final Approval of this Settlement shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court shall dismiss Settling Defendants from this Action with prejudice, and enter final judgment as to them, subject to the Court's continuing jurisdiction to enforce the Agreement.

14. **Amendment of Agreement**

- a. Counsel for the Parties may agree to amend this Agreement for any reason at any time.
- b. Prior to entry of the Final Approval Order, this Agreement may be amended only by a writing executed by counsel for all Parties.
- c. After entry of the Final Approval Order, this Agreement may be amended only by a writing executed by all Parties and approved by the Court.

15. **Termination Rights and Effect of Termination**

- a. Any of the Parties may terminate this Agreement if any of the following events happen: (i) the Court declines to approve any part of the Settlement; (ii) the Court declines to approve or changes a material term of the requested Preliminary Approval Order or the requested Final Approval Order; (iii) an appellate court reverses, vacates, or otherwise overturns the Final Approval Order in whole or in part; (iv) another of the Parties materially breaches this Agreement before the Effective Date and fails to promptly cure the breach after receiving written notice of the breach; or (v) the Effective Date otherwise does not come to pass. For Settling Defendants to terminate the Agreement under this section, they must unanimously agree to terminate the Agreement in writing unless a Defendant has breached the Agreement under (iv), above, in which case the non-breaching Parties must unanimously agree to terminate the Agreement in writing.
- b. Any Defendant shall have the right to withdraw from and terminate this Agreement in its entirety if the number of Persons in the Settlement Class that validly Opt Out of this Settlement pursuant to Section 11 of this Agreement exceeds the number of opt-outs permitted in the Parties' Confidential Opt-Out Agreement, which is set forth in more detail in Section 17 below.
- c. In order to exercise a right to terminate this Agreement, a Party must deliver written notice of termination to counsel for all other Parties within ten (10) days after the later of the event creating the right to terminate or the Party learning of the event creating the right to terminate, unless that deadline is extended by written consent of counsel for all Parties.
- d. If a Party exercises a right to terminate this Agreement, (i) the Parties shall have thirty (30) days to resume settlement negotiations and determine if the Parties can reach an amended agreement, including without limitation with the assistance of a mediator; (ii) all deadlines under this Agreement shall be stayed for the duration of the

negotiations; (iii) the Parties shall jointly request a stay of all Court deadlines for the duration of the negotiations; and (iv) the Parties shall jointly advise the Court of the status of this Agreement or any amendment to this Agreement within seven (7) days after the conclusion of the thirty-day negotiation period.

- e. Unless the Parties agree otherwise in writing, thirty-one (31) days after a Party exercises a right to terminate this Agreement:
 - i. The Agreement shall become null and void and of no further force and effect.
 - ii. Any unused portion of the Settlement Fund shall be returned to the Settling Defendants on a pro rata basis.
 - iii. The Action shall resume as if the Parties never entered into the Agreement.
 - iv. The Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses preserved as they existed on that date.
 - v. The Parties shall jointly move to vacate any orders entered in connection with the Settlement.
 - vi. The Parties shall jointly move for the entry of a scheduling order establishing procedures and deadlines for, among other things, a class certification hearing.
 - vii. The Agreement and any negotiations, statements, term sheets, communications, or proceedings relating thereto, the Preliminary Approval Order, and the fact that the Parties agreed to the Agreement shall not be offered as an admission or concession by any of the Parties or Settlement Class Members or as evidentiary, impeachment, or other material available for use or subject to discovery in any suit, action, or proceeding (including this Action) before any civil or criminal court, administrative agency, arbitral body, or other tribunal. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.
- f. If a Party breaches the Agreement after the Effective Date, none of the Parties may terminate the Agreement and any aggrieved Parties may seek relief only from the breaching Party. In no event shall any non-breaching Party have any liability arising out of or related to a breach of the Agreement by any other Party.

16. Confidentiality

- a. The Parties agree that the individual contributions made by each Settling Defendant to the Total Settlement Payment described in Section 2(b)(i) of this Agreement is confidential, and each Party agrees that they will not state, disclose, imply, or in any

way communicate to anyone any Settling Defendant's individual contribution to the Total Settlement Payment.

- b. While the Parties represent that this Agreement would not have been consummated absent this confidentiality provision, the Parties acknowledge that One Hundred Dollars (\$100.00) of the Total Settlement Payment represents consideration for the promises to maintain strict confidentiality of each Defendant's individual contribution to the Total Settlement Payment.
- c. The Parties acknowledge that the actual damages incurred for a violation of this confidentiality provision set forth in this Agreement would be impossible or very difficult to ascertain or prove with certainty. Therefore, the Parties agree that, in addition to reimbursing the non-breaching Party for all costs, including attorneys' fees, if any, incurred in establishing a breach of Section 16 of this Agreement, in the event of such breach, the non-violating or non-breaching Party shall be entitled to recover liquidated damages from the violating or breaching Party in the amount of Ten Thousand Dollars (\$10,000) for each violation thereof, and that each separate instance shall constitute a separate violation for purposes of calculating the damages incurred. The Parties further agree that the \$10,000 liquidated damages amount constitutes reasonable and just compensation for the harm that would be caused by any violation of Section 16; and, therefore, the Parties agree to accept this sum as liquidated damages, and not as a penalty, in the event of a violation of the confidentiality provision set forth in Section 16.
- d. Nothing herein prevents any Party from disclosing the Settling Defendants' individual contributions to the Total Settlement Payment to the extent required by law, court order, or subpoena. However, if any Party receives notice, or otherwise learns, of any attempt to compel disclosure of terms or information the disclosure of which is prohibited by this Section, that Party shall promptly, and in no event more than five (5) business days after learning of the attempt, provide to the other Parties, by email, notice of the attempt so that the other Parties have an adequate opportunity to oppose the disclosure. Notices to the Parties shall be sent to the Parties' attorneys listed in Section 17(p).

17. **Supplemental Agreements**

- a. In addition to the provisions contained in Section 15, each Defendant shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement pursuant to the Confidential Opt-Out Agreement to be executed by Plaintiffs and the Settling Defendants contemporaneously with the execution of this Agreement. This Agreement shall not be fully executed or enforceable without Plaintiffs' and the Settling Defendants' execution of the Confidential Opt-Out Agreement. The Confidential Opt-Out Agreement shall not be submitted to the Court except in the event of a dispute thereunder, in which case the Parties shall seek to file it only under seal.

18. **Miscellaneous**

- a. Jurisdiction and Venue. The United States District Court for the Eastern District of New York shall retain jurisdiction over the Parties and Settlement Class Members to interpret, implement, administer, and enforce the terms of this Agreement and resolve any dispute regarding this Agreement, the Settlement, the Preliminary Approval Order, or the Final Approval Order. All proceedings related to this Agreement, the Settlement, the Preliminary Approval Order, or the Final Approval Order shall be initiated and maintained in the United States District Court for the Eastern District of New York.
- b. Governing Law. The Agreement shall be governed by and construed in accordance with the law of the State of New York without regard for choice-of-law or conflict-of-laws principles.
- c. All Reasonable Efforts. The Parties agree to cooperate with one another and use all reasonable efforts to support, promote, and obtain court approval and finality, and to exercise reasonable efforts to accomplish the terms and conditions of this Agreement.
- d. Voluntary Settlement: The Parties and their counsel agree that, in consideration of all the circumstances, and after significant, adversarial arm's-length settlement negotiations among counsel and with the assistance of a mediator, the proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Classes, and was reached voluntarily after consultation with competent legal counsel.
- e. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class Members, and their respective agents, employees, representatives, heirs, executors, administrators, successors, and assigns.
- f. Failure of Plaintiff to be Appointed Class Representative. In the event that one or more Plaintiffs fails to secure Court approval to act as a class representative, the validity of this Agreement as to the remaining class representatives and the Settlement Classes shall be unaffected.
- g. Mistake. Each of the Parties to the Agreement has investigated the facts pertaining to it to the extent each Party deems necessary. In entering into this Agreement, each Party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.
- h. Finality. This Agreement is intended to be final and binding among the Parties, and is further intended to be a full and final accord and satisfaction between and among each of them. Each Settling Defendant and Plaintiff relies on the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.
- i. Authorization to Settle. Each of the Parties has all necessary authority to enter into this Agreement, has authorized the execution and performance of this Agreement, and has authorized the Person signing this Agreement on its behalf to do so.

- j. Execution. This Agreement may be executed in counterparts, including via electronic signature, and shall be binding once all Parties have executed the Agreement. The Parties further agree that signatures provided by portable document format (PDF) or other electronic transmission shall have the same force and effect as original signatures.
- k. Dispute Resolution. The Parties will attempt to resolve any disputes regarding this Agreement in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the United States District Court for the Eastern District of New York for resolution.
- l. No Liability. No Person shall have any claim against any Plaintiffs, Settlement Class Members, Class Counsel, Released Parties, counsel for the Settling Defendants, or the Claims Administrator based on actions that any Plaintiffs, Settlement Class Members, Class Counsel, Released Parties, counsel for Settling Defendants, or the Claims Administrator were required or permitted to take under this Agreement, the Preliminary Approval Order, or the Final Approval Order. No Person shall have any claim against any Released Parties or counsel for Settling Defendants related to administration of the Settlement. No Person shall have any claim against Plaintiffs, Class Counsel, or the Claims Administrator related to the administration of the Settlement (including making payments to Settlement Class Members), except for in the presence of proven willful misconduct.
- m. Entire Agreement. This Agreement and the Confidential Opt-Out Agreement constitute the entire agreement of the Parties with respect to the subject matter thereof, and they supersede all prior and contemporaneous oral and written agreements and discussions among them on that subject matter. The Settlement is not subject to any condition, representation, warranty, or inducement not expressly provided for herein, and there exist no collateral or oral agreements, promises, conditions, representations, warranties, or inducements among any of the Parties, Class Counsel, Settling Defendants, or counsel for the Settling Defendants relating to the subject matter of the Agreement and the Confidential Opt-Out Agreement that supersede or supplement the Agreement and the Confidential Opt-Out Agreement.
- n. Deadlines. If the last date for the performance of any action required or permitted by this Agreement falls on a Saturday, Sunday, or Court or public holiday, that action may be performed on the next business day as if it had been performed within the time period provided for performance of the action.
- o. Reasonable Extensions. Unless the Court orders otherwise, the Parties may agree in writing to any reasonable extensions of time to carry out any of the provisions of this Agreement.
- p. Notices. Any notice, demand, or other communication under this Agreement (other than the Class Notice) shall be in writing and shall be deemed duly given if it is addressed to the intended recipient as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed email, or delivered by reputable express overnight courier:

To Plaintiffs or Settlement Class Members:

James J. Bilsborrow
Weitz & Luxenberg, PC
700 Broadway
New York, New York 10003
jbilsborrow@weitzlux.com

To Bactolac:

Matthew D. Kelly
SEGAL MCCAMBRIDGE SINGER & MAHONEY, LTD.
233 S. Wacker Dr., Suite 5500
Chicago, IL 60606
mkelly@smsm.com

To NaturMed:

Sheila Carmody
Courtney Henson
Snell & Wilmer LLP
One Arizona Center
400 E. Van Buren St., Suite 1900
Phoenix, AZ 85004-2202
scarmody@swlaw.com
chenson@swlaw.com

To IVL2:

Anthony Austin
Fennemore Craig, P.C.
2394 East Camelback Road
Suite 600
Phoenix, AZ 85016
aaustin@fennemorelaw.com

Any notice required to be sent to the Claims Administrator shall be delivered to his, her, or its official business address.


- q. Waiver. The provisions of this Agreement may be waived only by written agreement signed by the waiving party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach of this Agreement.
- r. Materiality of Exhibits. All of the Exhibits to the Settlement Agreement are material and integral parts hereof.

- s. Severability. The provisions of this Agreement are not severable, except as provided in the Agreement.
- t. Third-Party Beneficiaries. This Agreement does not create any third-party beneficiaries, except Settlement Class Members and the Released Parties other than the Settling Defendants, who are intended third-party beneficiaries.
- u. Force Majeure. The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by Acts of God, fires, accidents, pandemics, other natural disasters, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.
- v. No Admission. Defendants expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Action and deny that the Action could have been properly maintained as a class action. It is expressly agreed that neither this Settlement, the Settlement Agreement and Release, any document referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may be used as, an admission by Defendants of any fault, wrongdoing or liability whatsoever with respect to the claims and allegations in the Action. By agreeing to settle the claims of the Settlement Class in the Action, Defendants do not admit that the Action could have been properly maintained as a contested class action and the Settlement Class does not admit any deficiency in the merits of their claims. Defendants assert they have valid defenses to Plaintiffs' and the Class Members' claims and are entering into the Settlement solely to compromise the disputed claims and avoid the risk and expense of continued litigation. Entering into or carrying out the Settlement Agreement and Release, and any negotiations or proceedings related thereto, is not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received in evidence in any action or proceeding by or against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between Defendants and any Class Member(s), the provisions of the Settlement Agreement and Release, or the provisions of any related agreement, order, judgment or release.

[SIGNATURES ON NEXT PAGE]

APPROVED AND AGREED TO:

Class Counsel


By: James Bitbarrow
Date: 12/9/21

Defendant Bactolac Pharmaceutical, Inc.

By:
Position:
Date:

Defendant NaturMed, Inc.

By:
Position:
Date:

Defendant Independent Vital Life LLC

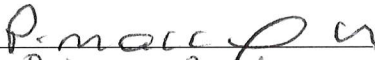
By:
Position:
Date:

APPROVED AND AGREED TO:

Class Counsel

By:
Date:

Defendant Bactolac Pharmaceutical, Inc.



By: Paula M. Reddy
Position: Chief Executive Officer
Date: 11/22/2021

Defendant NaturMed, Inc.

By:
Position:
Date:

Defendant Independent Vital Life LLC

By:
Position:
Date:

APPROVED AND AGREED TO:

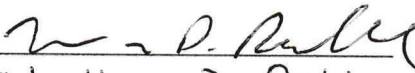
Class Counsel

By:
Date:

Defendant Bactolac Pharmaceutical, Inc.

By:
Position:
Date:

Defendant NaturMed, Inc.


By: William D. Ruble
Position: President (thru 4/15/17)
Date: 11/22/2021

Defendant Independent Vital Life LLC

By:
Position:
Date:

APPROVED AND AGREED TO:

Class Counsel

By:
Date:


Defendant Bactolac Pharmaceutical, Inc.

By:
Position:
Date:

Defendant NaturMed, Inc.

By:
Position:
Date:

Defendant Independent Vital Life LLC



By: **DON EGILE**
Position: **MANAGER**
Date: **11-30-21**